



BARRED FROM THEIR HOMES

THE CONTINUED DISPLACEMENT AND
PERSECUTION OF TAWARGHAS AND
OTHER COMMUNITIES IN LIBYA

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Cover photo: A man sits at a camp for refugees from Tawargha in Benghazi, January 31, 2012. ©REUTERS/Esam Al-Fetori

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INTRODUCTION

On 25 June 2013, a group of around 100 people tried to return to their home town of Tawargha, some 40 km from Misratah, from where they had fled in terror in August 2011 during the armed conflict that ended the rule of Colonel Mu'ammār al-Gaddafi. Frustrated by the failure of the post-Gaddafi governments to find a solution to their forcible displacement, improve their temporary living conditions, combat persistent threats and attacks against Tawarghas and find a safe way for them to return home, they defied advice by prominent Libyans to postpone their return for fear of reprisals by militias from nearby Misratah.

The small groups of Tawarghas set off in the early hours from their makeshift homes in the eastern city of Benghazi, driving in convoy towards their home town. A delegation of elders in Ajdabya, some 150km west of Benghazi, stopped them and convinced them to abandon their plans. The elders promised to negotiate a solution that would allow displaced Tawarghas to return home in safety at a later stage. In the evening of that same day, a smaller group of 30 Tawargha families, who had been living in the southern city of Sabha, was stopped by another group of elders some 30km from Jufra near Misratah. This group too was persuaded to turn back to avoid bloodshed.

And so continued the prolonged forcible displacement of the entire population of Tawargha, some 40,000 people.¹

For months, the displaced community of Tawargha had been planning their peaceful return home. They sought the support of the government, Libya's tribal leaders and the General National Congress (GNC), Libya's first elected body, but were left with empty promises and without concrete action. They eventually abandoned their plans when, days before they were due to set out, Prime Minister Ali Zeidan urged them to postpone their return until a solution free from potential confrontation was found. While the Prime Minister recognized the constitutional right of Libyan citizens to live anywhere in Libya in "ordinary circumstances", and the right of Tawarghas to return to their home town, he also acknowledged the right of Misratah residents to have reservations about their return, given "what happened in Misratah" – referring to war crimes committed in the city in 2011.² By doing so, the Prime Minister seemed to acquiesce to a policy of collective punishment of the entire Tawargha community for crimes allegedly committed by a few, at least until reconciliation is reached.

In mid-August 2011, at the height of Libya's armed conflict, everyone living in the town of Tawargha was driven out by anti-Gaddafi militia, who vowed Tawarghas would never be able to return. The militia accused the Tawarghas, a community of black Libyans, of supporting Colonel al-Gaddafi's government and of committing war crimes in Misratah on its behalf. Al-Gaddafi forces had used the Tawargha area, 40km south-east of Misratah, as a base when they laid siege to Misratah in 2011.³ For three months, Misratah residents were cut off from electricity and water as the city became the scene of the conflict's most heavy fighting. Hundreds of civilians died in air strikes and rocket attacks; many more were injured. Allegations of rape and sexual abuse by al-Gaddafi forces in Misratah exacerbated tensions between the neighbouring towns.⁴

Once they gained control of the area in August 2011, anti-Gaddafi fighters from Misratah struck back, seemingly driven by revenge. They attacked the town of Tawargha using indiscriminate weapons such as GRAD rockets in what appeared to be a deliberate campaign to target and collectively punish Tawargha's civilian population. They fired at some of those trying to escape, and detained Tawarghas who remained or ordered them to leave. After the anti-Gaddafi forces had emptied the area, the militias looted, vandalized and burned down homes. The burning and looting of homes continued after the conflict ended on 23 October 2011. Today, Tawargha is still a devastated ghost town.⁵

The Tawargha community remains scattered across Libya. According to the Head of the Local Council of Tawargha, a body formed after the conflict to represent the displaced community, some 18,000 Tawarghas fled to Benghazi and 13,000 sought refuge in Tripoli. Most live in poorly resourced makeshift camps. A further 7,000 Tawarghas live in Sabha in the south, in addition to smaller numbers in Sirte in the north, Tarhouna and Khoms in the west, Jufra in the centre, and Ajdabya in the east.

Libyan authorities say that over half of the country's 65,000 internally displaced people are from Tawargha.⁶ Others include residents of the Nafusa Mountain area, mainly the Mashashya tribe (see box below); as well as residents of Sirte and Bani Walid; and Tuaregs from Ghadames. All were driven out of their homes by militias because of their alleged support for al-Gaddafi forces during the conflict in 2011 and have so far not returned home for fear of reprisals. As of October 2013, the authorities were only able to ensure the safe return of some 530 families displaced from western Riyayna, a town in the Nafusa Mountain area, whose residents were accused by the neighbouring town of Zintan of collaboration with the al-Gaddafi forces in May 2011. According to the Office of Displaced Persons Affairs, their return was negotiated by tribal elders from Zintan and Riyayna as well as former "revolutionaries", as anti al-Gaddafi fighters are known in Libya. At the time of writing, negotiations were underway to ensure the safe return of approximately 670 families from Gawalish, another town in the Nafusa Mountain area, which was burnt and looted by Zintan fighters and whose residents were chased from their homes for their alleged support to al-Gaddafi during the conflict.

DISPLACEMENT OF THE MASHASHYA

I've lived here with my family for over a year and a half. We are 16 people in total. We fled 'Awnya on 16 June [2011]; there was a clash between the "thuwwar" and the army. At first, we went to Mizda, then Tripoli and finally to Shgeiga. We arrived together around October 2011. We did not have anywhere to live so we decided to settle in this building, which was meant to be a secondary school. There were no doors, no windows. We cleaned it, and made it our place. It is really cold here in the winter, and we don't have any running water. Recently, members of the Local Council of Shgeiga came to see us, and told us we had to leave the building. They said that they wanted to finish building it and finally open the school. They came a few times, but we told them that we have nowhere else to go.

Displaced member of the Mashashya community, Shgeiga, 30 April 2013

In June-July 2011, after militias from the town of Zintan gained control of the villages of 'Awnya, Zawayat al-Bagul and Omer, they forced out the entire resident population who came from the Mashashya tribe. Families fled to Tripoli and the nearby town of Shgeiga, where many people continue to live in dire conditions in

schools, unfinished administrative buildings and metal hangars, which they have been squatting since October 2011. More than two years after their displacement, they lack access to running water, heating or proper ventilation. They say that they have not received any governmental help.

The situation is similar for those displaced Mashashya who chose to flee in April 2011 due to the fighting between the armed opposition and al-Gaddafi forces. A group of 56 families in Sidi Salim camp has been living under the threat of forced eviction for months after the owner of the land where they had settled in late 2011 started procedures to take back his property. It took protests in front of the Prime Minister's office, and several interventions by Libyan charitable organizations, for the government eventually to take some action and search for alternative housing for the displaced community.⁸ Residents of the camp told Amnesty International that they feel neglected by the government: *"We are thankful to the owner for giving us housing for this long, and we understand that he has the right to his land. But where is the state? Where is the government? It's time they take responsibility for us; we lost our land, our homes; we lost everything in this war. It's been over two years, and they have not done anything. It is as if we are not Libyans. The municipality does not even come to collect the garbage from the camp, and just look at the sewage water. Can you smell it? It keeps blocking up"*.

The homes and belongings left behind by the Mashashya were vandalized, burned and looted. Destruction continued after the end of the armed conflict. Displaced Mashashya told Amnesty International that they still occasionally learn that their houses have been set on fire. They also said that rockets had destroyed water tanks and the 'Awnya clinic.

Scores of Mashashya were captured in June-July 2011 and detained in the nearby town of



Mashashya makeshift camp in Sidi Salim area of Tripoli, 28 August 2013 © Amnesty International

Zintan. Abductions during identity checks by Zintan militias continued well after the end of the conflict. While the majority of detainees were released by mid-October without charge or trial, the fate of seven people abducted by militias from Zintan after the end of the conflict remains unknown, despite complaints submitted to the GNC and the office of the General Prosecutor.

Mashashya leaders estimate the total number of internally displaced members of their community at approximately 10,000, comprising some 1,730 families. A list of forcibly displaced people from the community was submitted to the Office of Displaced Person's Affairs in March 2013, but little has been done to improve their living conditions or find a durable solution to their plight.

Militias from Zintan accused the Mashashya of supporting Colonel al-Gaddafi during the siege of their town between March and June 2011.⁹ Mashashya leaders say that the community is being punished because of a longstanding local conflict over land and water. In September 2011, leaders and elders from the Nafusa Mountain area promised to allow the Mashashya to return home provided that they surrendered their arms, handed over wanted people and raised the "independence flag"¹⁰ in Shgeiga. The Mashashya say that even though they fulfilled these terms, the Libyan authorities have been unable or unwilling to ensure their safe return. Just like the Misratah militias who threaten Tawargha, militias from Zintan vowed that the Mashashya would never be able to return.

The suffering of the Mashashya intensified following armed assaults on Shgeiga and Mizda in June 2012. The violence led to 105 deaths, according to government estimates, and further displacement. Since then, brigades under the Ministry of Defence have been deployed on the main road in the Nafusa Mountain, but they were unable to prevent violence in Mizda in March 2013 between the Mashashya and the Quntrar tribe, which is allied with Zintan. This outbreak of violence led to 15 deaths and temporarily displaced 1,000 families. The displaced Mashashya continue to live in fear of abductions and confrontation, and their movement in the area is greatly restricted.

During a fact-finding visit to Misratah in April 2013, Amnesty International met members of militias and state security agencies who vowed that they would block any attempt by the Tawargha community to return, implying that they would resort to the use of force.

Unable to establish the rule of law and build strong institutions, governments appointed since the end of the conflict have relied heavily on traditional, informal mechanisms to resolve conflicts. Community and tribal elders, prominent figures and various councils of "Wise Men" are used to diffuse tensions between communities. While these tribal negotiations have in many instances helped to prevent armed confrontations, the grievances and human rights abuses underlying these tensions remain largely unaddressed by the Libyan authorities. Amnesty International is concerned that, nearly two years after the end of the conflict, the government continues to prioritize the appeasement of militias over the needs of victims of human rights abuses. The authorities have failed to establish effective mechanisms to provide redress, accountability and truth.

After months of delays, in a vote held on 22 September 2013, the GNC agreed in principle to a Law on Transitional Justice. The draft law is pending a final vote before it can be adopted. It includes a set of legislative, social, administrative and judicial measures which aim to establish truth, accountability and reparations (including financial compensation, commemoration and rehabilitation) for victims of human rights violations perpetrated by "state-affiliated apparatuses" during Colonel al-Gaddafi's 42 years in power, and in the



Mashashya makeshift camp
in Shgeiga, Nafusa Mountain
area, 30 April 2013
© Amnesty International

transitional period following his fall.¹¹

The authorities' failure to take action for nearly two years has benefited and emboldened perpetrators of human rights abuses, including groups who continue to threaten the Tawargha and other displaced communities. It has led to a situation where they, the victims of abuses, have been asked to relinquish their rights and to be "reasonable", while the militias and others threatening them have gone unchallenged. The Tawargha and, to a lesser extent, other forcibly displaced communities, have continued to face security problems and threats where they are living, including arbitrary arrest and other reprisals such as attacks on their makeshift camps that affect their ability to lead a normal life. They also face arbitrary restrictions on their freedom of movement and impediments to their right to access education.

If members of the Tawargha community have been involved in war crimes during the conflict, they should be held to account in fair proceedings, like any other individual accused of such crimes. Justice cannot be selective, and a whole community cannot be collectively punished. Collective punishment is expressly prohibited under international law.¹²

The time is long overdue for decisive action to achieve a durable solution for Libya's internally displaced communities, and justice for the abuses they have suffered. The adoption of the Law on Transitional Justice could be the first real step towards justice for the Tawargha and other communities.

Amnesty International is calling for urgent action to end abuses against all displaced communities in Libya. As a first step, the organization is urging the Libyan authorities to ensure the prompt adoption of the Law on Transitional Justice, and all provisions related to internally displaced persons in a manner consistent with international law and standards. In particular, the authorities must:

- Take immediate action to end the forcible displacement of all affected communities in Libya, and provide them with a durable solution consistent with international law and standards and respectful of their needs, rights and legitimate interests.
- Ensure that all displaced persons are given the necessary information and resources that will enable them to make an informed and voluntary choice concerning local integration, the return to their place of origin or resettlement in other parts of Libya. Should displaced communities, including the Tawargha, decide to voluntarily return to their home towns, take the necessary measures to facilitate their safe return, including by providing the assistance to restore their lives.
- Provide full and effective reparations for abuses suffered by the internally displaced persons, as outlined by the draft Law on Transitional Justice, including compensation for material damage, commemoration, and rehabilitation. Ensure also the provision of other types of reparations such as full restitution and guarantees of non-repetition.



Photographs of dead bodies of Tawarghas who died in unclear circumstances since the beginning of the conflict. Photo exhibition, Camp of displaced Tawarghas, Janzour area of Tripoli, 17 April 2013
© Amnesty International

MISSING, DISAPPEARED AND DETAINED

“White skin will get you out of prison. The *thuwwar* [revolutionaries] tell us that if a black person manages to be released, they will be killed.”

Tawargha detainee held in Al-Wahda school in Misratah, 20 April 2013

Since the end of the conflict in 2011, Amnesty International has documented the abduction and enforced disappearance of dozens of Tawarghas from different cities. They were taken from checkpoints, camps, streets, homes and even hospitals, and immediately transferred to detention facilities in Misratah where they were tortured and otherwise ill-treated. Some subsequently died in detention. Many remain missing.¹³ The fate of many others, both civilians and soldiers, who went missing during the conflict, including in combat, also remains unknown. Representatives of the Tawargha community estimate that over 1,300 Tawarghas are either missing or detained, most likely in Misratah. Testimonies collected by Amnesty International suggest that many were captured and summarily killed.

During a fact-finding visit to Libya in April/May 2013, Amnesty International delegates met dozens of Tawargha detainees held in state prisons and in facilities effectively run by militias without state oversight, who said they had been held since 2011 without charge or trial. Many said that they had not been interrogated since their capture. Lawyers from the Tawargha community told Amnesty International that, until May 2013, only about 15 Tawarghas have been prosecuted out of the hundreds who are detained.

In Al-Wahda prison in Misratah, Amnesty International delegates met nine children aged between 16 and 18 from Tawargha who said that they had been held without charge or trial since they were apprehended. At the time of the visit, they had been held for up to 20 months without referral to the prosecution and without family visits. An additional six detainees held in the prison told Amnesty International that they were children when taken into custody but had since turned 18. Most had been abducted by militias from camps in Tripoli or private homes in Sirte where they had sought refuge following their displacement in August 2011.

For example, **Ahmad Omar Jumaa**, who was born on 14 June 1995, was 16 when he was abducted on 10 September 2011 from a displaced persons camp in the Abu Salim area of Tripoli. Some 84 men and boys from Tawargha were apprehended on that day, including Ahmad's father and uncle. Ahmad was taken with the group of detainees to Al-Wahda prison in Misratah. In 2012, he was interrogated once by the Supreme Security Committee – an umbrella of armed groups in Misratah – but was not referred to the prosecution. His family told Amnesty International that he was transferred to Ras Tuba Hospital in Misratah in early June 2013 following a nose bleed, and was diagnosed with anaemia. On 18 June, Ahmad Omar Jumaa died in hospital. Two days later, his body was transferred to Tripoli without a forensic report, which the family tried to obtain for a week. On 27 June, the family filed a complaint with the police explaining that it was unable to obtain a copy of the report, and requesting a new forensic examination. Despite a prosecution order, the Tripoli Medical Centre refused to perform the examination, saying that one had already been performed in Misratah. The case eventually reached the General Prosecutor, who referred it once again to the prosecution in Misratah. Sceptical of the Misratah authorities' willingness to co-operate, and frightened that Ahmad's body would not be handed back to them should they opt for a second forensic examination, Ahmad's family decided to bury him on 15 July without establishing the exact cause of death. *"How could this be possible? Ahmad was a healthy boy before he was abducted; he never complained of any illnesses. Was he beaten? Or did they prevent him from medical care in hospital? We will never know..."* – Ahmad's family told Amnesty International. Ahmad Omar Jumaa had appeared in good health when the organization interviewed him in Al-Wahda prison on 20 April 2013.

According to the family, Ahmad Omar Jumaa's father, who was also detained in Al-Wahda Prison at the time of his son's death, was not allowed to visit him in hospital.

Ali Abu Al-Qasem Omar, who was born on 7 December 1995, was 16 when apprehended from a relative's home in Sirte on 10 October 2011. At the time of Amnesty International's visit in April 2013, his file had not been processed by the prosecution. The Head of the Prosecution in Misratah acknowledged to Amnesty International delegates that there was no system to prioritize the cases of children.

The detention of children in Al-Wahda Prison is contrary to Libya's obligations under the UN Convention on the Rights of the Child and other relevant human rights standards. These require that the arrest, detention or imprisonment of a child conform to the law and be used only as a measure of last resort and for the shortest appropriate period of time. When deprivation of liberty is unavoidable, children must be separated from adults and held in a facility that takes into account the needs of people their age. Children who are above the age of criminal responsibility and are alleged to have committed a criminal offence must be treated in accordance with the principles of juvenile justice, in proceedings that fully respects the rights of the child.

The current lawlessness in Libya and the consequential paralysis of the judiciary has had a terrible impact on all those deprived of their liberty. Tawargha detainees have been among the worse affected. The courts simply have not been up to the challenge of processing cases of detainees held in relation to the 2011 conflict. In Misratah, the cases of only about 185 of some 2,800 detainees have reached the prosecution stage.¹⁴ Prosecutors complained to Amnesty International of the difficulties they face, especially when dealing with individuals accused of being al-Gaddafi loyalists, an accusation directed towards many Tawarghas. For example, release orders are not implemented by detaining authorities, and prosecutors and their homes have been attacked, including with home-made explosives. Such conditions led judicial employees in Misratah to strike for two weeks in April 2013. Legal proceedings have frequently been suspended in other cities as well. As a result, thousands of people, including some held for as long as two years, remain in detention without charge or trial. Due to public pressure, the authorities are often unable to order the release of detainees in cases where there is insufficient evidence to press charges. For example, in May 2013, the Military Police in Misratah compiled a list of 78 detainees against whom it did not have any evidence of committing crimes or participating in hostilities. To date, these detainees have not been released.

Under Article 28 of the draft Law on Transitional Justice, the Ministries of Justice, Interior and Defence are required to refer the cases of all detainees affiliated to the former regime to the prosecution within 90 days of the promulgation of the law in cases where there is sufficient evidence, or allow for their release.

The detainees from the Tawargha community, like other detainees, have also been tortured in detention and subjected to poor prison conditions. Although many told Amnesty International that their treatment in prison had improved over time, they also described the torture and other ill-treatment they suffered in the first period of detention to force them to "confess" to crimes they said they had not committed. Torture methods cited included whipping, beating with objects such as metal bars and water pipes (known locally as Tube PPR), and electric shocks. Some say they were forced into hard labour in prison. The victims have had no means to challenge the legality of their detention, report abuses they suffered, or seek redress. Many still carry the scars of the torture they endured, and have been denied medical care.¹⁵

Several videos circulated on social media websites show the torture and other cruel, inhuman or degrading treatment Tawargha detainees underwent following their capture in 2011. One such video received international media coverage and showed a group of Tawargha men held in a cage with their hands tied behind their backs and with green cloths stuffed in their mouths. They are watched by a group of men who can be heard shouting, "eat the flag

[referring to the green cloth] you dog, you Tawarghi.”¹⁶ Amnesty International has not been able to verify this video independently.

LAW ON TORTURE

As a party to both the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Libya has international obligations to prevent, criminalize, investigate and prosecute acts of torture and other forms of ill-treatment.

In April 2013, Libya's GNC enacted a law on torture, enforced disappearances and discrimination, which sets a minimum prison sentence of five years for anyone found guilty of inflicting, or ordering someone else to inflict, physical or mental suffering against anyone detained under their authority with the aim of eliciting a forced confession. Although a welcome step, the law falls short, in terms of the definition and the scope of the prohibition, of the requirements of the CAT. Sadly, even this modest gain in legislation has not translated into actual protection from torture and other ill-treatment for thousands of detainees held in both official and illegal detention centres, and more efforts have to be made for its implementation. Since the end of the conflict, the central authorities have been struggling to assert their power and control various heavily armed militias and powerful coalitions of armed groups which refuse to disarm; two of the largest such networks are the Supreme Security Committee and the Libya Shield, respectively under the Ministry of Interior and the Chief of Staff. Under these circumstances, the ill-equipped police and prosecution have been unable to conduct investigations into human rights abuses. Officials at the Ministry of Justice acknowledged to Amnesty International in a meeting in August 2013 that no one had been prosecuted under the torture law since it was enacted in April 2013.

Family visits to state prisons and unofficial detention centres in Misratah are, in principle, permitted. In practice, however, families of Tawargha detainees rarely risk a visit because of threats, the likelihood of reprisal attacks by Misratah's militias, the failure of the Libyan government to rein in these militias, and its inability to provide Tawargha visitors with adequate protection while they are in Misratah. For those families who risk a visit, usually an older female relative goes to the detention centre in the hope that they are less likely to be harassed. Even then, they are not always able to see their detained relative.

The Local Council of Tawargha¹⁷ has repeatedly requested a full list of Tawargha detainees from Libya's judicial authorities but has not received a satisfactory answer, allegedly because detaining authorities, including those nominally under the Ministry of Justice, refused to provide the relevant information.¹⁸ Since February 2013, the Ministry of Justice has been working on securing the transfer of all detainees held in Misratah's recognized detention facilities to the authority of the Judicial Police, which falls under the control of the Ministry of Justice. The new “Al-Jawiyah” Prison in Misratah's former air force base was inaugurated in August 2013, but at the time of writing only two out of nine prison blocs had been completed, and the authorities had managed to secure the transfer of only 289 detainees out of an estimated total of 2,800.

Many Tawargha families have been left in the dark about loved ones who went missing in 2011. Besides the mental suffering it causes family members, this has also had adverse, practical implications on their daily lives. Many families have lost their main breadwinners. Some say that they face discrimination when attempting to register with the Ministry of

Assistance to Families of Martyrs and Missing Persons (see below) to receive financial help. The families allege that their files are often not accepted as they lack death certificates.

According to official statistics, as of 18 June 2013, some 2,516 families of people who went missing during the conflict had registered with the Ministry of Assistance to Families of Martyrs and Missing Persons in the hope of receiving assistance – a small fraction of the total number of families of missing people. This is mainly due to a lack of confidence in the Ministry's approach, which many see as discriminatory.

The Ministry is tasked, among other things, with collecting data on "martyrs" and persons who went missing during the conflict; assisting with the identification of mortal remains and providing the families with care including moral support and training; and ensuring that those families receive access to healthcare, education and financial assistance defined by decree 85 of 2012 issued by the Cabinet of Ministers.¹⁹ A monthly allowance of 500 Libyan dinars (LYD, approximately US\$407) payable to each family of a "martyr" was set in addition to an allowance of 100 LYD (approximately US\$82) given monthly to each dependent. The decree further stipulates that the families of missing persons are granted 500 LYD on a monthly basis, but does not provide for an additional allowance payable to the dependants of missing persons, as is the case with those considered as "martyrs." In addition to financial compensation, the Ministry appears also to give preferential treatment in terms of other forms of reparations, such as public commemorations, to the families of those considered as "martyrs." While Decree 85 establishes a set of symbolic reparations to provide moral support to the families of martyrs, including the establishment of "Martyrs' Day", erecting a monument to commemorate the "martyrs of the revolution" and awarding families the "Order of Martyrs", it fails to provide the same symbolic recognition to the suffering of the families of missing persons.²⁰

Out of the 2,516 registered families of missing persons, only about 500 are receiving the monthly allowance.²¹ Families of those perceived as having supported al-Gaddafi forces during the conflict, as is the case with the Tawargha, were only granted financial assistance during the first four months of the Ministry's scheme, after which their allowance was halted, seemingly without any reason other than their perceived allegiance to Colonel al-Gaddafi. Because the Ministry's mandate is only limited to the conflict period, scores of families of those who were subjected to enforced disappearance by numerous militias after October 2011 are not entitled to any assistance, be it financial or moral support.

For example, **Saleh Kheiri Youssef**, a soldier with al-Gaddafi's Khamis Brigade then aged 26, went missing in April 2011 while stationed in Tripoli. At the time, the family received a note from his military unit confirming that he was missing. When the conflict ended, the family registered with the Ministry of Assistance to Families of Martyrs and Missing Persons, and was initially given the same financial assistance as other families of missing people. In July 2012, however, the assistance ended. Saleh's mother Sadia told Amnesty International, *"It is only because we're from Tawargha."*

In January 2013, Tawargha leaders received from undisclosed sources in Misratah photographs of dead bodies of Tawargha men who had died since the beginning of the conflict in unclear circumstances, allegedly also following capture by militia from Misratah. Some 93 family members identified their loved ones from the photographs, but many have

been unable to obtain death certificates or any clarification of the circumstances of the death.

Amnesty International interviewed a woman who said that she had identified one of her brothers in the photographs. The last time the family saw him was in August 2011 in Tawargha before he went back to Sirte where he worked as a police officer. The sister went looking for him in Sirte in September 2011 after the family received a phone call saying that a group of men from Tawargha had been apprehended and that her brother had been killed. The only information she found was from a hospital that her brother had sometimes been assigned to guard. The hospital director told her that her brother had come in with a bullet wound to his arm but that he was treated and was fine. The hospital had no other information of his whereabouts. She told Amnesty International, *"For months we did not know what happened to him. I went looking for him in Sirte and they were helpful at the hospital where he sometimes worked but they did not know where he was. And then a few months ago I saw him for the first time in the photo – dead."* The woman's three other brothers are all detained in Misratah.

Another woman explained to Amnesty International that she was unable to register with the Ministry of Assistance to Families of Martyrs and Missing Persons even though she had identified her husband's dead body in a photograph. **Jubeir Mohammad Jubeir Ishtiwi** had been captured by a "revolutionary brigade" from Misratah on 20 August 2011 as he was leaving the Zubeir Ibn al-Awwam Mosque in the Abu Salim neighbourhood of Tripoli where he lived. Jubeir's wife recounted the family's experience to Amnesty International: *"We came to Tripoli in February 2011 to find refuge; we rented a house, and Jubeir immediately started working as a baker to support us. He was not a fighter, and had nothing to do with the revolution."* Following Jubeir's detention, his wife spoke to someone who answered her husband's mobile phone. *"A drunk person answered and told me that he and other 'revolutionaries' had killed Jubeir two to three days after they had captured him"*, she continued. On 16 December 2011, Jubeir Mohammad Jubeir Ishtiwi's cousin identified his body in a photograph, which had been placed in a mosque. The photograph included Jubeir's name and grave number. Unofficially, his wife learned later that he had been buried in the Jannat cemetery in Misratah. On 31 December 2011, the cousin filled out a "deceased person's form", where he acknowledged identifying the dead body of Jubeir buried on 29 September 2011 in grave number 421. Jubeir's wife identified his body for a second time in a batch of photographs of dead bodies given to the Local Council of Tawargha in December 2012. Since then, she has been unsuccessfully trying to obtain her husband's death certificate, which she says is required to obtain financial assistance. The authorities have failed to retrieve her husband's body or confirm his death.

Members of the Tawargha community continue to be at risk of arbitrary detention, especially outside camps, although to a lesser extent than in the immediate aftermath of the conflict. In January 2013 a man (name withheld at the family's request) who lived with his family in a camp close to Tripoli airport was abducted while he was driving back after having taken his children to school. Eyewitnesses told his family that he was stopped at a gas station by people in cars with darkened windows who then took the man and his car. His family has not seen him since. They filed a complaint at the police station and have searched for him, but have heard nothing.

Monji Hmeid Abdallah, a 25-year-old accountancy student, was abducted by an armed brigade at 7pm on 8 December 2012 as he was leaving his school in the Ain Zara area of Tripoli. He was abducted together with a friend, also of Tawargha origin, and both were allegedly taken to Misratah. At the time of Amnesty International's interview at the end of July 2013, Monji's family had not had any contact with him and his whereabouts remained unknown.

At around 8pm on 3 June 2013, members of the Misratah Eagles' Brigade apprehended a resident of Janzour camp, aged 27 (name withheld at the individual's request), at a checkpoint near camp 17, west of Tripoli, while he was on his way to visit his aunt in the Siyad area on the outskirts of Tripoli. At the time of Amnesty International's interview with his family on 1 July, his whereabouts remained unknown. The family reported the incident to the Department of Combating Crime in Janzour, but said that no investigation into the disappearance had been initiated. He was released 40 days later, without charge or trial.

At about 6:30pm on 24 August 2013, **Hussein Saleh 'Ajaj**, aged 65, caused a car accident on the Coastal Road near Janzour. As he was waiting for friends to help him take his damaged car back to Janzour Camp where he resides, he was questioned by the Libya Shield Brigade from Misratah. At 9pm he was taken to the headquarters of the General Chief of Staff in Salah Al-Din area of Tripoli to give a statement. He called his wife to inform her of his whereabouts, and was allowed to make another phone call the next morning at 8am, after which he went missing. Hussein's wife expressed her feeling of helplessness to Amnesty International, *"I tried calling him an hour later, but his phone was off. I tried again and again. It's now been seven days [at the time Amnesty International delegates met with her] that I have not heard from him. I went to look for him at the General Chief of Staff headquarters, but was told that he is not there. On the third day, I went to report his disappearance at the police station in Janzour. The police officers kept referring me from one office to the other, and no one wanted to help me. I went to see a lawyer and the Red Cross [ICRC]. My three sons have been detained in Al-Wahda Prison in Misratah since 10 September 2011. Is he going to be the fourth one now?"*, she continued.

The exact number of the missing or disappeared among the Tawargha is yet to be established, as the Libyan authorities have been unable to investigate cases Tawarghas reported to the General Prosecutor, the police, local councils and security committees formed in the aftermath of the conflict.

Representatives of the Warfallah tribe have been trying to obtain information on the fate and whereabouts of 113 missing and disappeared persons, all from Bani Walid, since 2011. Of these, 76 individuals went missing or were subjected to enforced disappearance in 2011, mainly during the fighting between al-Gaddafi forces and anti-Gaddafi militias that took place in Bani Walid in October of that year. An additional 37 individuals disappeared in 2012, largely during a 20-day siege of Bani Walid by Libya Shield forces and militias in October of that year. The siege was conducted based on Decision No. 7 of the GNC authorizing the use of force if necessary to arrest suspects.²²

Mohammad Omar Mohammad Askib, an education inspector born in 1964, was abducted on 23 October 2012 during the siege of Bani Walid. He was taken from his home at 7:45am by four members of the 23rd June brigade of the Libya Shield Forces. His wife recounted the

events to Amnesty International: *"After the fighting started, we fled from our home and sought refuge at a relative's house in the eastern part of the city, but there were rocket attacks there as well. We tried to flee through the southern exit, but heard the roads were blocked, and so we went back home hoping for the best. Two days later, four men entered our house and started shouting for my husband to come out. Two of them were masked. They told me 'either he comes with us, or we will burn your house down'. This was the last time I saw my husband before he disappeared. We keep hearing that he is detained in Misratah or in Tripoli, but each time we go to prisons there, we are told he is not there."*

Similarly, representatives of the Mashashya community have been unsuccessfully trying to establish the fate of seven persons subjected to enforced disappearance since the end of the conflict, most likely by militias from Zintan.

Four relatives, **Mohammad Massoud Ali Al-Sweibigh** (born in 1978), **Mohammad Bel Qasem Mohammad Abu Sitteh** (born in 1973), **Salem Ibrahim Omar Essa** (born in 1984) and **Khaled Ibrahim Omar Essa** (born in 1984), all originally from Mashashya, disappeared following their detention in Tripoli in August 2012. According to the testimony of a relative, they were arrested during an identity check on the main road in Al-Zahra, an area on the outskirts of Tripoli. The arrest was carried out by members of the Department of Combating Crime, a body formed by former militiamen at the end of the conflict which subsequently integrated into the Ministry of Interior. After about two days they were transferred to the Qaaqaa Brigade, a Zintan militia nominally under the Ministry of Defence, in the Fellah area of Tripoli. The relative recounted the events to Amnesty International, *"During the first few days, I was in telephone contact with my brother. He informed me that he was held together with the others by the Qaaqaa brigade, and that he was allowed to use the phone of a man originally from Zintan. I spoke to the Head of Brigade who told me not to worry. On 12 August, I went to Tripoli with some relatives and we were allowed to visit them in detention. During the visit, my brother and cousins complained that they were beaten with sticks by the Department of Combating Crime. One of the men was shot in his leg. The Head of Brigade promised that all would be released within one day. A few days later - it was Eid al-fitr [around 19 August] - I called him back, but no one answered. I waited for a few days, and when I did not receive any news, I went back to Tripoli, but was told that my relatives had been transferred to Zintan. They showed me a letter dated 17 August 2012 stating that the men had been transferred to the Military Police prison in Zintan. The document listed their names and personal belongings."* Too frightened to visit their relatives in detention in Zintan, the family sought the intervention of elders from Zawiya and Ghirian. The delegation of elders allegedly went to visit the military police prison in Zintan but was unable to receive any information. The men's relatives then reported their disappearance at the Qasr Ben Ghashir Police Station in Tripoli on 2 October. The case was referred by the General Prosecutor first to the prosecution in Zawiya, then to Jadu in the Nafusa Mountain area. At the time of writing, there had been no results in the investigation of the disappearance of the four men.

LAW ON ENFORCED DISAPPEARANCES AND THE MISSING

Libyan legislation includes some safeguards against enforced disappearance and arbitrary detention. For instance, Law No. 20 of 1991 on the Promotion of Freedom includes a number of principles intended to guarantee the protection of human rights in the administration of justice. Article 1 of Law 10 of 2013, which criminalizes torture, enforced disappearance and discrimination, prescribes a prison sentence for anyone who has abducted, detained or deprived any individual of his or her personal liberty by force, threat or deception.

Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) defines “enforced disappearance” as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” The Libyan authorities have publicly announced their commitment to ratify the ICCPED, including at the Human Rights Council’s 22nd session in March 2013.

In addition, as a state party to the ICCPR, Libya is under an obligation to prevent arbitrary arrest and detention and to allow anyone deprived of liberty an effective opportunity to challenge the lawfulness of their detention before a court (Article 9). It must ensure that those arrested are promptly informed of any charges against them, and that those charged are brought before the judicial authorities within a reasonable time. Victims of unlawful arrest or detention have a right to compensation. Enforced disappearances also violate the right of detainees to humane treatment and the prohibition of torture and other ill-treatment (Articles 7 and 10 of the ICCPR); and can violate the right to life (Article 6 of the ICCPR) and the right to recognition as a person before the law (Article 16 of the ICCPR).

When enforced disappearances are committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack, they constitute crimes against humanity.²³

Under international humanitarian law, Libya has an obligation to “account for persons reported missing as a result of armed conflict and must provide their families with any information it has on their fate”, be they civilians or combatants.²⁴ Article 7 of the draft Law on Transitional Justice proposes the creation of a Fact-Finding and Reconciliation Commission to examine the file of “missing persons and detainees”, and take the necessary measures to address their situation.



THE STRUGGLE TO LEAD A NORMAL LIFE

Camp of displaced
Tawarghas in Fellah area
of Tripoli, 30 August
2013 © Amnesty
International

Living conditions are difficult for displaced Tawarghas, and other displaced communities. Some live in under-resourced camps in Tripoli and Benghazi; others struggle to support themselves and their families on their own. Their displacement has impacted on their lives in many different ways, not just financially but also in terms of security and education.

The Libyan authorities have failed to ensure the right to life and security of Tawarghas,²⁵ although the security situation for people in camps is somewhat better than in the months following the end of the conflict. Numerous camps were attacked by militias in 2011 and 2012. A militia raid on Janzur Camp in Tripoli in February 2012 resulted in the death of seven camp residents, including three children; at least 13 other residents were shot and injured. Militias from Misratah regularly drove past camps in Tripoli, shooting in the air and insulting residents in an attempt to intimidate them. Women in the Libyan Red Crescent Camp in Benghazi recently told Amnesty International that they felt unsafe to leave the camp on their own and would only leave with a male companion. Sporadic incidents continue to be reported until today.

At about 7am on 25 July 2013, **Milad Musbah Abdellatif Qersh**, a Tawargha driver, arrived as normal at Fella Camp in Tripoli to take a group of Tawargha men to their workplace. As he was parked near the camp entrance, three armed men arrived in an unmarked car, and allegedly started harassing an elderly female resident. When Milad Musbah Abdellatif Qersh intervened, the men started questioning him, and took away his identity card before driving off. Some 10 minutes later, another unmarked car arrived in the camp carrying armed men, who allegedly first opened fire in the air, then shot Milad Musbah Abdellatif Qersh in the abdomen. Four operations were performed in an attempt to save his life. He died in Tunisia on 11 August as a result of heart failure and a puncture of the intestine caused by gunshot. His family expressed the difficulties they faced when seeking redress: *"We went to report the incident at the police station, but were told that an investigation was impossible in the current circumstances. The police agreed to take our statement, but we doubt that action will be taken."*

Approximately a week later, armed men in an unmarked car once again entered Fella camp and shot in the air, leading the community to come out on the street and protest. When a police car allegedly opened fire at the protestors, Tawargha youths closed off the road, and clashed with other militia that kept driving by the camp and opening fire in their direction. Four Tawargha are believed to have been injured during the incident. Since then, the camp's residents have built a wall at the entrance of the camp, in an attempt to restrict the entrance of armed militias. They say that they have lost all confidence in the authorities, and in their ability to protect them.

Threats by Misratah militias and residents, as well as the authorities' failure to address those threats, have greatly impeded the right of Tawargha to freedom of movement. Although Tawarghas are not legally prevented from returning to their home town, which remains uninhabited, they are effectively barred from moving freely in that area because of the threats, and stigmatization. Militiamen from Misratah vowed that the Tawargha will never be able to return; some were reported to have said that the Tawargha deserve "to be wiped off the face of the planet" and that their return "will turn into a bloodbath."

Since April 2012, the elected Local Council of Misratah has been advocating for an "alternative solution" to the return of the Tawargha, stating that reconciliation was probably impossible. On 11 May 2013, three days after Tawargha community leaders issued a statement announcing their decision to return peacefully to their home town, the Misratah Local Council addressed a letter to the GNC warning against "irresponsible unilateral calls" and the possible implications that the Tawargha's return might have on the entire country. The Local Council said it would hold both the interim government and the GNC responsible for any consequences, should they fail to take a firm stance against "unstudied actions and calls." Further, the Local Council accused the National Transitional Council and subsequent governments of failing to address the situation of displaced persons. It then stated that this failure was exploited by groups affiliated with the former regime to spread strife and discord amongst Libyans, who were inciting displaced communities who had "left their homes without any coercion" to return. The Misratah Local Council reiterated that the suffering of the city's residents during military campaigns allegedly waged by volunteers from the Tawargha area had caused a "deep wound" whose impact would extend "for many years and into successive generations", thus implicitly justifying the collective punishment of an entire community.²⁶

A few days later, on 17 May 2013, approximately 1,000 people gathered in Misratah to protest against the proposed return. Some demonstrators were filmed by local media threatening the Tawargha with attack “by whatever means” should they decide to pursue their plans, and saying that “they will never reach their city.”²⁷

Under the UN Guiding Principles on Internal Displacement, threats and incitement to commit acts of “genocide, murder, summary or arbitrary executions and enforced disappearances, including abduction or unacknowledged detention” are prohibited.²⁸

Similarly, displaced Mashashya are confined to the areas of Shgeiga and Mizda in the Nafusa Mountain area, fearing attack and abduction by militias from Zintan during random “identity checks”. In the abandoned towns of ‘Awnya and Zawiyat al-Bagul, graffiti on walls includes messages such as “restricted military area – entry forbidden,” even though there was no official decision to seal off the area. Displaced people from Mashashya told Amnesty International that they never venture back to their home towns.



Deserted Mashashya homes and mosque in ‘Awnya in the Nafusa Mountain area; sign in Arabic reads “restricted military area”, 2 May 2013 © Amnesty International

RIGHT TO FREEDOM OF MOVEMENT AND CHOICE OF RESIDENCE

Under Article 12 of ICCPR, “everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” Under international law, the state may restrict an individual's freedom of movement only to protect national security, public order, public health or morals and the rights and freedoms of others. The restrictions must be proportionate to the danger posed by the individual's movement, and the state must give reasons for applying the restrictions. However, these restrictions are only permissible if they are consistent with other rights enshrined in the Covenant and the

principles of equality and non-discrimination. According to the Human Rights Committee, the rights enshrined in Article 12 cannot be restricted by “making distinctions of any kind, such as on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²⁹



Mashashya stores in the Nafusa Mountain area, looted, vandalized and burnt down by militias, 2 May 2013 © Amnesty International

Many Tawarghas left their livelihood and belongings behind as they fled the attacks of the Misratah militias in 2011. For many families, men who were the main breadwinner have been killed or detained, or have gone missing or subjected to enforced disappearance. Given the lack of security and the stigma people from Tawargha face, many complain of the lack of employment opportunities. Many also say that their previous salaries have been suspended or that they have been told that the security situation means they cannot collect their salaries from Misratah, where the majority of Tawarghas had been working prior to the conflict. The Mashashya reported difficulties in accessing their accounts and withdrawing their salaries from their bank in Yefren, a town near Zintan.

According to estimates by Tawargha activists, approximately 600 students from Tawargha are currently unable to continue their higher education as a result of their displacement. Students wanting to continue their studies have to obtain their transcripts, certificates and documents from their previous academic establishment, which many have not been able to do, particularly those whose certificates are in Misratah. Some who have formally requested their documents have received no response from the authorities.

Salima (full name not disclosed at the request of the individual), a third-year nursing student aged 24, has been unable to register at university in Tripoli because she does not have a copy of her university record. Before the conflict, Salima was studying nursing at the 7th

October University in Misratah. Following the mass exodus in 2011, Salima's family sought refuge in Tripoli, where they currently live. Salima's mother went to the university to obtain a copy of her daughter's record, but was told to bring a certificate from the Misratah Supreme Security Committee certifying that her daughter was not on the list of "wanted people." The mother did as instructed and sent a letter to the Ministry of Interior, but did not receive a response. Salima's friends, who had been given power of attorney, also failed to obtain Salima's university record.

Amnesty International met the head of the Displaced Person's Affairs Office within the Prime Minister's Office. She acknowledged that access to education was a problem and said that in the year following the conflict the new government, the National Transitional Council, had tried to find alternative solutions for students. She said that universities had accepted students if their parents guaranteed that their certificates would be provided at a later stage. However, such guarantees are no longer accepted. Attestations provided by the Local Council of Tawargha are not accepted either.

The right of everyone to education is enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which shall be guaranteed "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Under the UN Guiding Principles on Internal Displacement,³⁰ authorities are obliged to issue all necessary documents for internally displaced persons to allow them to enjoy their legal rights. The Principles specify that this should be done "without imposing unreasonable conditions, such as requiring the return to one's area of habitual resident in order to obtain these or other required documents".



A deserted apartment building in Tawargha, looted, vandalized and burnt down by militias, February 2012
© Amnesty International

IN SEARCH OF DURABLE SOLUTIONS

Although there has been some official acknowledgement of the plight of the Tawargha and other communities, no concrete action has been taken. The recognition of the rights of internally displaced persons in the draft Law on Transitional Justice and a prohibition of discrimination against them could be the first step towards achieving justice. Although the draft law is flawed in places, and does not meet Libya's obligations under international law in some aspects, it is widely seen as the most important initiative to date with regards to transitional justice in Libya. The authorities must now ensure that the law is adopted and that any solutions proposed are durable and in line with international law and guidelines on internal displacement.

The draft Law on Transitional Justice proposes to establish three bodies to ensure accountability and reparations for victims of human rights violations perpetrated during the 42 years of Colonel al-Gaddafi's rule and in the transitional period following his fall. The three bodies include a Fact-Finding and Reconciliation Commission, tasked primarily with drawing a "complete picture of the nature, reasons and scope" of serious human rights violations under Colonel al-Gaddafi's rule until the end of the transitional period; a Victims'

Compensation Fund, tasked with the payment of compensation to victims of “severe and systematic human rights violations”; and a Commission for Redressing Real Estate Grievances.

The draft law also includes provisions to guarantee the rights of the communities, which were displaced during and after the conflict. Under Article 8, the Fact-Finding and Reconciliation Commission would establish a department to seek truth about human rights violations perpetrated after the fall of the al-Gaddafi regime “in a manner that guarantees the rights of displaced persons”. Under Article 7, the Fact-Finding and Reconciliation Commission is mandated with examining the current conditions of displaced persons, both internally and abroad, and with “resolving the issue”. In the meantime, the Fact-Finding and Reconciliation Commission is also tasked with taking the necessary measures to ensure that internally displaced persons live in dignity and are able to enjoy the same rights as other Libyans without discrimination.

GUIDELINES ON INTERNAL DISPLACEMENT

Based on states’ obligations under international human rights law and international humanitarian law, international standards have been developed that identify how the rights of internally displaced persons should apply in all phases of displacement. They set out that “displacement should last no longer than required by the circumstances.” States have a duty to provide durable solutions for internally displaced persons and to allow them to make an “informed and voluntary choice on what durable solution to pursue.”³¹ The UN Framework on Durable Solutions for Internally Displaced Persons defines a “durable solution” as being a situation whereby “internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement.” The achievement of such a durable solution is usually measured against a set of criteria, including long-term safety and security, the enjoyment of an adequate standard of living without discrimination, access to livelihoods, employment, effective mechanisms to restore housing, land and property, as well as access to justice and reparations.

Under the UN Guiding Principles on Internal Displacement, “authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence.”³² In addition to “safe return”, the UN Guiding Principles on Internal Displacement also propose the voluntary resettlement of internally displacement persons to other parts of the country. States have also the primary responsibility to “ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.”

Further, the UN Guiding Principles on Internal Displacement state that authorities should assist internally displaced persons with the recovery of their property upon return or resettlement. In cases where recovery is not possible, authorities must ensure that victims receive “appropriate compensation or another form of just reparation.”

Importantly, a displaced person’s “choice of local integration or settlement elsewhere in the country, in the absence of option of return, must not be regarded as a renunciation of his/her right to return should that choice later become feasible.”³³

States should involve internally displaced persons in the “planning and management” of their durable

solutions in a participatory manner, by including voices of women, men, children and groups that are potentially marginalized. Authorities should grant internally displaced persons full access to all actors involved in the recovery process, including NGOs, international agencies and development organizations.

While the draft Law on Transitional Justice includes a provision for collecting “viewpoints of victims and publishing them”, it fails to define clearly the need for involving internally displaced persons in a consultation process to ensure that their rights and needs are taken into consideration.

The draft Law on Transitional Justice comes after a long list of failed governmental initiatives to address ongoing abuses against the Tawargha and other displaced communities. It is expected that the Fact-Finding and Reconciliation Commission proposed in the draft Law on Transitional Justice will replace an existing similar commission, which was established in 2012 by the National Transitional Council but which has remained largely inactive since then. The current commission has been criticized for failing to recognize the needs and perspectives of victims except in relation to compensation. In addition, the selection criteria of its members - all senior judges – and its stated purpose – to “accurately identify the persons responsible for crimes” – raised concerns that the commission was in fact a “quasi-judicial body” aimed at replacing judicial investigations rather than a supplementary mechanism for dealing with a legacy of violations.³⁴ Unsurprisingly, the Commission failed to gain the trust of communities perceived as al-Gaddafi supporters, such as the Tawargha, and failed to investigate militia abuses against displaced persons.³⁵ Finally, members of the Commission openly expressed reluctance to deal with abuses by militias in the current climate of lawlessness.

The draft Law on Transitional Justice aims at correcting some of these failings, by placing victims and truth-seeking at the centre of the transitional justice process; including a provision for witness protection; requiring the Fact-Finding and Reconciliation Commission to cooperate with civil society organizations; and including a provision preventing discrimination against internally displaced persons. Once the law is passed, the authorities must ensure that the Fact-Finding and Reconciliation Commission is afforded the necessary protection and resources to conduct its work in safety and impartially, free from the threats, public pressure and militia attacks which have plagued Libya since the end of the conflict. In parallel, effective mechanisms must be put in place to ensure the implementation of the law. A failure to do so risks to endanger once again the modest gains victims have made in their struggle for truth and justice, and turn the law into another failed initiative.

For example, in February 2013, Deputy Prime Minister Awad Barasi held a governmental meeting with representatives from several ministries, including the Justice and Interior ministries, to discuss the issue of internally displaced people. The outcome of the meeting was a list of recommendations to enact a Social Justice Law, improve efforts for national reconciliation, improve the living conditions of internally displaced people and ensure they are able to return to their homes. The recommendations were due to be handed over to the newly established Office of Displaced Persons’ Affairs under the authority of the Prime Minister. This office was created in February 2013 to act as the focal point within government institutions and to co-ordinate the relevant humanitarian work with international organizations.

The Head of the Office of Displaced Persons' Affairs told Amnesty International in a meeting in April 2013 that the Tawargha community could not return to their home town before reconciliation had been achieved, and that the return could not happen outside of the framework of the Law on Transitional Justice. She added that any such return could not be based solely on the decision of the Tawargha community but should be a decision made by all Libyans.

In April 2013, a Tawargha member of the GNC presented a draft decision to the body's Committee on Internal Security, asserting the right to return for all displaced persons. To date, no vote has been held.

Reconciliation seems far off for many Tawarghas, who continue to suffer from discrimination and lack of acceptance by other Libyans. In May 2013, a peaceful demonstration by Tawarghas calling for the GNC to recognize their decision to return was attacked by armed men who shot at the demonstrators. One person was injured in the leg. The demonstration was authorized by Tripoli's Public Security Directorate, which also provided forces to protect the demonstrators together with guards of the GNC. Although the protest organizers filed a complaint with the General Prosecutor's office, the current security situation does not allow for a proper investigation.

The Law on Transitional Justice could provide the first real avenue for the Tawargha and other displaced communities such as the Mashashya to seek justice or reparations for the violations they have suffered. Many of the attacks that Amnesty International has documented against Tawargha civilians committed by militias from Misratah during the armed conflict constituted war crimes. Given that militias carried out, during and after the conflict, prohibited acts including murder, forcible transfer, torture and enforced disappearance as part of a widespread, as well as systematic, attack directed against the civilian population of Tawargha, and with knowledge of the attack, it appears that they constituted crimes against humanity.

The forcible displacement of the Tawargha, and other communities such as the Mashashya, most of which happened during the internal armed conflict, also violates international humanitarian law. Article 17 of Protocol II Additional to the Geneva Conventions of 12 August 1949 (on protection of victims of non-international armed conflicts), prohibits the displacement of civilians during a non-international armed conflict except for their own security or for imperative military reasons. In the case of the Tawargha, the forced displacement was undertaken as a punitive measure and as such was prohibited. The fact that militia from Misratah continue to prevent the return of the Tawargha to their homes underlines that Tawarghas were indeed chased out of their town in violation of international humanitarian law.

The Tawargha community should be able to seek justice, truth and reparation for the violations they have suffered and continue to suffer. If members of the Tawargha community have been involved in war crimes during the conflict, they should be held to account in fair proceedings like any other individual accused of such crimes. Under international law, states are obliged to uphold the right of victims of human rights violations to an effective remedy. Principle VII of 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 states:

“Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and (c) Access to relevant information concerning violations and reparation mechanisms.”³⁶

Despite repeated statements by Prime Minister Ali Zeidan and members of the GNC regarding the right of displaced communities to return to their home towns, little has been done in reality to achieve national reconciliation and to improve security so that the Tawargha community and other displaced groups such as the Mashashya tribe, residents of Sirte and Bani Walid, and Tuaregs from Ghadames, can return safely to their homes. The intransigence and hostility of the very militia that was responsible for forcibly displacing the Tawargha, and other displaced communities, and committing other serious violations against them, must not be allowed to block their safe return to their homes. Neither should these militias be the only power brokers driving the search for durable solutions to internal displacement in Libya. The wishes and concerns of victims of forced displacement in Libya must be at the heart of any solution, and their choice must be respected.

رقم الجواز

123456



الاسم نازح راجع

اللقب التاورغي

مكان وتاريخ الميلاد تاووغا، 12-8-2011
علامات مميزة

الإدارة العامة للجوازات والجنسية

صدر في

من شهر سنة

بتاريخ

من شهر سنة

الوافق

القسم القنصلي

ادارة الجوازات

رقم 123456 من

RECOMMENDATIONS

Amnesty International urges the Libyan authorities to adopt the Law on Transitional Justice promptly, having ensured that its provisions are consistent with international law and standards. In particular, the authorities must take immediate action to end the forcible displacement of all communities in Libya; and provide them with a durable solution consistent with the UN Guiding Principles on Internal Displacement, which is respectful of their needs, rights and legitimate interests.

Amnesty International calls on the Libyan authorities to implement the following recommendations:

Provide durable solutions to internal displacement

- Ensure that all displaced persons are given the necessary information and resources that will enable them to make an informed and voluntary choice concerning local integration, the return to their place of origin or resettlement in other parts of Libya. Should displaced communities, including the Tawargha, decide to return voluntarily to their home towns, the authorities must take the necessary measures to facilitate their safe return, including by providing the assistance they need to restore their lives.
- Ensure that any body tasked with addressing the problem of displacement, such as the proposed Fact-Finding and Reconciliation Commission, involves internally displaced persons in the "planning and management" of their durable solutions in a participatory manner, by

Poster displayed at an exhibition shows a symbolic passport of a displaced man from Tawargha.

The left page reads: "Name: Returnee"; "Surname: Tawarghi"; "Date and place of birth: Tawargha, 12 August 2011", Camp of displaced Tawarghas, Janzour area of Tripoli, 17 April 2013 © Amnesty International

including voices of women, children and other potentially marginalized groups.

- Provide full and effective reparations for abuses suffered by internally displaced persons as outlined by the draft Law on Transitional Justice, including compensation for material damage, commemoration, and rehabilitation. Ensure also the provision of other types of reparations such as full restitution and guarantees of non-repetition.
- Protect all internally displaced persons from threats and retaliatory attacks. Ensure that those suspected of ordering, committing or condoning attacks on individuals and communities with the aim of, or resulting in, forcibly displacing them are brought to justice in fair trials and with no possibility of the death penalty.
- Ratify the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

End arbitrary arrests and detention

- Release detainees held without charge, or charge them without further delay with recognizably criminal offences and promptly bring them to trial in proceedings that meet international fair trial standards and without recourse to the death penalty.
- End arbitrary detentions of Tawarghas by militias and state security forces, and ensure that no one is deprived of their liberty except in accordance with procedures and grounds prescribed by law. No one should be imprisoned for their ethnicity or their national or social origin.
- Notify detainees' families of where they are detained and ensure that all those detained have access to families and lawyers, and are given an opportunity to challenge the lawfulness of their detention before a court or are released.
- Provide families of those subjected to enforced disappearances with information about their fate or whereabouts; and provide death certificates to the families for their relatives who have died.
- Increase efforts to clarify the fate of all missing persons without discrimination and take into account the psychological, financial and legal needs of their families when assisting them in the identification of mortal remains; recognize and seek to address the psychological challenges faced by families of missing persons; and provide financial support to all families of missing persons without discrimination.
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

Prevent torture or other ill-treatment

- Ensure that all those detained are treated humanely, receive necessary medical treatment, have regular access to their families and lawyers, and are protected from torture and other ill-treatment.

- Investigate all allegations of torture and other ill-treatment, and bring to justice those suspected of responsibility for human rights violations. Ensure the prompt implementation of Law 10 of 2013 criminalizing torture, enforced disappearances and discrimination.
- Ratify the Optional Protocol to the Convention against Torture.

Improve living conditions and grant access to education

Pending the implementation of the recommendations set out above, Amnesty International is calling on the authorities to immediately remove arbitrary obstacles to the enjoyment of human rights for all internally displaced persons, including their rights to education, health and an adequate standard of living. In particular, the Libyan authorities should:

- Ensure that all Tawargha students wishing to continue their education, including their university studies, are allowed to do so by obtaining transcripts of records and all other necessary documents from the local authorities in Misratah.

ENDNOTES

¹ In 2011, the total population of Tawargha was estimated at 30,000 (see Amnesty International's report, *"We are not safe anywhere": Tawarghas in Libya*, June 2012, Index: MDE 19/007/2012, available at: <http://amnesty.org/en/library/info/MDE19/007/2012/en>). In a meeting with Amnesty International on 10 May 2013, the Head of the Local Council said that 42,600 people were on the town's official register, including 37,000 living in Tawargha and 5,000 in Misratah.

² See a video of the press conference on 20 June 2013, available at: <http://www.youtube.com/watch?v=QYQT11AAyU>

³ For background information on the siege in Misratah, see Amnesty International's report, *Libya: Misratah under siege and under fire* (Index: MDE 19/019/2011), 6 May 2011, available at: <http://www.amnesty.org/en/library/info/MDE19/019/2011/en>; and *The Battle For Libya: Killings, disappearances and torture*, (Index: MDE 19/025/2011), 13 September 2011, available at: <http://amnesty.org/en/library/info/MDE19/025/2011/en>. For information on Amnesty International's findings that suggest crimes against humanity were committed against the Tawargha community, see, *Libya: Militias threaten hope for new Libya* (Index: MDE 19/002/2012), 16 February 2012, available at: <http://amnesty.org/en/library/info/MDE19/002/2012/en>; and *Libya: 'We are not safe anywhere': Tawarghas in Libya*, (Index: MDE: 19/007/2012), 8 June 2012, available at: <http://www.amnesty.org/en/library/asset/MDE19/007/2012/en/514d579a-3e2b-4f89-ba8b-6f17d479c617/mde190072012en.pdf>

⁴ In March 2012, the UN's International Commission of Inquiry on Libya reported that it had not found evidence of a widespread or systematic attack, or any overall policy of sexual violence by al-Gaddafi forces against a civilian population. Despite significant efforts to investigate allegations of sexual violence in 2011, Amnesty International recorded no first-hand testimonies to verify such claims, although the reluctance of survivors of sexual violence to report such abuses and seek redress may result from fear of social stigmatization as well as the fact that the vast majority of those detained in relation to the conflict have not yet been brought to justice.

⁵ For more information see, Amnesty International, *Libya: 'We are not safe anywhere,' Tawarghas in Libya*, (Index: MDE: 19/007/2012), 8 June 2012, available at: <http://www.amnesty.org/en/library/asset/MDE19/007/2012/en/514d579a-3e2b-4f89-ba8b-6f17d479c617/mde190072012en.pdf>

⁶ The Office of Displaced Persons' Affairs, which falls under the Prime Minister's authority, says that exact statistics on internal displacement are unavailable, and estimates the total population of internally displaced persons at 65,000. According to the United Nations High Commissioner for Refugees (UNHCR), as of August 2012, there remained 65,000 to 80,000 internally displaced persons in Libya, and as of January 2013, 177,452 internally displaced persons had been able to return to "their place of origin".

⁷ Arabic for "revolutionaries" as anti-Gaddafi fighters are known as in Libya.

⁸ In August 2013, the Office of Displaced Persons' Affairs started registering the residents of Sidi Salim camp with a view to transferring them to a camp in the Sidi Sayeh area of Tripoli. The proposed move was, however, rejected by the camp's residents who stated that the alternative did not provide sufficient

space for accommodation. In the beginning of October, they were still living in Sidi Salim and their situation had not changed.

⁹ Al-Gaddafi forces were stationed in 'Awnya as of the beginning of May 2011, and used the area to target the nearby town of Zintan with heavy weapons. Mashashya leaders argue that many civilians of the town had fled the area to Shgeiga and Tripoli immediately after al-Gaddafi forces had moved in, and that they did not participate in the hostilities.

¹⁰ The Libyan flag that was readopted by the National Transitional Council after the conflict; it was originally created in 1951 following Libya's independence and the creation of the Kingdom of Libya.

¹¹ The transitional period is set to end once elections are held following the adoption of a new Constitution.

¹² For the prohibition under international humanitarian law see International Committee of the Red Cross (ICRC), Customary IHL, Rule 103. And the UN Human Rights Committee has referred to the prohibition of collective punishment as a peremptory norm of international law. (See Human Rights Committee, General Comment 29, States of Emergency (article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para 11.

¹³ For more information on detention and torture of Tawargha detainees see Amnesty International, *Militias threaten hope for new Libya* (Index: MDE 19/002/2012), February 2012; *"We are not safe anywhere"*, *Tawarghas in Libya*, op. cit.; and *Libya: Rule of law or rule of militias?* (Index: MDE 19/012/2012), July 2012.

¹⁴ To deal with delays in the referral of cases to the prosecution, in April 2013 the Ministry of Justice allocated 16 prosecutors from the east of the country to support their colleagues in Misratah. However, according to the Misratah Local Council, most prosecutors resigned from their positions in Misratah after only one month. In September 2013, only two out of the initial group of 16 continued to provide support to the prosecution in Misratah. According to the Local Council, of the 185 detainees referred to prosecution, 35 were released under Law 35 "On granting amnesty for some crimes"; 33 were sentenced to prison terms ranging from one to five years; seven detainees were acquitted of all charges. On 31 July, five detainees were handed death sentences, including three in absentia.

¹⁵ See Amnesty International, *Libya: Rule of law or rule of militias* (MDE 19/012/2012), 5 July 2012; see also Amnesty International, *Libya: Militias threaten hopes for new Libya* (MDE19/002/2012)

¹⁶ See <http://www.youtube.com/watch?v=tigUj7plyq4>; the video was uploaded on 24 February 2012

¹⁷ The community of Tawargha is represented in the GNC through one member.

¹⁸ At the time of Amnesty International's visit in September 2013, there were seven official detention facilities in Misratah. Three of these – Tommina, Dafniya and Al-Wahda School – were nominally under the control of the Ministry of Justice, but were in fact staffed by former militiamen who had been integrated into the Judicial Police without adequate training or a vetting mechanism. Al-Hoda and al-Sikkit prisons were nominally under the Ministry of Defence. The Supreme Security Committee detention centre was brought under the nominal authority of the Ministry of Interior in January 2013. In cooperation with the Local Council in Misratah, the Ministry of Justice started a process of negotiating the gradual handover of detainees to "Al-Jawiyah Prison" under the authority of the Judicial Police, which at the time was being refurbished in the compound of the Air Force College. According to decision 219 issued by the Ministry of Justice in February 2013, all detainees are to be handed over to the

Judicial Police upon completion of the new prison building, expected now by the end of 2013. As of 2 September, only 289 detainees had been transferred. Amnesty International has also received a number of allegations of secret detention in Misratah in farms or private homes, but has been unable to confirm these. Delays in the handover of detainees to the Judicial Police have also had adverse consequences for the residents of Misratah. As of September 2013, according to the Misratah Local Council, some 2,500 students of the al-Wahda School were unable to pursue their education for a lack of a schooling space.

¹⁹ Decree 85 of 2012 fails to define and provide clear criteria as to who is considered “missing” or a “martyr” thus leaving room for ambiguity and discrimination in practice.

²⁰ Since the issuance of the decree in 2012, Martyrs’ Day was officially established on 16 September and declared a public holiday.

²¹ Free Generation Movement, Mafqood Project

²² See Amnesty International, *Libya: Bani Walid siege must be lifted*, 5 October 2012, available at: <http://www.amnesty.org/en/news/libyan-authorities-must-avoid-unnecessary-and-excessive-use-force-bani-walid-2012-10-05>

²³ See for example Article 7 of the Rome Statute of the International Criminal Court, which reflects customary international law.

²⁴ See International Committee of the Red Cross (ICRC), Customary IHL, Rule 117

²⁵ These rights are enshrined in Articles 6 and 9 of the ICCPR.

²⁶ See the Misratah Local Council facebook page, available at: <https://www.facebook.com/photo.php?fbid=451136061645280&set=a.451135924978627.1073741826.280951581997063&type=1&theater>

²⁷ See for example, Libya Herald, “Angry Misratans threaten to attack Tawarghans if they attempt to return”, available at <http://www.libyaherald.com/2013/05/19/angry-misratans-threaten-to-attack-tawarghans-if-they-attempt-to-return/#axzz2fhn7Pz7S>

²⁸ See Principle 10, UN Guiding Principles on Internal Displacement.

²⁹ See Human Rights Committee, General Comment General Comment No. 27: Freedom of movement (Art.12).

³⁰ E/CN.4/1998/53/Add.2, available at: <http://www.ohchr.org/EN/Issues/IDPersons/Pages/Standards.aspx>

³¹ Framework on Durable Solutions for Internally Displaced Persons, Report of the Representative of the Secretary-General on the human rights of internally displaced persons, A/HRC/13/21/Add.4, 29 December 2009

³² Principles 28, UN Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2.

³³ See Framework on Durable Solutions for Internally Displaced Persons, Report of the Representative of the Secretary-General on the human rights of internally displaced persons, A/HRC/13/21/Add.4, 29 December 2009.

³⁴ See UNSMIL, Transitional Justice, Foundation for a New Libya, available at:

³⁵ At the end of July 2013, the Fact-Finding and Reconciliation Commission announced the start of its work to investigate violations in the cities of Tawargha and Misratah, and against their residents, during

and after the conflict. The Commission recognized the Tawargha's inability to return home and problems they face in continuing their education. In a statement announcing the beginning of the fact-finding process, the Commission encouraged civil society organizations to co-operate in the truth-seeking process, and invited all concerned persons to submit relevant information, including photographic evidence and footage that would enable the identification of perpetrators. The Commission also called on all concerned persons to submit complaints for its review.

³⁶ 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 (Basic Principles on the Right to a Remedy and Reparation), adopted and proclaimed by UN General Assembly Resolution 60/147 of 16 December 2005 (UN Doc. A/RES/60/147). Article 7 stipulated that victims have the right to "access to relevant information concerning violations and reparation mechanisms."

BARRED FROM THEIR HOMES

THE CONTINUED DISPLACEMENT AND PERSECUTION OF TAWARGHAS AND OTHER COMMUNITIES IN LIBYA

In mid-August 2011, at the height of Libya's armed conflict, the entire population of Tawargha – some 40,000 people – was driven out by anti-Gaddafi militia, who vowed Tawarghas would never be able to return. The militia accused the Tawarghas, a community of black Libyans, of supporting Colonel al-Gaddafi's government and of committing war crimes in Misratah.

Today Tawargha is a ghost town. Seeking revenge, anti-Gaddafi fighters looted and burned down the Tawarghas' homes. For months, the Tawarghas were hunted and threatened by militias and suffered arbitrary arrests, torture and killings.

Two years on, Tawarghas and other displaced communities are still waiting for justice and reparations. Many continue to face discrimination and live in insecurity in under resourced camps with no solution in sight. Hundreds of detainees continue to be detained without trial or charge. Families have been left in the dark about loved ones who have gone missing or have disappeared.

In total, around 65,000 people are internally displaced across Libya, not just Tawarghas but members of the Mashashya tribe from the Nafusa Mountains, and residents of Sirte and Bani Walid too.

Amnesty International is calling on the Libyan authorities to take urgent action to end the continued forcible displacement of Tawarghas, and other communities, and provide justice and reparations for the abuses they have suffered.

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