

Accountability for Crimes under International Law in Libya: Challenges and Prospects

Briefing paper

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This briefing paper highlights some of the issues hampering accountability for crimes under international law that will be examined in detail in the International Commission of Jurists forthcoming report on Libya's criminal justice system.

Background

The 17 February 2011 uprising in Libya, culminating in the end of the regime of Muammar Gadhafi, presented a unique opportunity to end and address the legacy of gross human rights violations characterizing its rule. Human rights violations and abuses, including extrajudicial executions, enforced disappearances, torture and other ill-treatment, were all committed in a widespread and systematic manner.

Eight years on, Libya remains embroiled in violence and periods of armed conflict, with a multitude of State actors and armed groups perpetrating crimes under international law. International organizations, including the [United Nations Support Mission in Libya](#) (UNSMIL), the [United Nations Office of the High Commissioner for Human Rights](#) (OHCHR) and the [United Nations High Commissioner for Refugees](#) (UNHCR), report on widespread violations and abuses committed by State and armed groups in Libya under international human rights law (IHRL) and international humanitarian law (IHL). These include enforced disappearances, torture and ill-treatment including rape and other sexual violence against both women and men, unlawful killings, forced displacement, and both direct and indiscriminate or disproportionate attacks against civilians and civilian objects, as well as the prolonged or otherwise arbitrary detention of “thousands of men, women and children.”

In the context of impunity and lawlessness, a number of criminal organizations have entrenched their presence in the country and consolidated human trafficking routes towards Europe. The UNHCR, [UNSMIL](#), [OHCHR](#), the International Organization for Migration and NGOs continue to document and report on widespread and systematic violations and abuses of thousands of migrants, refugees and asylum seekers' human rights in Libya. In addition, thousands of migrants, refugees and asylum seekers are subject to prolonged detention without access to a lawyer or the possibility to challenge their detention, and have yet to be brought before judicial authorities.

Multiple actors are involved in the commission of such violations and abuses. Libya is presently governed by two rival authorities: the government of Abdullah Al-Thinni, which operates from Al-Bayda in eastern Libya, and the Presidency Council, which has been based in

Tripoli since 2016 and which presides over the internationally recognized Government of National Accord (GNA). The GNA was formed pursuant to the UN-brokered Libyan Political Agreement (LPA), an attempt to resolve the political stalemate prevailing in Libya. The LPA required the Tobruk-based House of Representatives (HoR), established as the sole legislative authority, to endorse the GNA and ratify the LPA. It has thus far failed to do so.

A [multiplicity of armed groups](#) continue to operate across Libya, whose loyalties to political institutions or factions regularly shift. While the situation is highly complex, the groups can roughly be divided into three categories, corresponding also to their legal responsibilities: those acting under GNA control, whether overall or more operational; those acting in alignment or alliance with the GNA or with their acquiescence; and those in opposition to the GNA, whether or not aligned with the rival government.

For example, the GNA relies on armed groups for its own security in Tripoli. Khalifa Haftar's self-styled Libyan National Army (LNA) was initially endorsed by the HoR but relations between the two have since been strained. And, while ISIS no longer controls territory in Libya, recent attacks on high profile targets such as the National Election Commission, the National Oil Company and Foreign Ministry demonstrate that it remains a threat.

Libya, including its armed forces, is fully bound by IHL and IHRL, including the *International Covenant on Civil and Political Rights* (ICCPR) and the *African Charter on Human and Peoples' Rights* (ACHPR) to which it is party. The Libyan State is confronted by multiple challenges for protecting persons from violations and abuses of IHL and IHRL and ensuring accountability for them. The legislative framework for investigating and prosecuting crimes contains numerous deficiencies that would lead, in application, to the violation of the rights to an effective remedy, to liberty and to a fair trial under articles 2, 9 and 14 of the ICCPR and articles 6 and 7 of the ACHPR. In practice, such rights are violated, as well as the rights to freedom from torture and cruel, inhuman and degrading treatment and to humane treatment under articles 7 and 10 of the ICCPR and article 5 of the ACHPR. Weak and decentralized political structures involving the rival governments and a precarious security situation have impeded the effective functioning of the Libyan judiciary in significant parts of the country; the fair and effective administration of justice; and legislative reforms necessary to remedy existing fissures in the criminal justice framework. [Courts in the west operate at reduced capacity and those in the east and south are mostly closed](#). Based on information provided to the ICJ, prosecutors and judges attempting to investigate and prosecute perpetrators have been threatened, abducted and, in some instances, killed, and fair trial guarantees and other human rights have typically not been respected. Accordingly, any investigation and prosecution of crimes under international law conducted by the Libyan authorities in the current context is likely unable to meet the standards necessary to ensure fair and effective justice.

IHL governing non-international armed conflict directly binds armed groups, which bear accordant obligations, and members of armed groups are liable for war crimes under international law for certain violations.¹ The obligation to criminalize, investigate, prosecute, punish and remedy crimes under international law committed by State officials and by any member of an armed group or other person acting under its direction or control rests solely on the Libyan authorities. To the extent that any armed group may be "acting on the instructions of, or under the direction or control of" Libya, its conduct will be attributable to Libya itself and these groups would effectively be acting as state agents.² Libyan authorities also have an obligation to investigate crimes committed by members of armed groups acting

¹ Convention (IV) relative to the Protection of Civilian Persons in Time of War, art. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 1(1).

² International Law Commission, *Draft Articles Responsibility of States for Internationally Wrongful Acts*, art. 8.

nominally under State control or with its acquiescence,³ and an obligation to exercise due diligence in endeavouring to protect any person from human rights abuses and crimes under international law committed by armed groups acting outside State control.⁴

Violations of rights in the criminal justice framework

Since 2011, Libyan efforts to criminalize offences under international law remain incomplete. Libyan law does not provide for criminal liability for war crimes, crimes against humanity and some serious forms of cruel, inhuman and degrading treatment or punishment, and efforts to criminalize torture, enforced disappearance and arbitrary deprivations of life fail to meet international standards.⁵ The definition of torture in article 2 of Law No. 10 of 2013 only criminalizes torture for the purpose of extracting a “confession,” but not for other purposes prescribed by article 1 of the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment* (CAT). These include but are not limited to obtaining information, punishing a person for an act that has been or is suspected to have been committed, or intimidating or coercing both or either the victim and/or a third person.

The definition of “forced disappearance” in article 1 of Law No. 10 of 2013 does not include two elements of enforced disappearance under article 2 of the *International Convention for the Protection of All Persons from Enforced Disappearance*, which is reflective of customary international law, namely (i) the involvement of governmental officials, directly or by acquiescence, and (ii) the refusal to disclose the fate or whereabouts of the person concerned or to acknowledge the deprivation of liberty. Further, the Penal Code criminalizes only some forms of extrajudicial executions (e.g. murder⁶) without specific reference to its commission by State officials, and does not adequately address arbitrary or summary executions.⁷ For instance, article 71 of the Penal Code effectively exempts from punishment public officials who use lethal force when necessary to “repel force or to overcome resistance to public authorities”⁸ without limiting it to “imminent threats to life” as required under international law and standards governing the use of force. In addition, the Penal Code applies the death penalty to crimes that are not the most serious,⁹ without always reserving judicial discretion to apply a lesser penalty,¹⁰ and without the right to appeal the judgement on errors of fact or for violation of fair trial rights,¹¹ in violation of article 6(2) of the ICCPR.¹²

Amnesties and immunities in domestic law also prevent the investigation and prosecution of crimes under international law. Laws effectively provide for amnesties for crimes under international law in violation of the duty to investigate and prosecute them,¹³ in particular for

³ Committee against Torture, General Comment no. 2: Implementation of Article 2 by States Parties, UN Doc. CAT/C/GC/2, 24 January 2008 (CAT Committee General Comment No. 2), para. 18.

⁴ Human Rights Committee (HRC), General Comment No. 31: Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 8; Human Rights Committee, General Comment No. 36: Article 6 (The Right to Life), UN Doc. CCPR/C/GC/36, 30 October 2018 (HRC General Comment No. 36), para. 21; CAT Committee General Comment No. 2, para. 18; African Commission on Human and Peoples’ Rights, General Comment No. 3: The Right to Life (Article 4), 57th Ordinary Session, 4–18 November 2015, para. 9.

⁵ With respect to slavery, see articles 425 and 426 of the Penal Code. See also Universal Declaration of Human Rights, art. 4; ICCPR, art. 8; ACHPR, art. 6; American Convention on Human Rights, art. 6; European Convention on Human Rights, art. 4; Rome Statute of the International Criminal Court, arts 7(1)(c, g), 8(2)(b)(xxii), (e)(vi); International Committee of the Red Cross, *Customary IHL Database*, rr 94, 156; Committee on the Rights of the Child, *Concluding Observations: Brazil*, UN Doc. CRC/C/BRA/CO/2-4, 30 October 2015, para. 85

⁶ Art. 296.

⁷ International Commission of Jurists, *Enforced Disappearance and Extrajudicial Execution: Investigation and Sanction – ICJ Practitioners’ Guide No. 9* (May 2015), pp 70, 79.

⁸ Art. 71.

⁹ E.g. arts 196, 198bis.

¹⁰ Arts 29, 296.

¹¹ Criminal Procedure Code, Arts 381, 385bis.

¹² HRC General Comment No. 36, paras 35-46.

¹³ Principle 24 of the *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, read in conjunction with principle 19, requires States to “undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and ... [ensure] that those responsible for serious crimes under international law are prosecuted, tried and duly punished” before granting amnesty.

(i) crimes committed between 11 February 2011 and 2 May 2012 except for *inter alia* "kidnapping, torture and forced intercourse crimes,"¹⁴ (ii) acts committed "for the necessities of the 17 February Revolution in terms of military, security or civil acts carried out by revolutionaries to save or protect the revolution"¹⁵ and (iii) crimes committed between 15 February 2011 to 7 September 2015 except for *inter alia* "sexual crimes, murder, abduction, forced disappearance and torture."¹⁶ Saif al Islam Gadhafi, who was convicted on 28 July 2015 by the Tripoli Court of Assize in the "Gadhafi-regime members" case (discussed below) on charges equivalent to war crimes and other offences, and who is subject to an arrest warrant by the International Criminal Court (ICC), was [released](#) from Zintan Prison following instructions from the Ministry of Justice to the city's chief prosecutor based on the law amnestying crimes in the third category. Article 69 of the Penal Code also shields public officials who have committed a crime pursuant to an unlawful order "when the law definitively forbids discussion on the lawfulness thereof" contrary to international law and standards, which provide that superior orders are not a defence to crimes under international law, particularly when an order is manifestly unlawful, and that, at best, acting upon a superior's order may constitute a mitigating factor for the purposes of sentencing.¹⁷

Provisions in the Criminal Procedure Code (CPC) are non-compliant with obligations to ensure the rights to liberty and a fair trial. With respect to the right to liberty, the CPC grants powers to the Prosecutor and an investigating judge to detain an accused pending trial that violate their right to be brought before a judicial authority independent of the investigating or prosecuting authority within 48 hours of arrest (unless delay is absolutely exceptional and justified in the circumstances), including to determine the lawfulness of their detention.¹⁸

The Prosecutor may order a person be detained for six days following arrest before bringing them before a competent summary judge.¹⁹ Where a person is accused of "crimes against the State,"²⁰ the arresting authority may detain them for seven days before transfer to the prosecutor, who may question them for three days and then detain them for a further two weeks before bringing them before a judicial authority.²¹ An investigating judge carrying out an investigation upon the request of the Prosecutor or accused may order the accused be detained for 15 days, and if necessary, for additional periods not exceeding 30 days.²² Further, accused persons "may always" be detained pending trial without the opportunity to apply for bail if they do not have a known fixed place of residence in Libya and the offence is a misdemeanour punishable by imprisonment.²³

With respect to the right to a fair trial, provisions that are non-compliant with international legal obligations include:

- An accused may be questioned upon arrest and confronted with other accused or witnesses without the presence of their lawyer in *flagrante delicto* cases or where there is a risk that evidence will be lost; even where a lawyer may be present, they may speak only if authorized by the judge.²⁴

¹⁴ Law No. 35 of 2012, art. 2.

¹⁵ Law No. 38 of 2012, art. 4.

¹⁶ Law No. 6 of 2015, arts 1, 3, enacted to repeal Law No. 38 but declared invalid by the GNA.

¹⁷ Including principle 27(a) of the *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*.

¹⁸ ICCPR, art. 9(3). HRC, *General Comment No. 35 on Article 9 on liberty and security of person* (2014), para. 33; *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, principle M(3).

¹⁹ Arts 175-176.

²⁰ Such as "bearing of arms by Libyans against the state" and "acts prejudicial to the territory of the state and facilitation of war against it", set out in the Penal Code, arts 165 *et seq.*

²¹ Arts 26, 112, 187 *bis* A.

²² Arts 51, 122.

²³ Arts 115, 122, 124-126.

²⁴ Art. 106.

- Without legislative limits, the public prosecution and investigating judge may “order ... that no one visit [the accused], without prejudice to the right of the accused to always contact his attorney without the presence of anyone.”²⁵
- As discussed in the ICJ’s report [Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality \(2016\)](#) (ICJ’s 2016 Report), the judiciary is not sufficiently independent and impartial.²⁶ Concerns extend to the Prosecutor, who requires the authorization of or a request by the Ministry of Justice to investigate certain crimes largely considered crimes against the “public interest” or “State.”²⁷
- The CPC does not expressly exclude the use of statements or other information obtained or extracted through torture or ill-treatment as evidence at trial or impose a burden on the prosecution to prove evidence and/or a confession was provided voluntarily.²⁸
- There is no provision for the protection of witnesses, which is particularly problematic against the backdrop of a volatile security situation, where [witnesses are frequently intimidated into not testifying](#), impacting the accused’s right to call and examine witnesses, as well as the prosecution’s capacity to do so.
- There is no right to appeal errors of fact, including in cases involving imposition of the death penalty.²⁹
- As discussed in the ICJ’s 2016 Report,³⁰ military courts could have jurisdiction over detainees who are broadly classified as “prisoners of war” and civilians for certain crimes, including for some offences that could, in some circumstances, be qualified as grave breaches of IHL.³¹
- Under article 2 of Law No. 28 of 2012, “[r]eports by revolutionaries documenting incidents and statements of witnesses and detainees from senior officials of the former regime” are granted the status of “information-gathering reports conducted by judicial police officers” under the CPC, which permits the use of statements, evidence and other information collected by members of armed groups during investigations and trials, despite their lack of independence and impartiality.

Violations of rights in practice

In practice, very few investigations and prosecutions of State officials, including military and security forces and armed groups pre and post-revolution have taken place. Libyan authorities investigated and prosecuted Gadhafi-aligned perpetrators in a handful of cases for crimes committed during the 2011 uprising or preceding it, in which serious breaches of accused’s rights occurred. In the “Gadhafi-regime members” case, 32 of 37 former officials of the Gadhafi regime, including Gadhafi’s son Saif Al-Islam and the former chief of intelligence Abdullah Al-Senussi, were convicted of charges equivalent to war crimes and other offences by the Tripoli Court of Assize. Nine defendants were sentenced to death. In its [Report on the Trial of 37 Former Members of the Qadhafi Regime](#), UNSMIL and OHCHR documented extensive violations of rights in connection with the trial, which included the arrest, prolonged detention, interrogation (without the presence of a lawyer) and torture and cruel, inhuman and degrading treatment of accused persons by members of armed groups and other non-judicial actors; two years’ detention before being informed of the charges, brought before judicial authorities, or meeting with lawyers; reliance by the prosecution on written witness statements, preventing the accused from cross-examining witnesses, and a limit of two

²⁵ Art. 121.

²⁶ See Part III of the ICJ’s 2016 Report.

²⁷ Arts 8-9, 167-168, 175, 178, 195, 208, 219-222.

²⁸ Compare CAT, art. 15.

²⁹ Arts 345, 429.

³⁰ See pp 73-74.

³¹ E.g. “killing or harming wounded persons” and “abandoning wounded persons”, in articles 55 and 56 of the Military Penal Code respectively.

defence witnesses per accused; the torture, ill-treatment, or coercion of other detained persons to provide evidence against the accused; prolonged detention prior to access to a lawyer, failure by the court to appoint lawyers for the accused, restrictions on lawyers' access to the *Al-Hadhba* prison complex to consult with their clients, and the exclusion of the lawyers from hearings during trial; the admission of statements taken during interrogation by members of armed groups, some of which were obtained through torture or other ill-treatment or without the presence of a lawyer; and security threats against defence counsel, including physical assaults.

On 15 August 2018, in the "[Abu Saleem Highway Massacre](#)" case, the Tripoli Court of Appeals convicted 99 of 128 charged persons identified by prosecutors as Gadhafi sympathizers and members of the security forces for killing 146 anti-Gadhafi protestors in August 2011; 45 of them received the death penalty. Defendants also [alleged](#) their rights were violated, including that they were subjected to torture or other ill-treatment, and were not granted access to counsel during interrogations and preliminary trial hearings.

Limited attempts have been made to hold accountable perpetrators of crimes committed following 2011. In January 2019, the Public Prosecutor in Tripoli reportedly [issued arrest warrants for two prominent armed groups leaders](#), Abdelhakim Belhaj, Chairman of the Al-Wattan Party, and Ibrahim Jadran, the former commander of the Petroleum Facilities Guard for "attacks, crimes and leading armed groups in Libya." The status of an investigation into extrajudicial executions allegedly committed by Mahmoud Al-Werfalli, who is also subject to an arrest warrant issued by the ICC for the war crime of murder, is unclear, with conflicting reports indicating that he was [released or escaped](#) from prison in August 2018 and that the Benghazi Court Martial had [revoked the arrest warrant](#) against him. Despite announcements by Libyan authorities that investigations had commenced in response to some complaints about widespread violations and abuses in detention facilities, OHCHR and UNSMIL report that they are not aware of any [investigation](#) or [prosecution](#) of armed group members, including those affiliated to the State, for post-2011 crimes, even in cases where the State exercised effective control. These concerns have been repeatedly echoed in the Human Rights Council's [repeated calls for accountability](#).

Since 2011, the prolonged arbitrary detention of persons, in facilities run by both State officials and armed groups acting on behalf or with the support of the Government of Libya, without being brought before a judicial authority, is widespread. According to reports by [UNSMIL](#), [OHCHR](#), the [Working Group on Arbitrary Detention](#) (WGAD) and the [UN Panel of Experts on Libya](#), thousands of persons are reportedly detained without charge, without being brought [before a court](#) or afforded the right to challenge their detention, and without being afforded access to lawyers or their families for prolonged periods, in some cases many years. Several attempts by the legislature, Presidency Council and Supreme Judicial Council to impose deadlines for the release of detainees have been ignored. Such practices violate the right to liberty under article 9 of the ICCPR and article 6 of the ACHPR.

Reportedly, large numbers of migrants, refugees and asylum seekers are also [detained in 17 to 36 detention facilities](#) controlled by the State without being afforded due process rights. Irregular migration is a crime under Libyan law,³² for which migrants, refugees and asylum seekers face prosecution and eventually deportation. However, according to [UNSMIL and OHCHR](#), the majority of them are detained indefinitely pending deportation without being brought before a judicial authority or charged.

³² Law No. 6 of 1987, art. 19(b); Law No. 19 of 2010, arts 6, 11.

Persons [deprived of their liberty in Libya](#), including [migrants, refugees and asylum seekers](#), suffer from poor detention conditions, including overcrowded or excessively small cells, with no adequate ventilation, sanitation and outdoor time; the provision of nutritionally poor food and insufficient drinking water; and denials of access to necessary access to medical care. [Torture and other cruel inhuman and degrading treatment](#) including sexual violence against men and women, beatings and extortion, are used in a widespread manner, including [during interrogations](#) in detention facilities. Such practices violate the rights to freedom from torture and ill-treatment and to humane treatment, as well as the rights to health, food, water and sanitation under articles 7 and 10 of the ICCPR, articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights and rules 12 to 22 and 42 of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

The control of territory by armed groups not acting under the control or with the acquiescence of the Government of Libya, as well as the prolonged detention and [mistreatment of persons](#) including migrants, refugees and asylum seekers by such armed groups and criminal organizations, seriously restricts Libyan authorities' ability to protect the population from human rights violations and crimes, and to ensure their fair trial rights are upheld. Detention of persons by armed groups often places detainees beyond the Prosecutor and court's reach entirely, and inhibits access by accused persons to detainees who are witnesses in criminal trials.

The international community's response to the situation in Libya

The UN has adopted limited measures aimed at ensuring accountability for serious human rights and IHL violations in Libya by establishing a [Commission of Inquiry](#) to investigate human rights violations that had occurred before, during and after the February 2011 uprising, which reported in [2012](#) and [2014](#), and a [Panel of Experts on Libya](#) to report to and assist the Security Council in the imposition of sanctions on Libya. UNSMIL and OHCHR also report on ongoing human rights and IHL violations, including by issuing joint thematic reports covering issues discussed above, and WGAD reports on issues related to arbitrary detention.

On 26 February 2011, the Security Council [referred the situation in Libya](#) since 15 February 2011 to the Office of the Prosecutor of the ICC, which has issued arrest warrants against Muammar Gadhafi (now deceased), [Saif Al-Islam Gadhafi](#) and Abdullah Al-Senussi for crimes against humanity, [Al-Tuhamy Mohamed Khaled](#) (the former head of the Libyan Internal Security Agency) for crimes against humanity and war crimes, and [Mahmoud Al-Werfalli](#) (a commander in the Al-Saiqa Brigade in the LNA) for war crimes. The ICC is also [reportedly](#) investigating crimes against migrants, refugees and asylum seekers. The ICC determined the case against Abdullah Al-Senussi [inadmissible](#) and has not been able to enforce any other arrest warrants.

Recommendations

To ensure accountability for crimes under international law, considerable progress needs to be made to stabilize the political and security situation in Libya to ensure justice system actors can operate in accordance with international law and standards. Reform of the legislative framework governing criminal justice is both necessary to facilitate stabilization, and to ensure international law and standards can be met in the future. Further, rights accorded under domestic and international law must be met in practice. The ICJ therefore calls on:

- With respect to the definitions of crimes, the HoR to amend article 2 of Law No. 10 of 2013 to bring the definition of torture in line with the CAT and criminalize acts

constituting serious cruel, inhuman and degrading treatment or punishment; amend article 1 of Law No. 10 of 2013 to criminalize enforced disappearance as required by international law; enact laws that fully criminalize arbitrary deprivations of the right to life (unlawful killings), war crimes and crimes against humanity.

- With respect to amnesties, the HoR to amend Law No. 35 of 2012 (or give effect to its repeal) and Law No. 6 of 2015 to exclude enforced disappearance, extrajudicial, arbitrary and summary executions, war crimes and crimes against humanity from the scope of pardons / amnesties; and amend article 4 of Law No. 38 of 2012 to exclude crimes under international law committed during the 2011 conflict.
- With respect to the legal framework governing criminal procedures, the HoR to:
 - Remove the authority of the Minister of Justice over the Prosecutor's Office, including the authority to control and direct investigations and prosecutions of specific crimes set out in article 224;
 - Repeal article 2 of Law No. 38 of 2012, which allows the use of information collected by armed groups in proceedings against former Gadhafi-era officials as evidence in investigations and trials;
 - Amend article 106 of the CPC to repeal the provision requiring a lawyer to seek authorization from the judge to speak during the interrogation of the accused and ensuring the right of access to a lawyer from the moment of arrest;
 - Amend articles 107, 115, 117 and 122 of the CPC to ensure detainees are brought before an impartial judicial authority promptly following arrest, and no later than 48 hours in any event;
 - Repeal articles 111, 115 and 125 of the CPC allowing detention of an accused on the sole ground that she or he does not have a fixed place of residence;
 - Amend the CPC to include provisions guaranteeing the rights to remain silent during questioning;
 - Amend article 121 of the CPC to ensure detainees have the right to be visited by and communicate with their family, lawyers and medical personnel at all times;
 - Amend article 2 of Law No. 38 of 2012 and the CPC to include provisions excluding the admissibility of information as evidence obtained through torture or ill-treatment in legal proceedings and imposing a burden on the prosecution to prove information, including "confessions," were obtained voluntarily;
 - With respect to military tribunals, limit the jurisdiction of such tribunals to alleged breaches of military discipline and ensure that cases involving alleged violations of human rights committed by military personnel and other law enforcement officials are under the jurisdiction of civilian courts;
- With respect to the judiciary, the Supreme Judicial Council, HoR and Constitutional Drafting Assembly should implement the recommendations set out in the ICJ's 2016 report, including but not limited to:
 - Adopting objective criteria and transparent procedures for the management of the career of judges, including selection, appointment, promotion, transfer and disciplinary procedures;
 - Adopting laws to govern disciplinary procedures on complaints against judges for alleged breaches of the Code of Ethics and Conduct and affording judges the right to a fair hearing before an independent and impartial body, and only disciplining judges for breaches of the Code;
 - Amending the law so no immunity is provided in cases in which there is reasonable suspicion on the basis of *prima facie* evidence of criminal responsibility for a gross human rights violation, a crime under international law or other serious crime;
 - Amending the law to clarify that the State should guarantee appropriate remedy and reparation for harm suffered by individuals as a result of acts or omissions by judges in the unlawful exercise of their judicial functions;

- Ensuring that the Constitution defines vetting procedures narrowly and provides that vetting procedures must conform to standards of fairness and transparency;
- The Libyan Prosecutor to commence a prompt, impartial and thorough investigation when an accused person alleges statements or other information were obtained through torture;
- The GNA and HoR to establish a robust system of victim and witness protection that conducts effective risk assessment for victims and witnesses and ensures that appropriate security measures are taken to protect them;
- The GNA and HoR to establish an immediate moratorium on the death penalty, with a view to abolition, and act expeditiously towards full abolition of article 17 of the Penal Code;
- The GNA and judiciary to ensure international standards governing fair trials are met in practice, including the right to be informed of the charges, to immediately access a lawyer, to be brought promptly before an independent judicial authority, to have access at all time to a judicial authority for the purposes of *habeas corpus* or similar procedures, to access family and medical services, to adequate time and facilities to prepare a defence, to defend oneself in person or through counsel, to be present at trial and appeal, to call and examine witnesses and to appeal errors of law;
- The Libyan Prosecutor to ensure that all alleged human rights violations amounting to crimes under international law are impartially and thoroughly investigated and prosecuted and the perpetrators held accountable;
- The GNA, the HoR and other institutional actors to take all necessary and reasonable steps to resolve the political deadlock that currently exists in Libya, with a view to holding fair and participative presidential and legislative elections with appropriate security measures in place to protect the population.

Given the significant political, security and human rights challenges faced by Libya, international actors must take further steps to ensure Libyan authorities meet their international human rights obligations. The ICJ therefore calls on:

- States and UN actors to entrench a human rights approach in its engagement with Libya, including in relation to arrangements made to deal with migration and trafficking from and through Libya to EU countries, as well as in relation to the supply of arms;
- States and UN actors to refrain from entering into agreements with Libyan authorities, including in relation to the detention of migrants, refugees and asylum seekers and provision of arms, in situations where it is reasonable that violations rights under international human rights law and/or refugee law might occur;
- States to act collectively and individually to ensure accountability for crimes under international law committed by State and non-State actors in Libya and call for reform in both law and practice, including through the Human Rights Council, other United Nations bodies and regional and State bodies;
- The Human Rights Council to appoint a Special Rapporteur on the situation of human rights in Libya for an indefinite period to monitor and report on human rights violations being committed in Libya;
- The Human Rights Council to establish a Special Rapporteur and/or Commission of Inquiry or similar mechanism on the situation of human rights in Libya for an indefinite period to monitor and report on human rights violations being committed in Libya;
- States to exercise universal jurisdiction to investigate and prosecute crimes under international law committed in Libya when the perpetrator is within their territory.
- States to adequately fund and resource the ICC and ensure full cooperation with it to ensure it has adequate capacity to conduct its investigation into the situation in Libya and to enforce arrest warrants to bring alleged perpetrators of crimes before the court for trial.