

THE INDEPENDENT FACT-FINDING MISSION ON LIBYA

QUESTIONS
AND ANSWERS

March 2021





This Question and Answer briefing by the International Commission of Jurists (ICJ) aims to provide Libyans, civil society actors and others with a user-friendly guide on the Independent Fact-Finding Mission on Libya (FFM). It explains:

- ≡ (i) what the FFM is, its role and mandate;
- ≡ (ii) the FFM's relationship with other accountability mechanisms;
- ≡ (iii) what the FFM may be expected to achieve; and
- ≡ (iv) how to engage with the FFM.

1.

WHAT IS THE FFM?



The FFM is an international fact-finding body established by the UN Human Rights Council (UN HRC) on 22 June 2020 through resolution [43/39](#). **The FFM is headed by three members** – Mohamed Auajjar (chair), Tracy Robinson and Chaloka Beyani – appointed on 19 August 2020 by the UN High Commissioner for Human Rights, and will be supported by a secretariat composed of staff from the UN Office of the High Commissioner for Human Rights (OHCHR) based in Tunis, Tunisia.

The FFM’s mandate is set to last one year, but can be renewed by the UN HRC at its 48th session in September 2021. The FFM is tasked with investigating violations and abuses of international human rights law (IHRL) and international humanitarian law (IHL) committed by all parties in Libya, i.e., both State and non-State actors, since the beginning of 2016. In particular, it is mandated to:



- Establish facts and circumstances of the human rights situation throughout Libya;
- Collect and review relevant information;
- Document alleged violations and abuses of IHRL and IHL, including any gendered dimensions of such violations and abuses;
- Preserve evidence with a view to ensuring that perpetrators be held accountable;
- Work in cooperation with the Libyan authorities, the League of Arab States, the African Union and the UN Support Mission in Libya (UNSMIL); and
- Present a written report on its work and findings to the UN HRC in September 2021.

2. WHY WAS THE FFM ESTABLISHED?

The FFM was established following advocacy by Libyan and international NGOs and others, including the ICJ, calling for a commission of inquiry or similar accountability mechanism to document violations and abuses of IHRL and IHL committed in Libya with a view to holding perpetrators accountable. The OHCHR, the former Special Representative of the UN Secretary-General for Libya and head of UNSMIL, Ghassan Salame, as well as several international actors and States supported the call to establish such a mechanism.

The FFM was created to address the dire human rights situation in Libya where gross violations and abuses of IHRL and serious violations of IHL have been and are being perpetrated on a widespread and systematic scale. Both State and non-State actors continue to commit extrajudicial executions, enforced disappearances, torture and other ill-treatment, including through acts of sexual and gender-based violence (SGBV), and war crimes. Thousands of people, including migrants and refugees, are detained arbitrarily, without fair trial guarantees, and are often subjected to torture and other ill-treatment, including through SGBV.

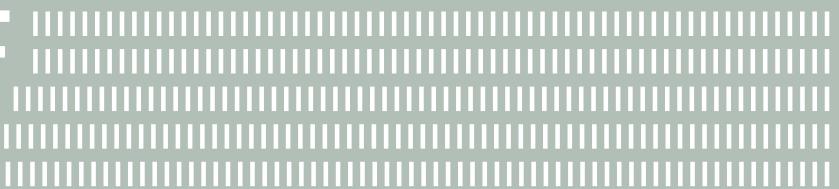
Pervasive insecurity makes it extremely difficult for judges and prosecutors to investigate human rights abuses, particularly when committed by armed groups, including those affiliated with the State. Few domestic investigations and prosecutions of violations and abuses of IHRL and IHL have been conducted, resulting in a situation of near total impunity.

By establishing an independent fact-finding body, the UN HRC aimed to:

- overcome some of the obstacles faced by Libyan civil society and justice actors in documenting violations and abuses of IHRL and IHL in the country;
- preserve evidence for use in future investigations and prosecutions, or in other judicial processes before domestic or international courts; and
- identify necessary reform measures in pursuit of the rule of law in Libya.

3.

WHAT IS THE SCOPE OF THE FFM'S MANDATE?



The FFM has a **broad mandate** to investigate:

- “Violations and abuses of IHRL and IHL ..., including any gendered dimensions of such violations and abuses”, meaning its mandate is not limited by the type or gravity of violations and abuses of IHRL and IHL;
- Violations and abuses of IHRL and IHL committed by “all parties in Libya”, meaning both State and non-State actors, including armed groups;
- Violations and abuses of IHRL and IHL committed anywhere on the territory of Libya – West, East and South – meaning it has no geographical limitations; and
- Facts and events relevant to the human rights situation in the country that occurred after the “beginning of 2016”, although the FFM may examine violations and abuses that occurred prior to the beginning of 2016 when their effects have continued after that date, such as enforced disappearances, or that have root causes predating the beginning of 2016, including during the Gadhafi era.

Although the FFM’s mandate is extensive, **resource limitations will impact its capacity** to investigate the sheer number of violations and abuses that have been and are being committed in Libya. As a result, the FFM will not be able to investigate every violation and abuse perpetrated against every victim. In light of this, the FFM may focus on violations and abuses that are representative of the types of crimes being committed, as well as of perpetrators and victims. Other factors that the FFM may take into account in determining which violations and abuses to investigate include their gravity and whether they may have been committed in a widespread or systematic manner.



4. WHAT WILL THE FFM DO TO FULFILL ITS MANDATE?

The FFM is mandated to collect and review relevant information, document violations and abuses of IHRL and IHL, and preserve evidence for accountability purposes. It cannot, however, conduct criminal investigations or prosecute individuals (see below section 6). In carrying out its mandate, the FFM will ensure that its collection, recording and storage of information, and the preservation of evidence be efficient, effective and appropriate.

The FFM places great importance on a broad and diverse range of sources of information and evidence, both primary and secondary. The FFM may collect information and evidence through desk-based research, interviews with victims and victims' organizations and other consultations, field missions and site visits. Information may come in various forms, including oral and written testimonies of victims, their families, and witnesses; medical reports; courts documents; video materials; photographs; and satellite images. The FFM will publish information on its website about how victims and organizations may share information and evidence with it (see section 7 below).

To collect information and evidence, it is important that the Libyan authorities grant the FFM unfettered access to Libyan territory, so that, in turn, the FFM be able to visit different parts of the country and speak to a wide range of actors and interlocutors. The HRC explicitly called on the Libyan authorities to grant such access in Resolution 43/39.

The FFM will analyze the information and evidence collected and submit **a report on its work and findings to the UN HRC at its 48th Session in September 2021**. The FFM will evaluate the information and evidence gathered for relevance, reliability of sources, and truthfulness, and make findings about the commission of and responsibility for violations and abuses of IHRL and IHL. Resolution 43/39 requested the FFM's report to focus on the "situation of human rights in Libya", address "efforts to prevent and ensure accountability for violations and abuses of human rights", and make relevant recommendations. As such, the report is expected to:

- ≡ (i) present the findings of the FFM's investigation, including
- ≡ the documentation and analysis of violations and
- ≡ abuses of IHRL and IHL in Libya; and

- (ii) set out recommendations to Libyan authorities and international actors on necessary steps to prevent and remedy violations and abuses of IHRL and IHL, including on institutional and legislative reforms and criminal justice measures (see section 5 below).

In light of its mandate to consider any “gendered dimensions” of violations and abuses of IHRL and IHL, **the FFM is required to integrate a gender perspective**, including, but not solely, with respect to SGBV, throughout its investigation and into its analyses. In turn, this means the FFM should collect information and evidence about the gendered causes and consequences of violations and abuses, address them in its analysis, and take them into account in formulating its recommendations.

Furthermore, the HRC has expressly highlighted the importance of the FFM addressing **the impact on women and children of violations and abuses of IHRL and IHL** in Libya. As a result, the FFM should analyze how women and children have been affected by such violations and abuses, including, in particular, forced displacement and attacks on schools and health facilities, and should investigate if and how women and/or children have been specifically targeted for violations and abuses, including by reason of entrenched discrimination and gender inequalities in law and practice.

The legal principle of the “best interests of the child” will guide any FFM decisions and actions on the gathering of information and evidence from and about children.

To fulfil its mandate to “preserve evidence” for the purpose of “ensuring that perpetrators ... are held accountable”, **the FFM will collect evidence of violations and abuses of IHRL and IHL**, including evidence identifying individuals who allegedly perpetrated crimes.

With the consent of those who provide the information, such evidence may be transmitted to domestic, regional and international human rights and accountability mechanisms for them to exercise their criminal jurisdiction or otherwise deliver other forms of accountability. The resolution establishing the FFM does not contain any explicit conditions for the sharing of such evidence. Nonetheless, the FFM should require compliance with due process requirements under international law, including fair trial rights and victim and witness protection, before agreeing to share any evidence. Moreover, the FFM should also ensure that victims, witnesses and other sources of information and evidence have provided prior, express and informed consent regarding (i) the use of that information and evidence; (ii) the disclosure of their identity; and (iii) with whom it may be shared.

5. WHAT IS THE FFM'S RELATIONSHIP WITH OTHER ACCOUNTABILITY MECHANISMS?



The FFM is not the first international human rights mechanism created for Libya. In 2011, the UN HRC established the Libya Commission of Inquiry (COI), which was mandated to investigate human rights violations committed in the context of the 2011 uprising, the ensuing armed conflict, and the period following the end of the hostilities. Two reports published in 2012 and 2014, respectively, featured the Libya COI's detailed findings. Subsequently, under Resolution 28/30, the UN HRC dispatched an OHCHR mission in 2015 to "investigate violations and abuses of international human rights law that have been committed in Libya since the beginning of 2014." The findings of the OHCHR investigation were published in February 2016. Time-wise, therefore, the FFM's mandate begins at the point in time when the OHCHR's investigation ended (see above section 3).



In February 2011, the UN Security Council referred the situation in Libya to the Office of the Prosecutor of the **International Criminal Court** (ICC). The ICC is an international tribunal established by the Rome

Statute, and it is tasked to investigate and, where warranted, prosecute genocide, crimes against humanity, war crimes and the crime of aggression. The ICC focuses on the criminal responsibility of individuals formally accused of such crimes. Since 2011, the ICC has issued arrest warrants against Saif al-Islam Gadhafi (one of Muammar Gadhafi's sons) and Abdullah Al-Senussi (former head of the Military Intelligence); and against Al-Tuhamy Mohamed Khaled (former head of the Libyan Internal Security Agency) and Mahmoud Mustafa Busayf AL-Werfalli (commander in the Al-Saiqa Brigade in the Libyan National Army, presently known as Libyan Arab Armed Forces), both of whom remain at large.

The FFM and the ICC are distinct but complementary mechanisms. The information, documentation and evidence that the FFM may gather **can be used by the ICC Office of the Prosecutor in relation to ongoing investigations or to initiate new ones**. While the ICC focuses on a limited number of "the most serious crimes of international concern", the

FFM's inquiry may cover a broad range of human rights violations and abuses. Furthermore, the FFM will collect evidence of such violations and abuses of IHRL and IHL, and its work may therefore be relevant to other accountability processes concerned with truth-seeking, transitional justice, reparations and institutional reform.

The FFM's findings may also be useful for the documentation and reporting of human rights violations and abuses of other UN bodies, including UN special procedures, such as the Special Rapporteur on extrajudicial, summary or arbitrary executions. Information collected by the FFM may also be referenced by Libyan and international NGOs when **submitting reports or bringing individuals cases** to UN human rights treaty bodies, such as the UN Human Rights Committee and the Committee against Torture, and the African Commission on Human and Peoples' Rights, or when making submissions for the Universal Periodic Review of Libya.

The evidence collected by the FFM and its findings may also be used in **domestic criminal justice processes**. Libyan judicial authorities and any transitional justice mechanism, such as the Fact-Finding and Reconciliation Commission, if established, may also make use of the evidence gathered by the FFM for the investigation and prosecution of crimes or other accountability processes. Third countries in which criminal proceedings may be instituted on the basis of extraterritorial jurisdiction, including **universal jurisdiction**, may also employ the FFM's evidence and findings. Universal jurisdiction allows, and in certain circumstances requires, a State to prosecute crimes under international law – such as war crimes, crimes against humanity, crimes of torture and enforced disappearance – committed anywhere in the world, whenever the alleged perpetrator is present on such State's territory or is otherwise under its jurisdiction. Two complaints under universal jurisdiction principles have already been filed in France against Khalifa Haftar, the head of the Libyan Arab Armed Forces.

6. WHAT RESULTS MAY THE FFM ACHIEVE?

As the UN High Commissioner for Human Rights stated, the objectives of the FFM are to “effectively address the widespread impunity for human rights violations and abuses” of IHRL and IHL, “serve as a deterrent to prevent further violations”, and “contribute to peace and stability” in Libya. To meet such objectives, the FFM will document and make findings about human rights violations and abuses, as well as the factors that contribute to their occurrence and impunity for them. Through its recommendations on institutional and legal reform, the FFM may also contribute to ensuring non-recurrence and prevention of further violations and abuses.

The FFM is **not a criminal justice mechanism**. Although it can collect evidence that could be used in future criminal proceedings, it cannot conduct criminal investigations or prosecute individuals. As set out above in section 4, its findings may be relevant to identifying cases for investigation by domestic or international judicial authorities, including the ICC, which may use the evidence the FFM collects. The FFM may therefore **indirectly contribute to achieving individual criminal accountability** for violations and abuses of IHRL and IHL. Another way for the FFM to contribute to strengthening accountability for human rights violations and abuses in

Libya is to recommend reforms to institutional structures and legislative reforms of the criminal justice system.

Similarly, any **transitional justice process** in Libya may use the findings of the FFM. By collating and analyzing information and evidence from victims, witnesses and other sources, and documenting human rights violations, the FFM may offer highly authoritative and expert mapping and credible analysis of the patterns of violations and abuses committed in Libya, including structural issues underpinning them. This, in turn, will contribute to the efforts of Libyan civil society, transitional justice actors and the international community to achieve accountability, truth, justice and reparations in the country.

Although the **FFM cannot award reparations to victims**, it may contribute to any future reparations process in Libya by documenting human rights violations and abuses and identifying victims entitled to them. Libyan authorities remain responsible for guaranteeing victims’ access to legal and other remedies. Adequate reparations should be awarded to victims and their families as the result of legal proceedings or as part of extrajudicial reparation schemes, including under transitional justice processes.

7. HOW CAN CIVIL SOCIETY ACTORS ENGAGE WITH THE FFM?

The FFM has issued a **call for submissions** of relevant information and materials, the deadline for which is **30 June 2021**. To this end, victims, witnesses and their representatives, as well as any other interested individual or organization, may **submit information through a dedicated online form**, available in Arabic and English. More information about the process and means by which information may be shared confidentially and securely is available in the call for submissions. The FFM may also be reached through its general email address: ffmlibya@ohchr.org.

The FFM Secretariat will determine additional methods for consulting with civil society actors and engaging with victims, witnesses and other sources. The FFM will likely conduct both remote and in-person interviews, and may travel to Libya to conduct interviews and on-site visits to the extent the security situation and the COVID19- pandemic allow.

As part of its mandate, the FFM must take all possible measures to protect the safety of victims, witnesses, cooperating persons and sources. For this purpose, during both in-person and remote interviews the FFM should observe the following principles:

- **Confidentiality** of the identity of interested persons and the information they provide;
- **Do no harm**, which aims to avoid jeopardizing a person's life, safety, freedom and well-being, particularly in relation to victims and witnesses of SGBV and children, and which should involve access to referral pathways for psychosocial support, among other things;
- **Clarify limitations** regarding the FFM's ability to guaranteeing a person's protection;
- **Participatory approach** to protection, by taking the interested person's views and knowledge into account, and involving them in risk assessments and the choice of protection measures;
- **Context-specific protection** based on the situation's concrete circumstances, including political and security factors, commitment of the national authorities to the process, existing witness protection frameworks and the FFM's capacity and resources.

The sources and content of the information provided to the FFM will not be made public without the interested person's prior, express and informed consent. Even when the latter is provided, the final decision regarding the publication of such information rests with the FFM.

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the 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.

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Questions and Answers

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