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Written statement* submitted by United Nations Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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New United Nations Human Rights Council (UNHRC) member Libya is in non-compliance with resolution 60/251

One often hears that it is normal for the United Nations to include all manner of countries on its Human Rights Council, even those who commit gross and systematic human rights abuses. Yet the truth is that the presence of abusers on the Council undermines the Council's legitimacy and contradicts its own charter.

According to UN General Assembly Resolution 60/251, which established the Council in 2006, General Assembly members are obliged to elect states to the Council by considering "the candidates' contribution to the promotion and protection of human rights and their voluntary pledges and commitments made thereto." The resolution further provides that consideration ought to be given to whether the candidate can meet membership obligations (a) "to uphold the highest standards in the promotion and protection of human rights" and (b) to "fully cooperate with the Council."

More than half of the current members of the Council (24 out of 47 members) fail to meet the basic standards for democracy according to Freedom House.¹ These include some of the world's worst human rights abusers: Eritrea, Mauritania, Qatar and the Bolivarian Republic of Venezuela. These countries use their membership in the Council as a false badge of legitimacy in the international arena.

One example is Libya, which took its new seat on the Council in March. Libya commits serious human rights abuses, including armed conflict, arbitrary arrests, human trafficking, harsh and life-threatening prison conditions, torture and killings by armed groups. Clearly, Libya does not satisfy the Council's membership criteria.

Since the fall of longtime dictator Muammar Qadhafi in 2011, Libya has been politically fractured and beset by violence and instability. It is listed by Freedom House among the thirteen "worst of the worst" countries in the world.²

Libya is governed by the internationally recognized Government of National Accord (GNA). However, the self-proclaimed Libyan National Army (LNA) operates outside the law in parts of the country. Armed groups on either side of the conflict continue to clash.³ Between April and August 2019, an estimated 1100 people were killed in confrontations in Tripoli, including some 44 migrants who were killed when their detention center was bombed.⁴ At least three Libyan military and political officials are currently subject to arrest warrants by the International Criminal Court, including an LNA field commander who was filmed extrajudicially executing ten people.⁵

While the GNA is recognized by the UN, armed militias wield significant power and influence and effectively control a number of critical government institutions and ministries.⁶ The GNA itself was not democratically elected, but was selected in 2015 as part of an internationally brokered peace process, and has not been approved by the House of

¹ Freedom in the World 2019, Freedom House, <https://freedomhouse.org/report/countries-world-freedom-2019>.

² Democracy in Retreat: Freedom in the World 2019, Freedom House (2019), <https://freedomhouse.org/report/freedom-world/freedom-world-2019/democracy-in-retreat>.

³ Libya: Events of 2018, Human Rights Watch (2019) [Hereinafter "Human Rights Watch Libya 2019"], <https://www.hrw.org/world-report/2019/country-chapters/libya>.

⁴ Libya: ongoing atrocities reveal the trouble with international military intervention, The Conversation (August 16, 2019), <http://theconversation.com/libya-ongoing-atrocities-reveal-the-trouble-with-international-military-intervention-119918>; Declan Walsh, Airstrike Kills Dozens of Migrants at Detention Center in Libya, New York Times (July 3, 2019), <https://www.nytimes.com/2019/07/03/world/middleeast/libya-airstrike-migrants-tripoli.html?module=inline>.

⁵ Human Rights Watch Libya 2019, supra note 3.

⁶ Freedom in the World 2019: Libya, Freedom House (2019), <https://freedomhouse.org/report/freedom-world/2019/libya>.

Representatives, the dominant of two rival legislatures.⁷ In addition, the mandate of the House of Representatives expired in 2015.⁸

Government corruption is pervasive.⁹ According to a report by the Audit Bureau, 277 billion Libyan dinars were laundered between from 2012 to 2017, much of it through extortion by armed groups.¹⁰

The government has insufficient control over national police and other security forces.¹¹ Both government forces and armed groups commit extrajudicial killings and enforced disappearances, including kidnapping for ransom. For example, on March 15, 2018, an unknown militia abducted Masoud Erhouma, the government's chief military prosecutor.¹² On April 20, 2018, local militias abducted Tripoli University professor Salem Mohamed Beitelmal on his way to work.¹³

Government forces and armed groups also engage in arbitrary arrests with impunity. Even government detainees are often held in unofficial facilities controlled by armed groups where torture is routine.¹⁴ Thousands of individuals are currently being held without charges for extended periods and denied due process.¹⁵ In August 2018, 99 defendants were convicted in a mass trial, 45 of whom were sentenced to death.¹⁶ Victims of abuses are unable to seek redress, as the judiciary lacks the capacity to effectively function and is unable to enforce judgments.

Armed groups are responsible for indiscriminate shelling of civilian areas, torture of detainees, summary executions, rape, and destruction of property.¹⁷ Government officials, members of civil society, journalists, and religious leaders have all been targeted by armed groups.¹⁸ On November 26, 2018, two prominent government-aligned commanders were killed on arrival at the airport.¹⁹ Terrorist attacks and military confrontations have resulted in thousands of deaths and injuries to civilians in 2019.²⁰ In April 2019, the UN High Commissioner for Human Rights Michelle Bachelet said "The escalation of attacks in residential areas, including the use of artillery, rockets and airstrikes is deeply worrying. Thousands of children, women and men's lives are at risk."²¹

The government itself places many restrictions on journalists. In addition, due to the conflict, human rights defenders as well as journalists face serious threats. They are subjected to assaults, detention, harassment and disappearances.²² On January 11, 2018, journalist Mariam al-Tayeb was abducted by an armed group for views expressed on social media.²³ On March 20, 2018, a government-aligned militia detained the director of the Al-Asima Television Channel for a week without giving a reason. On July 30, 2018, another government-aligned

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ 2018 Country Reports on Human Rights Practices: Libya, United States of America Department of State (March 13, 2019) [Hereinafter "State Department Report Libya 2019"], <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/libya/>.

¹¹ Id.

¹² Amnesty International Report 2017/18: Libya, Amnesty International (2018) [Hereinafter "Amnesty International Libya 2018"], <https://www.amnesty.org/en/countries/middle-east-and-north-africa/libya/report-libya/>.

¹³ State Department Report Libya 2019, supra note 10.

¹⁴ Id; Justice, Delayed in Libya, Human Rights Watch (Sep. 11, 2019), <https://www.hrw.org/news/2019/09/11/justice-delayed-libya>.

¹⁵ Amnesty International Libya 2018, supra note 12; State Department Report Libya 2019, supra note 10.

¹⁶ Freedom in the World 2019: Libya, supra note 6.

¹⁷ Id.

¹⁸ State Department Report Libya 2019, supra note 10.

¹⁹ Id.

²⁰ Id.

²¹ Grave concerns for trapped civilians in Libya, OHCHR (April 30, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24535&LangID=E>.

²² State Department Report Libya 2019, supra note 10.

²³ Amnesty International Libya 2018, supra note 73.

militia detained and interrogated four Reuters and AFP journalists for ten hours.²⁴ On July 31, 2018, journalist Musa Abdul Kareem was found dead.²⁵

Libya is not party to the 1951 Refugee Convention and has no refugee law or procedure.²⁶ Migrants are severely mistreated and are subjected to detention in squalid facilities by both government forces and armed groups without any judicial process. Among other things, these migrants suffer from starvation, overcrowding and poor sanitation and they are subjected to sexual exploitation and abuse.²⁷ In a June 2017 press release the Office of the UN High Commissioner for Human Rights (OHCHR) said it was “deeply concerned about the ghastly conditions in which migrants and refugees are being held in Libya.”²⁸

As of September 2018, there were 8,000 to 9,000 migrants and refugees held in some 20 government detention facilities and an unknown number in non-government facilities.²⁹ In addition, migrants face a high risk of disappearance or death and are routinely exploited by traffickers.³⁰ While the overall number of migrants transiting to Europe through Libya declined, deaths of those trying to reach Europe through Libya increased dramatically.³¹ The UN High Commissioner for Refugees has stated that in 2019 alone more than 850 migrants had died or gone missing attempting to cross the Mediterranean from Libya.³²

In July 2019, after a migrant detention center was bombed in hostilities, High Commissioner Michelle Bachelet called for “the closure of all migrant detention centers in Libya” and “for the release of detained migrants and refugees as a matter of urgency.”³³

For all of these reasons, Libya does not satisfy the criteria for membership on the Human Rights Council.

²⁴ State Department Report Libya 2019, supra note 10.

²⁵ Human Rights Watch Libya 2019, supra note 3.

²⁶ Id.

²⁷ Freedom in the World 2019: Libya, supra note 6; Mario Malie, As a refugee in one of Libya’s dangerous detention centres, I know what it feels like when the world leaves you behind, *The Independent* (July 15, 2019), <https://www.independent.co.uk/voices/libya-strike-refugee-unhcr-tripoli-triq-al-sikka-italy-a9004961.html>.

²⁸ Press briefing note on Libya, OHCHR (June 7, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24681&LangID=E>.

²⁹ State Department Report Libya 2019, supra note 10.

³⁰ Id.

³¹ Human Rights Watch Libya 2019, supra note 3.

³² Scores dead off coast of Libya in latest Mediterranean shipwreck, Office of the United Nations High Commissioner for Refugees (Aug. 27, 2019), <https://www.unhcr.org/news/press/2019/8/5d6565ac4/scores-dead-coast-libya-latest-mediterranean-shipwreck.html>.

³³ Attack on Libyan migrant detention centre Statement by UN High Commissioner for Human Rights Michelle Bachelet, OHCHR (July 3, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24784&LangID=E>.