



UNITED NATIONS HUMAN RIGHTS COUNCIL

36th Session of the Working Group on the Universal Periodic Review

May 2020

**International Commission of Jurists and Defender Center for Human Rights'
Submission to the Universal Periodic Review of Libya**

Submitted on 3 October 2019

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists works for the legal protection of human rights and the promotion of the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

P.O. Box, 91, Rue des Bains, 33, 1211 Geneva 8, Switzerland

Tel: +41(0) 22 979 3800 – Fax: +41(0) 22 979 3801 –

Website: <http://www.icj.org> - E-mail: info@icj.org

**International Commission of Jurists and Defender Center for Human Rights'
Submission to the Universal Periodic Review of Libya**

I) Introduction

1. The International Commission of Jurists (ICJ) and the Defender Center for Human Rights (DCHR)¹ welcome this opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Libya. Since the fall of the Gadhafi regime in 2011, the scale and magnitude of human rights violations and abuses committed by State and non-State actors have both increased. Despite this situation, the response of the Libyan authorities and the international community has been weak or ineffective, resulting in a situation of near total impunity.

2. In this submission, the ICJ and DCHR wish to draw the attention of the Working Group on the UPR to the following concerns:

- Impunity for crimes under international law committed by State and non-State actors;
- The insufficient penalization of crimes under international law;
- The lack or inadequacy of investigations and prosecutions of crimes under international law;
- The systemic failure to guarantee the right to liberty and fair trial rights at pre-trial and trial stages.

3. Information provided in this submission is based on the ICJ report entitled *Accountability for Serious Crimes under International Law in Libya: an Assessment of the Criminal Justice System*, published in July 2019.²

II) Impunity for crimes under international law committed by State and non-State actors

4. In Libya, throughout the post-2011 period, human rights violations and abuses, including those amounting to war crimes, have been perpetrated on a widespread scale by a multitude of State and State-affiliated actors and armed groups. These violations and abuses have included: enforced disappearance; torture and other ill-treatment; rape and other forms of sexual violence perpetrated against women and girls, as well as men and boys; unlawful killings; forced displacement; and direct and indiscriminate or disproportionate attacks against civilians and civilian objects; as well as the unlawful, prolonged or otherwise arbitrary detention of "thousands of men, women and children."³ The upsurge in conflict in Libya's capital since April 2019 has seen an increase in alleged indiscriminate and disproportionate attacks against civilians and civilian objects.⁴ In many instances, these violations and abuses constitute war crimes and/or crimes against humanity.

5. Such crimes are not being effectively investigated and prosecuted, largely because of the absence of political will, inadequate resources and the frequent threats made against justice sector actors by armed groups.⁵ Despite the establishment of a human rights office within the Ministry of Interior, and announcements by Libyan authorities that investigations had commenced in response to some complaints about widespread violations and abuses in detention facilities, the information available indicates that investigations and prosecutions of armed group members, including those affiliated to the State, have not been undertaken or completed, even in cases where the State exercised effective control.⁶ These concerns have been echoed by the UN Human Rights Council.⁷

6. For example, the Libyan authorities have failed to conduct meaningful investigations into the *Libya Dawn* operation, which involved violations of international humanitarian law (IHL) and international human rights law, including abductions, torture, extrajudicial executions, indiscriminate shelling and the destruction of civilian property.⁸ The authorities have also failed to carry out investigations into:

- similar crimes allegedly perpetrated in the context of the Libyan National Army's (LNA) *Operation Dignity*;
- the extrajudicial killing of Muammar Gadhafi and his son Mutasim;⁹
- the forced displacement of some 40,000 members of the Tawerghan community;¹⁰ and
- the Gharghour massacre in 2013, in which some 46 people died and 516 were injured.¹¹

In any event, even if such crimes had been investigated and prosecuted, the Libyan domestic legal framework is unable to ensure justice in compliance with the requirements under international law. This concern is set out in greater detail in the next section.

III) Insufficient penalization of crimes under international law

7. Libya is party to a number of international human rights treaties, including the *International Covenant on Civil and Political Rights* (ICCPR); the *International Covenant on Economic, Social and Cultural Rights*; the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT); the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW); the *Convention on the Rights of the Child*; the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*; the *Convention on the Rights of Persons with Disabilities* (CRPD); the *Arab Charter on Human Rights* (Arab Charter) and the *African Charter on Human and Peoples' Rights* (ACHPR). Libya is also bound by IHL, including the four Geneva Conventions (GCs) and Additional Protocols I (AP I) and II (AP II), as well as customary IHL. Libya has an obligation under international law to criminalize, investigate and, where there is sufficient evidence, prosecute all crimes under international law.¹² However, the Libyan domestic legal framework does not adequately criminalize crimes under international law.

8. The Libyan domestic legal framework does criminalize all forms of arbitrary deprivation of life. In particular: (i) while homicide is criminalized, there is no specific provision with respect to homicide committed by State officials in the course of their duties; (ii) moreover, article 71 of the Penal Code excuses public officials from liability for deaths caused by the use of force to "repel force or overcome resistance to public authorities" (and persons who assist them to fulfil a "lawful request"), contrary to the requirement under international law that lethal force may only be used as a measure of last resort in response to an imminent threat to life;¹³ and (iii) the death penalty is mandatory for certain offences, e.g. murder, and may apply in situations prohibited under articles 6 and 14 of the ICCPR (e.g. to pregnant women and without the right to review of factual errors).¹⁴

9. Libyan domestic law does not adequately criminalize torture and other forms of cruel, inhuman or degrading treatment or punishment (ill-treatment). The definition of torture under article 2 of Law No. 10 of 2013¹⁵ is non-compliant with the torture definition under the CAT and customary international law. Article 2 punishes "... anyone who inflicts or orders another person to inflict physical or mental pain on a detainee under his control in order to extract a confession for any act that such detainee has or has not committed, or because of discrimination, regardless of its type, or revenge, regardless of its motive." This definition excludes some of the purposes included in article 1 of CAT:¹⁶ (a) obtaining information; (b) punishing the person for an act that has been or is suspected to have been committed; or (c) intimidating or coercing both or either the victim and/or a third person. More critically, under the domestic definition of torture the list of purposes is exhaustive, whereas the purposes listed under article 1 of CAT are illustrative and non-exhaustive. Moreover, neither the Penal Code nor Law No. 10 of 2013 criminalize other serious "acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture," as required by article 16 of the CAT.

10. Despite the fact that Law No. 10 contains a prohibition titled "forced disappearance," it does not criminalize enforced disappearance as defined by the *International Convention for the Protection of all Persons from Enforced Disappearance* (ICPPED)¹⁷ and customary international law, or acts which are constitutive of enforced disappearance and prohibited by the CAT and the ICCPR.¹⁸ Article 1 of Law No. 10 of 2013 punishes anyone who "kidnaps or detains a human being or deprives the same of any of his personal freedoms, whether by force, threats or deceit."¹⁹ While article 1 includes the element of deprivation of liberty, it fails to include the two other elements of enforced disappearance – the involvement of a public official and the refusal to disclose the fate or whereabouts of the person concerned or acknowledge the deprivation of liberty. Consequently, it fails to recognize the special gravity of enforced disappearance, including its nature as a continuing crime amounting to a composite and cumulative violation of several human rights.

11. Libyan law is only partially in line with international law and standards governing the prohibition of slavery and slavery-like practices, including the ICCPR and the Arab Charter.²⁰ Slavery is criminalized under article 425 of the Penal Code, but is not defined, and sexual slavery is not recognized as a distinct crime. The gender-specific definitions of forced prostitution, which pertain exclusively to women and children, and international trafficking of women,²¹ exclude men and boys, thus failing to ensure the criminalization of the same acts when committed against them. The definition of forced labour,²² in turn, requires the issuance of a threat, and does not appear to be penalized as a criminal offence. Finally, Libyan law criminalizes the international trafficking of women and children for the purposes of prostitution,²³ but does not penalize other forms of human trafficking, including of men.

12. Rape and other forms of sexual violence are not adequately criminalized in domestic law, contravening international law.²⁴ The domestic equivalent of rape and "indecent assault", under article 407 and article 408 of the Penal Code, respectively, are not sufficiently broad to capture all situations in which the absence of consent to sexual conduct could be inferred from a coercive environment in which they may be committed, and do not cover all forms of sexual and gender-based violence. Furthermore, article 424 of the Penal Code, which shields from prosecution offenders who marry their victims, and which: (i) in effect amounts to a legitimization *ex post* of the crime;²⁵ (ii) constitutes gender-based discrimination against women and girls because it grants immunity from prosecution, thereby also excluding women victims of rape married by the perpetrator from obtaining redress for the harm suffered; (iii) breaches their right to a remedy, and subjects the victims to further psychological, and possibly physical, violence.²⁶

13. Article 37 of the 2017 Consolidated Draft Constitution, provides: "[a]ll forms of behavior that constitute crimes against humanity, war crimes, genocide, and terrorism shall be prohibited, shall not be subject to the statute of limitations, and shall not be pardoned, in so far as this does not contradict the provisions of the Constitution. The international jurisdiction of the Libyan judiciary shall apply thereto." This provision has not been approved by way of referendum and thus has not been adopted. As a result, Libyan law continues to fail to criminalize war crimes and crimes against humanity, as required by treaty and customary IHL and the ICCPR.²⁷

14. Between 2012 and 2015, Libya has adopted three amnesty laws.²⁸ Law No. 35 of 2012 amnesties certain crimes committed between 15 February 2011 and 2 May 2012, which may include enforced disappearance, arbitrary deprivations of life, war crimes and crimes against humanity, and which Libya is under an obligation to investigate and prosecute.²⁹ Law No. 38 of 2012 provides for blanket immunity in respect of conduct connected to the "necessities of the 17 February Revolution";³⁰ in the absence of any further detail, this provision, as currently formulated, may be applicable to any crime under international law. Law No. 6 of 2015³¹ contravenes international law insofar as it does not exclude other forms of arbitrary deprivation of life, ill-treatment constituting crimes, war crimes and crimes against humanity from the scope of the amnesty. The aforementioned Laws are in violation of Libya's international obligations to the extent they do not exclude all crimes under international law from their scope of application.³²

The ICJ and DCHR therefore call on the Working Group and the Council to urge the Libyan authorities to:

- **Amend article 2 of Law No. 10 of 2013 to bring the definition of torture in line with the CAT, and criminalize other serious acts of cruel, inhuman or degrading treatment or punishment;**
- **Amend article 1 of Law No. 10 of 2013 so as to criminalize enforced disappearance consistent with international law;**
- **Enact laws fully criminalizing arbitrary deprivations of life, in particular arbitrary and summary executions, consistent with international law,³³ and amend article 71 of the Penal Code to remove the exemptions applying to public officials and parties assisting them from liability for using excessive force resulting in death in the performance of their duties;**

- **Amend articles 407 and 408 of the Penal Code to criminalize rape in line with the definitions contained in the Istanbul Convention, including by criminalizing rape and other forms of sexual violence committed in coercive environments; enact laws criminalizing all forms of sexual violence and other forms of gender-based violence; and repeal article 424 of the Penal Code extinguishing an offence and granting of stay of execution of penalty against a perpetrator of rape or indecent assault if the perpetrator marries the victim;**
- **Amend article 425 of the Penal Code to provide a definition of the crime of slavery consistent with international law and standards;**
- **Enact laws that criminalize war crimes and crimes against humanity, as defined under IHL and international criminal law; and**
- **Amend (or repeal) Law No. 35 of 2012 and Law No. 6 of 2015 to exclude enforced disappearance, ill-treatment constituting crimes, arbitrary deprivation of life, war crimes and crimes against humanity from the scope of amnesties; and amend (or repeal) article 4 of Law No. 38 of 2012 to exclude crimes under international law committed during the 2011 conflict from the scope of the amnesty.**

IV) The lack or inadequacy of investigations and prosecutions of crimes under international law

15. Libyan laws governing the commencement of investigations, in particular the Code of Criminal Procedure (CCP), are non-compliant with international law and standards. First, although the CCP entrusts the public prosecution with conducting investigations, they may only be commenced upon a complaint by a victim, which must be filed within three months from the moment that they become aware of the offence. Moreover, if the victim dies, the right to file a complaint expires.³⁴ First, these restrictions constitute a significant barrier to ensuring crimes are investigated and prosecuted, and fail to guarantee sufficiently the rights of the victim's next of kin.³⁵ Second, some crimes may only be investigated upon authorization or request of the Ministry of Justice,³⁶ even when a complaint has been filed. The right to an independent and impartial court or tribunal requires the prosecutor to exercise independence from the executive, such that instructions issued to prosecutors not to prosecute must be prohibited or otherwise exceptional, subject to specific controls, and to a right to challenge decisions not to investigate or prosecute.³⁷ Third, evidence gathered by persons other than ordinary law enforcement or judicial authorities may be used during investigations and prosecutions. Decree 388 of 2011 and Law No. 38 of 2012 entrust investigative powers on persons who do not have the necessary degree of competence, independence and impartiality required under international law.³⁸ Decree 388 of 2011 extends investigatory powers to the "Supreme Security Committee", the members of which are appointed by the Ministry of Interior,³⁹ and article 2 of Law No. 38 of 2012 allows the prosecutor to use evidence collected by armed group members of crimes committed by former Gadhafi-era officials in investigations and potentially as evidence at trial, subject to the approval of the trial judge.

The ICJ and DCHR therefore call on the Working Group and the Council to urge the Libyan authorities to:

- **Amend article 3 of the CCP to remove the requirement that an investigation may only be commenced upon the receipt of a criminal complaint, and extend the three-month deadline that bars victims from filing a complaint and remove it entirely for crimes under international law and for other serious crimes under domestic law;**
- **Amend article 7 of the CCP to grant victim's family members the right to file a complaint with a view to ensuring the commencement of an investigation;**
- **Remove the power of the Minister of Justice to control and direct investigations and prosecutions by the Prosecutor's Office contained in article 224 of the Penal Code; and**
- **Repeal article 2 of Law No. 38 of 2012 and Decree 388 of 2011.**

V) The systemic failure to guarantee the right to liberty and fair trial rights at pre-trial and trial stages

16. Article 31 of the 2011 Constitutional Declaration of Libya protects the right to a fair trial, providing that: "There shall be no crime or penalty except by virtue of the text of the law. Any defendant shall be innocent until he is proved guilty by a fair trial wherein he shall be granted the guarantees necessary to defend himself. Each and every citizen shall have the right to recourse to the judiciary in accordance with the law." However, the legal framework giving effect to the 2011 Constitutional Declaration and governing the investigation and prosecution of crimes in Libya suffers from substantive and procedural deficiencies that amount to violation of the rights of accused persons to liberty and a fair trial, both of which Libya is obligated to respect and protect under international law.⁴⁰

(i) Right to liberty and freedom from arbitrary detention

17. Certain provisions in the CCP may be used in practice to detain people arbitrarily. Under articles 111, 115 and 125, accused persons may be detained, or their release denied, if they do not have a known place of residence; this ground of detention when applied without an assessment of the standards of last resort, reasonableness, necessity and proportionality in the circumstances of the individual case may result in arbitrary detention.⁴¹ Articles 123, 177 and 187 *bis* B do not set a maximum duration of pre-trial detention, much less one that is permissible, which may violate the right to be tried without undue delay under article 14(3)(c) of the ICCPR.⁴²

18. In practice, large numbers of persons have been detained since the 2011 conflict without, according to OHCHR and UNSMIL, being "referred to trial" or having the "opportunity to challenge the legality of their detention."⁴³ Attempts by the Libyan legislature to solve this issue have been unsuccessful.⁴⁴ As of January 2019, UNSMIL reported that 800 of an estimated 3,600 detainees had been screened, 300 of whom had been released.⁴⁵ Further, multiple cases of unlawful and arbitrary arrest and detention by armed groups, including those affiliated with the State and with the Libyan National Army, were reported by UNSMIL and OHCHR,⁴⁶ the UN Panel of Experts⁴⁷ and the UN Working Group on Arbitrary Detention (WGAD),⁴⁸ including arrests without a warrant and detention in unofficial localities.⁴⁹ In the *37 Gadhafi-regime members* case, UNSMIL documented that many of the defendants had been arbitrarily detained for prolonged periods of time, some of them up to two years.⁵⁰ Similar cases have been reported by the WGAD.⁵¹ Arbitrary arrest and detention carried out without a warrant in unofficial facilities violate Libya's international obligations under article 9 of the ICCPR, article 14 of the Arab Charter and article 6 of the ACHPR.

(ii) Right to be brought promptly before a judge

19. The CCP does not comply with the requirement that an accused person be brought promptly before a independent and impartial judicial authority,⁵² within 48 hours from arrest or detention unless absolutely exceptional and justified under the specific circumstances.⁵³ An accused may be detained by the public prosecution for up to six days or, in cases involving crimes against the State, by the police for seven days and then the public prosecution for up to two weeks before being brought before a judicial authority. They may also be detained by an investigating judge after interrogation or in the case of escape for 15 days or, in some circumstances, up to 30 days, before being brought before a court of first instance to determine whether detention should continue.⁵⁴ Moreover, under domestic law judicial control over arrest and detention is foreseen only for extending detention, and only once a case is referred to the Indictment Chamber or the criminal court.⁵⁵ By not subjecting the police and public prosecution's detention powers to prompt judicial review, the CCP fails to ensure detention is subject to independent and impartial judicial control as required under international law.⁵⁶ A prosecutor cannot constitute a judicial authority within the meaning of article 9(3) of the ICCPR. The investigating judge may also not constitute an impartial authority where they discharge the functions of an investigating authority and/or an authority ordering the detention of the accused, in particular where they have interrogated the accused and determined whether they should be indicted, roles which require them to take a position regarding whether the accused may be guilty.⁵⁷

20. UNSMIL and OHCHR reported that most of the 2011 conflict-related detainees have not appeared at all before judicial authorities and their detention has not been reviewed; they also documented the failure promptly to bring detainees before judicial authorities in a number of cases.⁵⁸ In the *37 Gadhafi-regime*

members case, UNSMIL and OHCHR found that some of the detainees were held for prolonged periods of time, sometimes up to two years, before being brought before judicial authorities.⁵⁹ The African Court on Human and Peoples' Rights determined that Saif al-Islam Gadhafi, while in custody of an armed group in Zintan, had not been brought promptly before a proper judicial authority when taken before an extraordinary court later declared unconstitutional by the Libyan Supreme Court.⁶⁰ The foregoing practice constitutes a violation of the right of anyone arrested or detained on a criminal charge to appear promptly before a judicial authority independent of those conducting the arrest and responsible for the initial detention in violation of articles 123, 177 and 187 *bis* B of the CCP, as well as Libya's international legal obligations under articles 9(3) of the ICCPR and 14(5) of the Arab Charter.⁶¹

(iii) Right to habeas corpus

21. The CCP does not provide for the right to *habeas corpus*. Under article 33, detainees have the right to "submit a written or verbal complaint to the prison warden at any time and ask him to notify it to the Public Prosecution or to the competent judge." They do not have the right to "to take proceedings before a court, in order that that court may decide without delay on the lawfulness of [their] detention and order [their] release if the detention is not lawful" (ICCPR, Article 9(4)); rather, their possibility of bringing a habeas corpus challenge before a judge is dependent on prison wardens complying with their duty to submit a complaint about the legality of their detention to a competent judge. The CCP also does not provide a right to compensation or other reparation for persons who are unlawfully detained, except for political prisoners detained by the Gadhafi regime.⁶²

(iv) Right to legal counsel

22. The right to effective legal counsel immediately upon arrest and throughout detention, required by the ICCPR, the Arab Charter and the ACHPR,⁶³ is not guaranteed by the CCP. Although the investigating judge or the public prosecution may only question an accused, as well as confront him or her with other accused or witnesses, in the presence of a lawyer, the lawyer may only speak when authorized by the investigating judge, substantially limiting their effectiveness. The right to have counsel present during questioning by the investigating judge or confrontation with witnesses or other accused also does not apply in cases of *flagrante delicto* or when there is a risk that evidence will be lost.⁶⁴ Further, there is no obligation on the court to appoint counsel to persons accused of misdemeanors or infractions punishable by imprisonment,⁶⁵ contrary to international law and standards. Further, the right to access free legal representation by submitting an application to the Department of People's Legal Defence enjoyed by Libyans is only provided to foreign nationals subject to the payment of a fee,⁶⁶ contrary to the obligation imposed on States to ensure adequate and effective appointed legal counsel for those charged with criminal offences⁶⁷ and to provide legal aid free of charge whenever the interests of justice require.⁶⁸

23. UNSMIL and OHCHR have reported that detainees are not informed of their right to legal counsel and do not have the possibility to meet in private with their lawyer; many are also questioned without a lawyer being present at the interrogation.⁶⁹ The WGAD reported cases involving a number of individuals who were arrested and detained without access to a lawyer.⁷⁰ In the *37 Gadhafi-regime members* case, UNSMIL reported that many of the defendants had not been represented by counsel during hearings before the Accusation Chamber and that, for some defendants, this lack of representation continued for several hearings at trial.⁷¹ The judgment, which has yet to be made public, corroborates these reports.⁷² For example, Abdullah Al-Senussi stated that he had been deprived of access to legal counsel during interrogations.⁷³ The court assured the defendant that it would appoint counsel from the public bar association for those defendants who were still unrepresented, but the extent to which defendants were permitted to choose their own counsel, as required by international law, remains unclear. Some defendants remained unrepresented by counsel on a consistent basis for the duration of the trial.⁷⁴ For example, at least twelve defendants, including Abdullah Al-Senussi and Saif Al-Islam Gadhafi, had no legal representation at some of the hearings.⁷⁵ Taking into consideration the political sensitivity of the case, finding Libyan lawyers willing to represent the defendants was challenging.⁷⁶ One lawyer recused himself after he had allegedly been physically attacked in the streets approximately two days before.⁷⁷ The ICJ is not aware of any appropriate measures taken by the authorities to ensure the safety of lawyers, nor of any investigation by the authorities into the attack.

24. The regular absence of lawyers from criminal trial proceedings raises serious questions as to the quality and effectiveness of the legal advice and representation afforded to the defendants. In addition, the representation of multiple accused by the same counsel may also raise concerns about their capacity to provide effective assistance, particularly given the gravity of the crimes charged, the complexities of the legal issues involved, and the possibility that the accused had competing interests and conflicting defences. As noted above, the State is obligated to ensure not only that accused persons be assisted by legal counsel, but also that legal assistance offered to them is of the required competence, expertise and experience in light of the gravity of the offences of which they are being accused, and the complexity of the cases and legal issues involved. There is no evidence in the judgment to suggest that the court took measures to ensure that the defendants' legal representation was effective and consistent with international standards. This is particularly concerning given nine defendants were sentenced to death.

(v) Right to adequate time and facilities to prepare a defence

25. The accused's right to adequate time and facilities to prepare a defence is restricted under the CCP, contrary to international law.⁷⁸ Although the 2011 Constitutional Declaration states that "[a]ny defendant ... shall be granted the guarantees necessary to defend himself,"⁷⁹ an accused may not obtain copies of investigative files if "the investigation was conducted in their absence pursuant to a decision in this regard;"⁸⁰ furthermore, the right of the accused's lawyer to review the case file upon which an order to refer a case for prosecution was based⁸¹ does not make provision for making copies of the file.⁸² The right to "adequate facilities" requires the accused' to have timely access to all evidence relied upon by the Prosecution, including exculpatory material and the circumstances in which it was acquired, as well as "the right to [retain] materials necessary to the preparation of a defence," including copies of the case file.⁸³ The CCP also restricts an accused's (and prosecutor's) right to challenge evidence gathering or investigation procedures if they took place before the accused's lawyer and the lawyer did not object at the time; in such cases the accused's (and prosecutor's) right to challenge such procedures subsequently is extinguished.⁸⁴

26. In practice, accused are not afforded sufficient time and facilities to prepare a defence. The WGAD reported that, in one case, Abdul Majed al-Gaoud was not provided with the necessary documentation to prepare his defence adequately.⁸⁵ UNSMIL and OHCHR documented the difficulties faced by several defendants in the *37 Gadhafi-regime members* case in accessing relevant documentation and, more generally, in preparing their defence adequately.⁸⁶ At several hearings, defence lawyers petitioned the court for access to key information, including a copy of the accusation file and list of witness and their affidavits. While the court appears to have approved the petition, the fact that defence lawyers made similar requests at subsequent hearings would suggest that access to key information and evidence remained an issue throughout the trial.⁸⁷

(vi) Right to call and examine witnesses

27. Although under the CCP the accused has the right to question witnesses at the investigation stage,⁸⁸ and an implicit right at the trial stage,⁸⁹ and both the prosecution and accused have the right to call witnesses at trial,⁹⁰ their right to challenge the evidence by an absent witness may be limited by the lack of any explicit guarantees to protect the right, contrary to the accused's rights under international law and standards.⁹¹

28. In the *37 Gadhafi-regime members* case, the accused's right to call and examine witnesses was severely restricted. The prosecution relied only upon written statements,⁹² which could not be tested through cross-examination. The Court rejected challenges to the prosecution's reliance on written testimony by some defence lawyers, who submitted that the witnesses, many of whom were detained at the time, were subject to coercion or even torture or ill-treatment to extract testimony and that they should be called to testify.⁹³ Al-Senussi himself stated that the prosecution "had deceived the court" by selecting witnesses beneficial to their case and refusing to listen to "the true witnesses."⁹⁴ The Court also set an arbitrary limit of two witnesses per defendant to testify during proceedings, putting the defence at a considerable disadvantage compared with the prosecution, which relied upon the written testimony of

an unlimited number of witnesses. This decision contravened both the rights of defence and the principle of equality of arms⁹⁵ and negatively impacted the fairness of the trial.

(vii) Right to appeal

29. The right to appeal criminal convictions is restricted, contrary to international law,⁹⁶ which requires timely, thorough and substantial review of both errors of law and of fact, in relation to both the conviction and sentence.⁹⁷ Under the CCP, accused persons can seek review of criminal court verdicts through cassation or reconsideration within 60 days of the verdict (or 30 days where the accused has been sentenced to death) on the basis that (i) the verdict is based on a violation of law or an error in its execution or interpretation; or (ii) if the verdict is null or the procedures involve a nullity that affected the verdict.⁹⁸ The Court of Cassation has the power to replace the verdict where it was based on a violation of law or an error in its execution or interpretation; no further appeal from the Court of Cassation's verdict is permitted.⁹⁹ If the Court of Cassation determines that the "verdict is null or the procedures involve a nullity that affected the verdict," it must return the matter to the first instance court or another criminal court composed of new judges "to decide on it anew", following which a further appeal on the above grounds may be filed.¹⁰⁰ The public prosecution, victims and civil defendants have the right to file an appeal on the above grounds in the absence of the accused.¹⁰¹ If the grounds on which an appeal is filed by an accused are related to other accused in the case, any ruling on them shall apply to the other accused as well, even if they do not file an appeal.¹⁰²

30. This framework is non-compliant with international law and standards for the following reasons: (i) those convicted do not have a right to appeal their conviction on the grounds that it was due to an error of fact; (ii) appeals by one accused may result in rulings which impact upon the conviction or acquittal of another accused, irrespective of whether the latter has had an opportunity to make any representations on the issue, potentially violating their right to defend themselves and participate in the proceedings; and (iii) if an accused is convicted on appeal, they have no right to appeal the conviction, on any grounds, effectively preventing them from appealing any errors of law or fact that impact their conviction.

31. Other problematic provisions include that: (i) the right of those convicted to appeal is extinguished if they do not appear for execution of their sentence before the appeal hearing, without provision for a reasonable excuse or determination of whether enforcement of the sentence is appropriate in the circumstances;¹⁰³ (ii) only the Public Prosecution has the right to request the Court of Cassation to overturn any "verdict, decision, order, or procedure issued by any judicial authority in penal matters where its authority was abused," not those convicted;¹⁰⁴ and (iii) those convicted of felony charges do not have the right to reconsideration of a verdict upon the emergence of a new fact.¹⁰⁵

The ICJ and DCHR therefore call on the Working Group and the Council to urge the Libyan authorities to:

- **Amend articles 111, 115 and 125 of the CCP as to exclude the possibility that they would allow the detention of an accused on the sole ground that she or he does not have a fixed place of residence;**
- **Amend articles 123, 177 and 187 bis B to set a maximum duration of pre-trial detention in line with international law and standards, and specify that any such detention should be employed as last resort only when necessary, proportionate and reasonable according to the circumstances of the case;**
- **Amend articles 107, 115, 117, 122, 175 and 187 bis B of the CCP to ensure that detainees are brought before an independent and impartial judicial authority promptly following arrest, and no later than 48 hours in any event;**
- **Amend the CCP to include a provision recognizing the right to bring proceedings before an independent court to challenge the lawfulness of detention, and to obtain release if detention is found to be unlawful, and the right to compensation and other reparation for persons who have been unlawfully detained;**

- **Amend the CCP to provide for the right to legal counsel from the moment of arrest, whatever the offences in connection with which arrest and detention have been carried out;**
- **Amend article 106 of the CCP to ensure an accused has the right to legal counsel at all times from the moment of arrest, and repeal the provision requiring a lawyer to seek authorization from the investigating judge to speak during the interrogation of the accused;**
- **Amend article 163 of the CCP to envisage the disclosure of all evidence to the accused before a case is referred to court for prosecution, and to allow the accused to make copies of the case file;**
- **Amend article 306 of the CCP to provide the accused with adequate time to challenge evidence gathering or investigation procedures if her or his lawyer did not object at the first available occasion;**
- **Amend the framework governing appeals by:**
 - **Amending article 345 of the CCP to permit convicted persons to appeal their convictions both on errors of fact as well as errors of law;**
 - **Amending article 396 to ensure that any appeal rulings, which are favourable to a co-accused who is not a party to such appeal, are applied to their benefit and that any such rulings that are adverse to a co-accused in such instances are not applied to their detriment;**
 - **Amending the CCP to ensure that, where an accused is convicted at the appeal stage following an acquittal at the trial stage, the accused can appeal the conviction to a competent appeals chamber composed of different judges;**
 - **Amending article 395 of the CCP so that a convicted person's right to appeal is not extinguished if they do not appear for execution of the sentence before the appeal hearing, if they have legitimate reasons for not doing so;**
 - **Amending article 401 of the CCP to afford all parties to a case the opportunity to challenge any verdict, decision, order or procedure by any judicial authority which abused its authority;**
 - **Amending article 402 to provide a convicted person the right to reconsideration of the verdict convicting them on felony charges upon the discovery of new facts.**

¹ Founded in Tunis in 2014 by Libyan jurists, the Defender Center for Human Rights is a non-governmental organization that acts as a focal point in Tunisia for Libyan human rights defenders, activists and media workers, providing them and their institutions with technical and logistical support.

² See <https://www.icj.org/wp-content/uploads/2019/07/Libya-Accountability-serious-crimes-Publications-Reports-Thematic-reports-2019-ENG.pdf>. This report contains a more extensive analysis of the legal framework governing the criminal justice system in Libya and its application in practice, including an analysis of fair trial rights not examined in this submission and the right to remedy and reparation. It also contains more contextual information regarding the political and security situation in Libya, as well as the functioning of the judiciary.

³ UNSMIL & OHCHR, *Abuse Behind Bars: Arbitrary and Unlawful Detention in Libya*, April 2018, p. 3. See also UNSMIL & OHCHR, *Torture and Deaths in Detention in Libya*, October 2013; UNHCR, *UNHCR Position on Returns to Libya (Update II)*, September 2018.

⁴ Amnesty International, *Libya: Evidence of Possible War Crimes Underscores Need for International Investigation*, 16 May 2019.

⁵ Interviews conducted by the ICJ with Libyan judges and prosecutors, October 2018.

⁶ See, e.g., UNSMIL & OHCHR, *Abuse Behind Bars: Arbitrary and Unlawful Detention in Libya*, April 2018.

⁷ UN Human Rights Council Resolution 37/41, UN Doc. A/HRC/RES/37/41, 13 April 2018, paras. 3, 26, 29, 31.

⁸ Report of the Secretary-General on the United Nations Support Mission in Libya, UN Doc. S/2015/144, 26 February 2015, paras. 8, 46, 55.

⁹ *Ibid.*, paras. 47, 55.

¹⁰ Report of the Secretary-General on the United Nations Support Mission in Libya, UN Doc. S/2011/727, 22 November 2011, para. 23; Report of the Secretary-General on the United Nations Support Mission in Libya, UN Doc. S/2013/516, 5 September 2013, paras. 17-18.

¹¹ Report of the Secretary-General on the United Nations Support Mission in Libya, UN Doc. S/2014/131, 26 February 2014, para. 17. For reference to the lack of investigations and prosecutions of serious human rights abuses and violations of IHL, which may constitute war crimes committed by armed groups, including those affiliated with al-Qaida and the Islamic State, see: Report of the Secretary-General on the United Nations Support Mission in Libya, UN Doc.

S/2015/144, 26 February 2015, paras. 17-19; Report of the Secretary-General on the United Nations Support Mission in Libya, UN Doc. S/2016/182, 25 February 2016, paras. 24-29; Report of the Secretary-General on the United Nations Support Mission in Libya, UN Doc. S/2018/140, 12 February 2018, paras. 24-28; Report of the Secretary-General on the United Nations Support Mission in Libya, UN Doc. S/2018/429, 7 May 2018, paras. 18-19; Report of the Secretary-General on the United Nations Support Mission in Libya, UN Doc. S/2019/19, 7 January 2019, paras. 17-18.

¹² CAT, art. 12; CRPD, art. 16; *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, principle 19; GC IV, art. 146(1-2); AP I, art. 85(1); ICRC Customary IHL Database, rule 158; 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. 18.

¹³ *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, 27 August–7 September 1990, principle 9.

¹⁴ Penal Code, arts. 17, 53, 296; Code of Criminal Procedure (CCP), arts. 381(1), 385 *bis*, 436.

¹⁵ Law No. 10 of 2013 on the Criminalization of Torture, Forced Disappearance and Discrimination, 14 April 2013.

¹⁶ Article 1 of the CAT defines torture as: "... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

¹⁷ While Libya is not yet party to the ICPPED, Article 2 of this Convention contains the contemporary international definition and standards relating to enforced disappearance. This provision 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."

¹⁸ HRC, *General Comment No. 31*, para. 18; *Boucherf v. Algeria*, UN Doc. CCPR/C/86/D/1196/2003, 27 April 2006, para. 9.2.

¹⁹ This provision replicates almost *verbatim* article 428 of the Penal Code, which was repealed pursuant to article 6 of Law No. 10 of 2013.

²⁰ ICCPR, art. 8; Arab Charter, art. 10; ACHPR, art. 6; *Slavery Convention*; 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*.

²¹ Penal Code, arts. 416, 418.

²² Law No. 12 of 2010 on Labour Relations and its Bylaw, 28 January 2010, arts. 2, 5.

²³ Penal Code, art. 416.

²⁴ See, in particular, ICRC Customary IHL Database, rules 93, 156 (rape constitutes a violation of IHL in international and non-international armed conflicts); GC IV, arts. 27(2), 147; AP I, arts. 75(2)(b), 76(1), 85(2); AP II, art. 4(2)(e); ICC Statute, art. 7(1)(g); ICC, *Elements of Crimes*, arts. 7(1)(g)-6, 8(2)(b)(xxii)-1, 8(2)(e)(vi)-1; *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (Istanbul Convention). For a definition of the crimes of rape and sexual violence, see ICTY, *Prosecutor v. Kunarac and Others*, Case No. IT-96-23 & IT-96-23/1-A, Appeals Chamber, Judgement, 12 June 2002, paras. 127-128; *Prosecutor v. Furundžija*, Case No. IT-95-17-1, Trial Chamber, Judgement, 10 December 1998, para. 186.

²⁵ In its report entitled *Obstacles to Women's and Girls' Access to Justice for Gender-based Violence in Morocco*, the ICJ recommended that "[i]mpunity, including the suspension of penalties by way of mitigating circumstances, is never granted to perpetrators in cases of forced or early marriage after rape;" see p. 37.

²⁶ Under certain circumstances, the latter condition may amount to the crime of sexual slavery. ICC, *Prosecutor v. Katanga*, Case No. ICC-01/04-01/07, Trial Chamber II, Judgement, 7 March 2014, para. 978: "... the notion of sexual slavery may also encompass situations where women and girls are forced to share the existence of a person with whom they have to engage in acts of a sexual nature."

²⁷ GC IV, arts. 146-147; AP I, art. 85; ICRC Customary IHL Database, rule 158; HRC, *General Comment No. 31*, paras. 15, 18.

²⁸ Law No. 35 of 2012 on the Amnesty of Particular Crimes, 2 May 2012; Law No. 38 of 2012 on some Procedures concerning the Transitional Phase, 2 May 2012; Law No. 6 of 2015 on General Amnesty, 7 September 2015.

²⁹ Article 1 of Law No. 35 of 2012 amnesties crimes committed between 15 February 2011 and 2 May 2012 except for, among others, "[k]idnapping, torture and forced intercourse crimes."

³⁰ Article 4 of Law No. 38 of 2012 provides that "[t]here is no penalty for necessities of the 17 February Revolution in terms of military, security or civil acts carried out by revolutionaries to save or protect the revolution."

³¹ Article 3 of Law No. 6 of 2015 amnesties crimes perpetrated between 15 February 2011 and 7 September 2015 excluding, among others, "sexual crimes, murder, abduction, forced disappearance and torture." According to its article 11, this Law repeals Law No. 35 of 2012. However, the Government of National Accord based in Tripoli

considers Law No. 6 of 2015 as invalid; see ICC, *The Prosecutor v. Saif Al-Islam Gaddafi*, Prosecution response to 'Admissibility Challenge by Dr. Saif Al-Islam Gaddafi', ICC-01/11-01/11, 11 October 2018, para. 146.

³² HRC, *General Comment No. 31*, para. 18; Inter-American Court of Human Rights, *Barrios Altos v. Peru (Merits)*, Series C No. 75, 14 March 2001, para. 41; International Criminal Court, *Prosecutor v. Saif al-Islam Gaddafi*, Case No. ICC-01/11-01/11, Pre-Trial Chamber I, Decision on the 'Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute', 5 April 2019, paras. 61, 77.

³³ In particular, article 6 of the ICCPR, article 5 of the Arab Charter and article 4 of the ACHPR, as well as IHL.

³⁴ CCP, arts. 1-3, 7, 172.

³⁵ HRC, *General Comment No. 31*, para. 15; African Commission on Human and Peoples' Rights (AComHPR), *General Comment No. 3: The Right to Life (Article 4)*, 57th Ordinary Session, 4-18 November 2015, para. 15.

³⁶ CCP, arts. 8-9, 224.

³⁷ ICJ, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors – Practitioners' Guide No. 1*, 2007, p. 71.

³⁸ CAT, arts. 12-13; *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, UN Doc. E/1989/89, January 1991, principle 9; *Guidelines on the Role of Prosecutors*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August–7 September 1990, guideline 13(a).

³⁹ Decree No. 388 of 2011 on the Establishment of the Interim Supreme Security Committee and the Determination of its Competence and Organizational Structure, 28 February 2011, art. 1: "An interim Supreme Security Committee shall be established and a chairman and deputy chairman shall be assigned to head it. They shall be appointed by virtue of a decision from the Minister of Interior. The spatial jurisdiction of the Committee's branches shall comprise all territories of the Libyan State."

⁴⁰ ICCPR, arts. 9, 14; Arab Charter, arts. 11-16; ACHPR, arts. 6-7.

⁴¹ HRC, *General Comment No. 35: Article 9 (Liberty and Security of Person)*, UN Doc. CCPR/C/GC/35, 16 December 2014, para. 12.

⁴² *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, UN Doc. A/RES/43/173, 9 December 1988, principle 38; HRC, *General Comment No. 32: Right to Equality before Courts and Tribunals and to a Fair Trial (Article 14)*, UN Doc. CCPR/C/GC/32, 23 August 2007, para. 35.

⁴³ UNSMIL & OHCHR, *Report on the Trial of 37 Former Members of the Qadhafi Regime (Case 630/2012)*, February 2017, p. 8.

⁴⁴ Law No. 38 of 2012, art. 1; Law No. 29 of 2013, art. 26; Law No. 9 of 2014, art. 1.

⁴⁵ UNSMIL, *Report of the Secretary-General*, UN Doc. S/2019/19, 7 January 2019, paras. 33-35.

⁴⁶ UNSMIL & OHCHR, *Abuse Behind Bars: Arbitrary and Unlawful Detention in Libya*, April 2018, pp. 20-21 (in the west and east).

⁴⁷ Final Report of the Panel of Experts on Libya established pursuant to Resolution 1973 (2011), UN Doc. S/2018/812, 5 September 2018, paras. 34-44.

⁴⁸ WGAD, *Opinion No. 3/2016 concerning Farida Ali Abdul Hamid and Salim Mohamed Musa (Libya)*, UN Doc. A/HRC/WGAD/2016/3, 15 June 2016, paras. 5-6; *Opinion No. 6/2017 concerning Yousif Abdul Salam Faraj Ahbara and Others (Libya)*, UN Doc. A/HRC/WGAD/2017/6, 9 June 2017, paras. 4-28 (arbitrary detention carried out by LNA-aligned armed groups in eastern Libya, which arrested multiple persons without a warrant).

⁴⁹ This is in violation of article 31 of the CCP, which provides that "[n]o person may be held in detention except in such prisons as are intended for that purpose."

⁵⁰ UNSMIL & OHCHR, *Report on the Trial of 37 Former Members of the Qadhafi Regime (Case 630/2012)*, February 2017, pp. 24-25.

⁵¹ WGAD, *Opinion No. 4/2016 concerning Abdul Majed al-Gaoud and Others (Libya)*, UN Doc. A/HRC/WGAD/2016/4, 15 June 2016, paras. 4-34.

⁵² ICCPR, art. 9(3). See also Arab Charter, art. 14(5); *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, principles 4, 11.

⁵³ HRC, *General Comment No. 35*, para. 33.

⁵⁴ CCP, arts. 26(2), 115, 122-123, 137, 175-176, 187 bis B.

⁵⁵ CCP, arts. 123, 131, 176.

⁵⁶ ICCPR, art. 9(3); Arab Charter, art. 14(5); *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, principle 4; HRC, *General Comment No. 35*, paras. 32-33.

⁵⁷ ICJ, *Accountability for Serious Crimes under International Law in Libya: an Assessment of the Criminal Justice System*, July 2019, pp. 65-66.

⁵⁸ UNSMIL & OHCHR, *Abuse Behind Bars: Arbitrary and Unlawful Detention in Libya*, April 2018, pp. 21-22. See also WGAD, *Opinion No. 3/2016*, para. 10; *Opinion No. 4/2016*, paras. 16, 18-19, 21, 24, 27; *Opinion No. 6/2017*, paras. 16, 19, 24-25, 28.

⁵⁹ UNSMIL & OHCHR, *Report on the Trial of 37 Former Members of the Qadhafi Regime (Case 630/2012)*, February 2017, pp. 24-25.

⁶⁰ African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v. Libya*, Application No. 002/2013, Judgment, 3 June 2016, paras. 90-91.

⁶¹ See also *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, principles 4, 11.

⁶² Law No. 50 of 2012 on compensation of political prisoners provides for the payment of 8,000 Libyan Dinar's per month as compensation and indemnification to "any civilian or military person detained in prison or special detention camps from 01/09/1969 to 15/02/2011 due to opposition to the former regime." Law No. 50 of 2012 on Compensation of Political Prisoners, 11 June 2012, arts. 1-2. Under article 2, any amounts already awarded to the victim are deducted from this amount. Article 3 provides that any conviction of the political prisoner is revoked. Compensation is determined by a body established pursuant to Decree No. 1 of 2012, which is based on the duration of time the prisoner spent in detention. Decree No. 513 of 2013, issuing Executive Regulation of Law No. 50, art. 7.

⁶³ ICCPR, art. 14(3)(d); Arab Charter, art. 16(4); ACHPR, arts. 3, 7; ICPPED, art. 17(2)(d); HRC, *General Comment No. 35*, paras. 35, 46. The ICCPR and the ACHPR expressly provide for the right to legal counsel during the trial phase, however, human rights bodies have considered that such provisions apply to the pre-trial phase as well; see HRC, *Concluding Observations: Netherlands*, UN Doc. CCPR/C/NLD/CO/4, 25 August 2009, para. 11; AComHPR, *Liesbeth Zegveld and Mussie Ephrem v. Eritrea*, Communication No. 250/02, 20 November 2003, para. 55.

⁶⁴ CCP, art. 106.

⁶⁵ CCP, art. 210.

⁶⁶ Law No. 4 of 1981 establishing the Department of People's Legal Defence, 27 January 1981, arts. 3, 6-7, 10.

⁶⁷ *Basic Principles on the Role of Lawyers*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August–7 September 1990, principle 3.

⁶⁸ ICCPR, art. 14(3)(d); Arab Charter, art. 16(4).

⁶⁹ UNSMIL & OHCHR, *Abuse Behind Bars: Arbitrary and Unlawful Detention in Libya*, April 2018, pp. 21-22.

⁷⁰ WGAD, *Opinion No. 6/2017*, paras. 4-28; *Opinion No. 4/2016*, paras. 4-34.

⁷¹ UNSMIL & OHCHR, *Report on the Trial of 37 Former Members of the Qadhafi Regime (Case 630/2012)*, February 2017, p. 37.

⁷² *The State of Libya v. Saif al-Gadhafi, Abdullah al-Senussi & Others*, Case No. 630/2012, July 2015, pp. 1-21.

⁷³ *Ibid.*, p. 14.

⁷⁴ *Ibid.*, pp. 1-65.

⁷⁵ *Ibid.*, p. 13, 15.

⁷⁶ UNSMIL & OHCHR, *Report on the Trial of 37 Former Members of the Qadhafi Regime (Case 630/2012)*, February 2017, p. 38.

⁷⁷ *Ibid.*, pp. 37-38.

⁷⁸ ICCPR, art. 14; Arab Charter, art. 16(2); AComHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, principle N(3).

⁷⁹ 2011 Constitutional Declaration, art. 31. If adopted, article 63 of the 2017 Consolidated Draft Constitution would constitutionalize a detainee's right to "be given sufficient time and the necessary facilities to prepare his defense."

⁸⁰ CCP, art. 68.

⁸¹ CCP, art. 163.

⁸² According to the information available to the ICJ, in practice, some prosecutors occasionally allow counsel to make copies of the file; such practice differs from region to region. Litigants may also "review the case documents as soon as they are summoned to appear before the court." CCP, art. 209.

⁸³ *Basic Principles on the Role of Lawyers*, principle 21; HRC, *General Comment No. 32*, para. 33.

⁸⁴ CCP, art. 306.

⁸⁵ WGAD, *Opinion No. 4/2016*, para. 16.

⁸⁶ UNSMIL & OHCHR, *Report on the Trial of 37 Former Members of the Qadhafi Regime (Case 630/2012)*, February 2017, pp. 40-42.

⁸⁷ *The State of Libya v. Saif al-Gadhafi, Abdullah al-Senussi & Others*, Case No. 630/2012, July 2015, pp. 1-65.

⁸⁸ CCP, arts. 244-245.

⁸⁹ In particular, the right of the accused to travel to question witnesses who are unable to attend the trial hearing; CCP, art. 254.

⁹⁰ CCP, arts. 159-161, 244-245.

⁹¹ ICCPR, art. 14(3)(e); Arab Charter, art. 16(5); HRC, *General Comment No. 32*, para. 39.

⁹² UNSMIL & OHCHR, *Report on the Trial of 37 Former Members of the Qadhafi Regime (Case 630/2012)*, February 2017, p. 43.

⁹³ *Ibid.*, p. 43; *The State of Libya v. Saif al-Gadhafi, Abdullah al-Senussi & Others*, Case No. 630/2012, July 2015, p. 39.

⁹⁴ *The State of Libya v. Saif al-Gadhafi, Abdullah al-Senussi & Others*, Case No. 630/2012, July 2015, p. 39.

⁹⁵ ICCPR, art. 14(3)(e); Arab Charter, art. 16(5); HRC, *General Comment No. 32*, para. 39.

⁹⁶ ICCPR, art. 14(5); Arab Charter, art. 16(7); ACHPR, art. 7(1). See also AComHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, principles A(2)(j), N(10).

⁹⁷ HRC, *General Comment No. 32*, paras. 48-51.

⁹⁸ CCP, arts. 345, 381, 382, 385, 385 *bis*. See also article 33 of the 2011 Constitutional Declaration of Libya, which provides that "legal decisions exempting any administrative decision from review by the courts shall be prohibited."

⁹⁹ CCP, art. 393.

¹⁰⁰ CCP, arts. 393, 399.

¹⁰¹ CCP, art. 384.

¹⁰² CCP, art. 396.

¹⁰³ CCP, art. 395.

¹⁰⁴ CCP, art. 401.

¹⁰⁵ The right to request reconsideration only applies in misdemeanour and petty offence cases; CCP, art. 402. Requests for reconsideration are barred after a final verdict has been issued on appeal; CCP, art. 416.