**Written contribution on the Interface between International Human Rights and International Humanitarian Law in Counter-Terrorism Regulation: Assessing legal and institutional dimensions**

**By Elizka Relief Foundation**

**(Case Study: The State of Libya)**

**Preamble**

There is no doubt that the norms of human rights and international humanitarian law are clear in the context of terrorism and counter- terrorism. However, violations of these laws and regulations continue. When we take the State of Libya as an example, it becomes clear that the armed conflict inside the country has impacted all forms of human rights, especially the rights of refugees, migrants, detainees, and other groups most vulnerable to the conflict. Security Council resolutions countering the phenomenon of foreign terrorist fighters have not been complied with nor have their provisions been implemented, in violation of human rights and international humanitarian law.

Elzika Relief foundation submits this written contribution to point out that these violations of discrimination, mistreatment of detainees, and illegal torture, are not counter-terrorism mechanisms by any means and are considered war crimes. Elzika also highlights non-compliance with Security Council resolutions associated with foreign terrorist fighters’ phenomenon.

**A- Violation of international humanitarian law while countering terrorism ... Libya as a model**

International humanitarian law guarantees decent treatment for detainees who have not participated in any hostilities. This is in accordance with Article 3 of the Third and Fourth Geneva Convention of 1949, which stipulate that "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. [[1]](#footnote-1)

2) The wounded and sick shall be collected and cared for[[2]](#footnote-2)"

Nevertheless, in light of the raging conflict in the country, Libya is breaching that agreement, and the following cases are observed:

1. **Inhumane detention systems in Libya**

In Libya, there are at least 33 shelters (according to the UNHCR) and 20 shelters not counting informal facilities (according to the International Organization for Migration).[[3]](#footnote-3) It is estimated that about 1,500 detainees are held in official detention centers run by Libya's internationally recognized Government of National Accord and other thousands are held in militia-controlled centers. However, reliable figures are hard to be obtained.[[4]](#footnote-4)

Detainees in the European Union-funded Gathering and Departure Facility are reportedly abused and severely tortured. This facility is one of the camps opened in December 2018 in Tripoli, as part of an agreement between the European Union and Libya. It aims to distribute refugees from Libya to Europe regularly or return them to their countries of origin. This center was supposed to be a substitute for Libyan detention centers, but migrants are also subjected to torture. The facility is overcrowded, diseases are widespread, and medical care is almost non-existent. All this and the Libyan government did not take any step to reduce torture in such camps.[[5]](#footnote-5)

The humanitarian crisis in Libya is aggravating in these centers, with the intensification of the conflict and the risk of the outbreak of the COVID-19 in addition to the effects of the current conflict. It is possible that the Libyan displaced persons, refugees, and asylum seekers who do not have adequate shelter and live in poorly-equipped, overcrowded places, face a humanitarian disaster especially in light of difficult access to sanitation, clean water, and other virus-fighting essentials.[[6]](#footnote-6)

The threat is not only internal, as some migrant detention centers are frequently struck with rocket-propelled grenades. The last strike was on May 5, 2020, when a volley of rockets landed on the Tripoli seafront, near a naval base where returned migrants disembark.[[7]](#footnote-7)

What migrants are suffering in light of the chaos and insecurity is also worth mentioning, as murders are being committed against irregular migrants in Libya and refugees; such as the mass murder case took place in late May 2020 in "Muzdah", when 26 Bangladeshi migrants and 4 Africans were killed, and 11 others were wounded, with varying injuries, against the backdrop of a retaliatory reaction against migrants by the people of a Libyan citizen who was killed and suspected of involvement in human trafficking.[[8]](#footnote-8)

**2. Torture in Libya:**

Systematic torture of civilians in Libya continues, including citizens, or migrants and refugees. It is estimated that 85% of more than 3,000 migrants and refugees who arrived to Italy from Libya were subjected to torture, violence and inhuman treatment in Libya, between 2014 and 2020. A large number of them were subjected to forced labor or servitude for months or years.[[9]](#footnote-9)

In mid-June 2020, armed militias affiliated with the “Berkane Fury” operation led by the Government of National Accord, arrested dozens of Egyptian workers in Tarhuna, and subjected them to inhuman and degrading torture, on charges of supporting the Libyan army and working for it. They were forced to stand under the sun by barefoot, on one foot and raise their hands to the top, and they were also forced to chant verbal abuse, chanting and praising the city of Misurata.[[10]](#footnote-10) Al-Wefaq government Ministry of Interior was limited only to denunciation and condemnation. It is worth noting that the Egyptians were returned to Egypt a few days later after the Egyptian government intervened. However, such an incident is not a good indication of the armed militias' failure to respect the rules of international humanitarian law in the treatment of civilians. Also, escaping accountability, on the pretext that "investigations are underway", is expected because the "Berkane Fury" militia supports the Government of National Accord

**B- Libya: Violation of Security Council resolutions related to stemming the flow of foreign terrorist fighters**

In September 2014, The United Nations Security Council unanimously adopted resolution 2178, which obliges all member states to criminalize foreign terrorist fighters and condemn violent extremism, includes implementation mechanisms targeting foreign fighters from the moment they “try to travel” to conflict areas until their “return”.[[11]](#footnote-11) The Security Council also adopted Resolution 2396 in December 2017 to help member states uncover the threat posed by foreign terrorist fighters. Resolution 2396 calls for the establishment of strict standards for aviation security and urges UN member states to exchange fighting terrorism-related information with each other.[[12]](#footnote-12)

Despite these UN resolutions, some countries are still violating them in full view of the international community. The government of Turkey is helping to transfer thousands of mercenaries and foreign terrorist fighters from Syria’s conflict zones, to fight with Libya's Government of National Accord against the Libyan National Army (LNA) led by Field Marshal Khalifa Haftar. According to the Syrian Center for Human Rights, as of late June 2020, their numbers reached over 14,700 mercenaries with Syrian citizenship, of whom only 2,600 returned to Syria. While Turkey continues to ship and send new batches of its militants to Libya.[[13]](#footnote-13)

Another violation of international humanitarian law and UN resolutions are recruiting children in these conflicts. In Libya, 300 children aged 14-18, the majority of whom are under the Brigade of "Sultan Murad".[[14]](#footnote-14) As of July 19, 2020, about 417 militants, including 30 children under the age of 18, were killed.

It is worth noting that about 400 foreign fighters took the chance of going to Libya to flee to Europe, and they entered the European continent illegally through Italy.[[15]](#footnote-15)

All of this included in the framework of the Turkish government’s claim to help Al-Wefaq government militarily to fight terrorism. However, war crimes and human rights violations were the actual reality, despite Turkey’s signing of the Berlin agreement to stop foreign interference and respect the UN arms embargo, and despite calls from the neighboring countries of Libya, including Egypt that launched the "Cairo Declaration" initiative which stemming the flow of foreign fighters and mercenaries into Libya was among its key items, and in violation of Security Council resolutions 2178 of 2014 and Resolution 2396 of 2017.

**Recommendations**

**Elzika Relief Foundation** recommends the following:

1. There must be a clear plan to close abusive migrant and refugee detention centers and put an end to the apparent violations of human rights and international humanitarian law that are taking place there.
2. The humanitarian aid - logistical and material – provided to detention centers in Libya must be increased, while control over the disposal and distribution of such aid to those who are entitled to it must be tightened.
3. The results of the investigation into the torture and humiliation suffered by Egyptians in Libya must be revealed as soon as possible, and perpetrators must be held accountable publicly.
4. Security Council Resolution 2178 of 2014 and Resolution 2396 of 2017 must be enforced and Turkey must be pressured through various UN mechanisms, to stop sending mercenaries and foreign terrorist fighters from Syria to Libya, under the claims of assisting Al-Wefaq government in its war on terrorism.
1. Geneva Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. [↑](#footnote-ref-1)
2. Geneva Convention (IV), Relative To The Protection Of Civilian Persons In Time Of War Of 12 August 1949. [↑](#footnote-ref-2)
3. Libya: Migrants are at the mercy of human trafficking networks, and the sterile European security approach of handling the issue”, Democratic Transition and Human Rights Support Center, 9 June 2020, available at: <https://bit.ly/3fUr4fp> [↑](#footnote-ref-3)
4. Omer Karasapan, “Libya and its migrants confront new threats”, Brookings, May 20, 2020, available at: <https://brook.gs/2VfHrex> [↑](#footnote-ref-4)
5. دالين صلاحية، " ليبيا- عنصرية وتعذيب واستغلال جنسي في مركز للاجئين تموله أوروبا"، مهاجر نيوز، 31/01/2020، على الربط التالي: <https://bit.ly/2Z4rWY1> [↑](#footnote-ref-5)
6. شريف بيبي، " في ليبيا.. تساؤلات حول مصير المهاجرين في مراكز الاحتجاز المكتظة"، مهاجر نيوز، 26/05/2020، على الرابط التالي: <https://bit.ly/2Z7t8K9> [↑](#footnote-ref-6)
7. Coronavirus narrows options for migrants buffeted by Libya’s war”, Arab News & Reuters, May 08, 2020, available at: <https://arab.news/ynebv> [↑](#footnote-ref-7)
8. حكومة الوفاق الليبية: مقتل 30 مهاجرا في هجوم انتقامي"، روسيا اليوم، 28.05.2020، على الربط التالي: <https://ar.rt.com/nzb0> [↑](#footnote-ref-8)
9. Report on Human Rights Violations Against Migrants and Refugees in Libya (2014-2020)”, MEDU, February 2020, available at: <https://bit.ly/2YuEkkX> [↑](#footnote-ref-9)
10. منية غانمي، " ميليشيات الوفاق تعذب عمالاً مصريين بترهونة.. والقاهرة تتدخل"، العربية نت، 15 يونيو 2020، على الرابط التالي: <https://ara.tv/6hcts> [↑](#footnote-ref-10)
11. Resolution 2178 (2014) Adopted by the Security Council at its 727, 2nd meeting, on 24 September 2014 [↑](#footnote-ref-11)
12. Resolution 2396 (2017) Adopted by the Security Council at its 814,8th meeting, on 21 December 2017 [↑](#footnote-ref-12)
13. المرصد السوري لحقوق الانسان: عودة بعض المرتزقة السوريين من ليبيا"، المرصد السوري لحقوق الإنسان، 19 يونيو 2020، على الرابط التالي: <https://bit.ly/31c55MY> [↑](#footnote-ref-13)
14. المرجع السابق. [↑](#footnote-ref-14)
15. المرصد السوري لحقوق الانسان: ارتفاع أعداد القتلى المرتزقة في ليبيا إلى 417 وهروب 400 “مرتزقٍ” إلى أوروبا"، المرصد السوري لحقوق الإنسان 20 يونيو 2020، على الرابط التالي: <https://bit.ly/37ZbDQe> [↑](#footnote-ref-15)