

31 July 2019

Libya: Addressing accountability for serious crimes and reform of the criminal justice system are key to peace, stability and justice

The United Nations, international actors and States must prioritize accountability for crimes under international law in their engagement with Libya, including by establishing a Commission of Inquiry or similar mechanism to document and report on gross human rights violations and to collect and preserve evidence of crimes for future criminal proceedings, the ICJ said in a report released today on Libya's criminal justice system.

"The Libyan criminal justice system needs comprehensive reform to dismantle the structural impunity that prevails in the country," said Said Benarbia, the ICJ's MENA Programme Director. "Rather than assuming the system is capable of ensuring justice for the egregious human rights violations and abuses still being perpetrated in Libya, international actors should establish a mechanism to monitor, report on and address these violations and prioritize human rights in any agreement with Libyan authorities."

The report finds that investigations and prosecutions of crimes under international law have been limited to a handful of cases and that future cases are unlikely meet international standards necessary to ensure fair and effective justice, in particular the rights to liberty and a fair trial and the prohibition on torture and ill-treatment.

Fragmentation in Libyan executive and legislative bodies, with the internationally recognized government unable to control significant parts of the territory, has weakened political structures and led to a precarious security situation that impedes the effective functioning of the judiciary, which has remained largely unified.

"Accountability efforts in Libya are hindered by cycles of violence, weak and ineffective law enforcement agencies, the arbitrary exercise of policing and detention powers by armed groups, and a web of amnesties, immunities and defences that shield perpetrators from justice," said Kate Vigneswaran, the ICJ's MENA Programme Senior Legal Adviser. "Victims should not have to wait any longer for these obstacles to be removed and justice delivered. Peace and justice in Libya can only be achieved if the rule of law is fully established."

Since 2011, crimes under international law and other gross human rights violations, including torture and ill-treatment, enforced disappearance, enslavement and rape, have been committed by State and non-State actors on a widespread scale, including against thousands of migrants, refugees and asylum seekers arbitrarily detained.

"The recent upsurge in conflict and related commission of direct and indiscriminate attacks against civilians and mass displacement of the population makes tackling the climate of impunity vital for combatting the commission of crimes," said Benarbia.

To this end, States should fully support International Criminal Court efforts to conduct Libya-related investigations and prosecutions, including with a view to enforcing arrest warrants and bringing alleged perpetrators before the court for trial.

In her address to the Human Rights Council on 24 June, High Commissioner for Human Rights Michelle Bachelet stated that "Libya is not a port of safe return" and that "[t]he international community must come together to support pathways to sustainable peace in the country."

Key recommendations for international actors, including UN bodies and States, include:

- The United Nations Human Rights Council should establish a Commission of Inquiry or similar mechanism, with a mandate to monitor, document, establish the facts and report on gross human rights violations in Libya, including with a view to collecting and preserving evidence of crimes under international law for future criminal proceedings before national or international courts;
- States should exercise universal jurisdiction to investigate and prosecute crimes under international law committed in Libya, including when the perpetrator is within their territory or otherwise under their jurisdiction;
- States should fully cooperate with and adequately resource the ICC to enhance its capacity to conduct its investigations and prosecutions, enforce related arrest warrants, and bring alleged perpetrators to account; and
- States and UN actors should refrain from entering into or implementing agreements with Libyan authorities, including in relation to the detention of migrants, refugees and asylum seekers and the provision of arms, where it is reasonably foreseeable that violations of rights under international law might occur.

Key recommendations for Libyan actors to implement when the political situation permits include:

- Enacting new legal provisions or amending existing ones to criminalize torture and ill-treatment, enforced disappearances, arbitrary deprivation of life, rape and other forms of sexual violence, slavery, war crimes and crimes against humanity in line with international law and standards, and to codify superior responsibility in respect of all crimes under international law;
- Amending or repealing laws on amnesties and immunities to ensure they are not a barrier to the investigation and prosecution of crimes under international law or the provision of reparations;
- Ensure detainees have the right to legal counsel from the moment of arrest, throughout pre-trial proceedings and during trial and have the right to access family and medical care at all times; preserve the accused's right to re-trial following trials in *absentia*; ensure the right to appeal questions of fact and the right to review upon discovery of a new fact; and revoke military tribunals' jurisdiction over civilians and gross human rights violations; and
- Establish an immediate moratorium on the death penalty, with a view its abolition.

Contact:

Said Benarbia, Director, ICJ Middle East and North Africa Programme, t: +41-22-979-3817; e: said.benarbia@icj.org

Kate Vigneswaran, Senior Legal Adviser, ICJ Middle East and North Africa Programme, t: +31-62-489-4664; e: kate.vigneswaran@icj.org