

# **Stability Through Accountability:** Why Libya Needs an International Human Rights Mechanism





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# I. Introduction

In March 2023, the Independent Fact-Finding Mission on Libya (FFM) mandated by the UN Human Rights Council (HRC or the Council) issued its final report. The Council then decided not to renew the FFM's mandate or to establish a follow-up mechanism. Instead, it adopted resolution 52/41, requesting the Office of the High Commissioner for Human Rights (OHCHR) to provide technical assistance and capacity building to Libya with a view to ensuring accountability for and preventing violations and abuses of human rights.<sup>1</sup> In July 2024, the Council renewed the OHCHR's technical assistance and capacity building mandate.<sup>2</sup> However, two years after the end of the FFM's mandate, the OHCHR's efforts had had only minimal effects, while the human rights situation in Libya remains dire, and impunity continues to prevail.

In this joint position paper, Lawyers for Justice in Libya (LFJL) and the International Commission of Jurists (ICJ) urge the Council to establish a follow-up mandate to the FFM.

The position paper will (in section II) address why such a mandate is necessary in Libya today, and (in section III) will detail the possible ways forward for the international community to bridge the accountability gap in the country.

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1 HRC, 'Technical assistance and capacity-building to improve human rights in Libya', A/HRC/RES/52/41, 4 April 2023.

2 HRC, 'Technical assistance and capacity-building to improve human rights in Libya', A/HRC/RES/56/16, 11 July 2024.

## II. The necessity of international accountability efforts

### i. Domestic accountability efforts' lack of progress – including the Libyan authorities' failure to implement the FFM's recommendations and HRC resolution 52/41

Following the FFM's final report, in March 2023, the HRC adopted consensually an Item 10 resolution,<sup>3</sup> requiring OHCHR to provide technical assistance and capacity-building to the Libyan authorities to enhance their ability to pursue transitional justice and address ongoing and widespread human rights violations and abuses. However, in its June 2024 report on "Technical assistance and capacity building to improve human rights in Libya", OHCHR noted that "denial of access to critical locations" and "security concerns related to the arrest and detention of United Nations staff in eastern Libya", among other factors, had severely affected the implementation of the resolution.<sup>4</sup>

Indeed, since March 2023, the human rights situation in the country has continued to deteriorate, with human rights violations and abuses becoming systematic against certain groups of the population.<sup>5</sup>

The Libyan authorities have only taken limited steps towards the implementation of the FFM's recommendations. It took the Libyan authorities a whole year, until March 2024, to merely agree on creating a committee devoted to the implementation of these recommendations domestically.<sup>6</sup>

Since then, another year has passed, and seemingly the Libyan authorities have taken no tangible steps to set up such committee. Similarly, during a workshop convened by the UN Support Mission in Libya (UNSMIL or the Mission) in September 2023 on detention and detention conditions, the Libyan authorities agreed to establish a mandate to monitor the conditions of detention in the country.<sup>7</sup> According to information available to LFJL and the ICJ, the mandate is yet to be established.

Finally, at the end of 2024, the Presidential Council and the House of Representatives (HoR) discussed a draft law on national reconciliation, addressing all components of transitional justice (truth, justice, reparation, memorialisation and guarantees of non-recurrence).<sup>8</sup> Since then, however, its adoption has stalled over political tensions, suggesting a lack of political will and commitment to effectively ensure accountability and justice for victims. According to information available to LFJL and the ICJ, there is no reason to believe that

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3 Op. cit., A/HRC/RES/52/41, 2023. The so-called Item 10 resolutions in the agenda of the Council are those resolutions requiring the concerned country's consent to be drafted and adopted. In the case at stake, this implies that the most recent resolutions, namely resolutions 52/41 (4 April 2023) and 56/16 (11 July 2024) on technical assistance and capacity-building, were adopted with the agreement of the Libyan authorities.

4 OHCHR, Report of the Office of the United Nations High Commissioner for Human Rights, 'Technical assistance and capacity-building to improve human rights in Libya', A/HRC/56/70, 3 June 2024, para. 3. A consultation for civil society organisations had to be cancelled in Benghazi because "access was denied by the eastern authorities", para. 15.

5 See further below, section II-ii.

6 Op. cit., A/HRC/56/70, para. 19.

7 Ibid., para. 27.

8 ICJ, 'Libya: An opportunity for accountability and justice', June 2024.

the situation and the approach of the Libyan authorities will change in the foreseeable future.

In conclusion, despite some efforts by the Libyan authorities, they largely remain inadequate and insufficient. Tarhuna serves as an example of this lack of commitment.

## ■ Tarhuna as a case study



Credit: Jared Malsin/The Wall Street Journal

The mass atrocities committed in the town of Tarhuna, about 90 km south-east of the Libyan capital Tripoli, and the mass graves discovered there since 2020, have been widely documented at both national and international level.<sup>9</sup> Between 2021 and 2022, the FFM focused its investigations on Tarhuna.<sup>10</sup> It found that between 2015 and 2020, the al-Kaniyat militia ruled Tarhuna “through a campaign of terror[,] intimidation [and] killing”, “primarily targeting those who they perceived as opposition or a threat.”<sup>11</sup>

The FFM concluded that there were reasonable grounds to believe that the al-Kaniyat militia committed war crimes and crimes against humanity in the area, including murder, extermination, imprisonment, torture, persecution on political grounds, enforced disappearance and other inhumane acts.<sup>12</sup> The FFM recommended that the Libyan authorities establish a Special Tribunal for Tarhuna to ensure accountability

and justice for survivors and victims’ families and continue working towards establishing the fate and whereabouts of the missing persons and the identification of bodies.<sup>13</sup> The Office of the Prosecutor (OTP) of the International Criminal Court (ICC) visited the sites and gathered evidence of Rome Statute crimes.<sup>14</sup>

In October 2024, the ICC unsealed six arrest warrants for alleged war crimes committed in Tarhuna by individuals affiliated to the al-Kaniyat militia.<sup>15</sup> However, according to information available to LFJL and the ICJ, the prospect that the Libyan authorities will

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9 Amnesty International, “Libya: ‘Every Day We Die a Thousand Times’: Impunity for Crimes against Humanity in Tarhuna.”, 28 November 2024; OHCHR, “Tarhuna - Mass Graves and Related Human Rights Violations and Abuses in Libya”, August 2024; including references to reports from the Libyan General Authority for the Search and Identification of Missing Persons (GASIMP), footnote 31.

10 HRC, ‘Detailed findings on the situation in Tarhuna’, A/HRC/50/CRP.3, 1 July 2022.

transfer the suspects to the Court is very limited.

Between 2020 and 2021, the Libyan authorities took some initial steps towards holding alleged perpetrators accountable.<sup>16</sup> The Tripoli-based Government of National Accord (GNA) established dedicated institutions tasked with conducting exhumation work and identifying bodies.<sup>17</sup>

The Libyan authorities established a specialised unit under the Public Prosecutor Offices, the Special Prosecution Team for Tarhuna; however, to date, the work of this unit has been characterised by lack of transparency about its activities and the advancements of the investigation.

In June 2020, the Attorney General issued arrest warrants for several suspected perpetrators. However, according to information available to LFJL and the ICJ, at the time of writing, only one of the arrest warrants had been enforced,<sup>18</sup> and other suspects had allegedly fled, absconding somewhere within Libya or abroad, or are now members of other powerful militias or armed groups in Libya and continue to operate freely. According to information available to

LFJL and the ICJ, five suspects were arrested in Egypt but then released, for reasons that remain unclear.

According to LFJL's and the ICJ' sources, in the wake of the recommendations of the FFM and two years since the launch of the Libyan-led investigations, the Libyan authorities have not taken any tangible steps to establish a specialised court or chamber for Tarhuna. Decisions by the Tripoli Criminal Court, in early June 2024, condemning one individual affiliated to the al-Kaniyat militia to death for murder, and by the Khoms Court of Appeals, condemning three other people to between five and 13 years' imprisonment, lacked transparency, as very limited public information was made available. For instance, the identity of the four defendants was not disclosed and neither were the charges before the Khoms Court of Appeals. The dates and duration of the trials were also not made public.<sup>19</sup>

Notwithstanding the existence of substantial information and evidence collected by the FFM, the ICC and by national bodies in Libya, some of which could be available to the Libyan judiciary, Tarhuna represents a paramount example

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11 Ibid

12 Ibid.

13 Ibid., para. 221.

14 ICC, '[Statement of the ICC Prosecutor Karim A.A. Khan KC to the United Nations Security Council on the Situation in Libya, pursuant to Resolution 1070 \(2011\)](#)', 11 November 2022, (hereinafter ICC, Statement of the Prosecutor November 2022).

15 ICC, '[Statement of ICC Prosecutor Karim A.A. Khan KC on the Unsealing of Six Arrest Warrants in the Situation in Libya](#)', 4 October 2024.

16 Op. cit., A/HRC/50/CRP.3, 2022, paras 21-22.

17 The General Authority for the Searching and Identification of Missing Persons (GASIMP), in cooperation with the Office of the Prosecutor General; the Ministry of Health, the Ministry of Justice and the Ministry of Interior; the Department of Forensic Medicine

at the Centre for Judicial Expertise and Research (CJER); and the Forensic Medicine Committee, among others. Op. cit., A/HRC/50/CRP.3, 2022, paras 21-22.

18 444<sup>th</sup> Combat Brigade, Libyan Army, Government of National Unity, [Facebook post](#) of 23 November 2024.

of the inability and, seemingly, the Libyan authorities' unwillingness to prosecute alleged perpetrators of mass atrocities amounting to serious crimes under international law in compliance with international human rights law and standards.

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<sup>19</sup> Attorney General Office, State of Libya, Facebook post of 6 June 2024 (since taken down).



**ii. Deteriorating human rights situation: an increase in human rights violations and abuses – including acts amounting to crimes under international law with complete impunity, and an escalating crackdown on civil society**

The human rights situation in Libya has sharply deteriorated over the past few years. Reports from the FFM<sup>20</sup> and human rights organisations<sup>21</sup> provide a grim picture of widespread, gross human rights violations and abuses perpetrated by State security forces, militias and armed groups. Violations and abuses of human rights – at times amounting to war crimes and crimes against humanity – include: arbitrary detention, torture, murder, rape, extrajudicial killing, enforced disappearance, as well as the enslavement, including for sexual purposes, of migrants, asylum seekers and refugees.<sup>22</sup>

Militias and armed groups affiliated to the authorities have systematically resorted to enforced disappearance, torture and other forms of ill-treatment against detainees, including torture and other forms of ill-treatment against detainees.<sup>23</sup>

In addition, frequent violent clashes have taken place in recent years between armed groups, often resulting in numerous fatalities and injuries.<sup>24</sup> With respect to this, however,

nobody has been held accountable to date, either at the domestic or international level, benefitting from – and, in turn, fostering even further – a culture of impunity. Despite the situation being already extremely dire at the time of the FFM's final report in March 2023, since then the OHCHR reported in June 2024 an increase in human rights violations and abuses by security services and militias.<sup>25</sup>

Moreover, the crackdown on civil society has escalated against a backdrop of repressive laws and decrees straightjacketing civil society organisations (CSOs). Reports of systematic enforced disappearances, arbitrary detention and torture of civil society activists and human rights defenders (HRDs) by militias and armed groups are frequent.<sup>26</sup>

The Libyan authorities have reverted to the use of laws passed by the Gaddafi regime to prevent the existence of any independent CSOs. In particular, the Libyan authorities have over the past two – three years (re) enforced Law No. 19 of 2001, which allows the State to exercise strict control over the activities of CSOs, including the possibility for the State to suspend any organisation on the ground of 'urgency'.<sup>27</sup> Not only does Law No. 19 of 2001 provide a vague definition of the term 'urgency', but, in practice, this provision has been used to limit the ability of CSOs to obtain funding and/or collaborate with international partners without prior official State approval.<sup>28</sup>

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20 Office of the High Commissioner on Human Rights (OHCHR), (Press release), '[Libya: Urgent action needed to remedy deteriorating human rights situation. UN Fact-Finding Mission warns in final report](#)', 27 March 2023.

21 See references in the paras below and above.

22 Op. cit., A/HRC/52/83, 2023.

23 Ibid., paras 60-66; see also [Amnesty International \(AI\)](#), '[Libya 2023](#)'.

24 Ibid., paras 35-36; and AI. On more recent clashes, see also, UN, UN News, '[Libya: Fierce clashes in Tripoli highlight 'precarious' situation](#)', 22 August 2023.

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25 Op. cit. A/HRC/56/70, 2024, para.33.

26 LFJL '[Suppressed and marginalised: Systematic violence against civil society in Libya](#)', 25 March 2024, see also Op. cit., A/HRC/56/70.

27 Ibid., p. 20; and ICJ, '[Libya's civic space: repressive frameworks: continued attacks – Questions and answers](#)', October 2023, p. 1.

28 Op. cit., LFJL, '[Suppressed and marginalised: Systematic violence against civil society in Libya](#)'.

The exercise of human rights – including the rights to freedom of expression, of thought, conscience and religion, and of peaceful assembly and association – is therefore severely curtailed, and often times criminalised, resulting in the arbitrary detention and harassment of activists, journalists, as well as others, solely for seeking to exercise such rights.<sup>29</sup> As a result, CSOs' ability to document human rights abuses and raise awareness about the human rights situation in the country has been severely hampered.

In addition, in May 2023, the Libyan authorities presented a new draft law to purportedly regulate the activities of CSOs in Libya, aimed at repealing Law No. 19 of 2001.<sup>30</sup> If adopted as currently formulated, the draft law would impose additional, severe restrictions: CSOs' purposes "must not violate public order and morals" or "harm national security"; and CSOs must obtain approval from the authorities for registration and to communicate with external actors, including international organisations.<sup>31</sup> At the time of writing, the draft law had not yet been passed. This new draft legislation is part and parcel of a wider campaign against Libyan and international human rights groups who have been accused of undermining Libyan values.

The situation with respect to women's human rights has also regressed, with systemic discrimination against women in all aspects of their daily lives, a reported

increase in domestic violence, and a lack of accountability for crimes against them.<sup>32</sup> November 2024 saw further restrictions on women's rights, as Minister of Interior Emad al-Trabelsi announced plans to impose compulsory veiling for women and to criminalise those women who failed to comply. These measures were to be enforced by the re-establishment of a "morality police," tasked with monitoring dress, behaviour and public conduct under the pretext of upholding "societal morals".<sup>33</sup> Although the morality police's mandate extends to society as a whole, it is evident that women would be disproportionately impacted.

These measures, combined with the failure to hold those responsible for serious violations accountable, not only demonstrate the lack of political will to protect women in the public space but also send a clear and direct message that targeting women with the aim of removing them from the public space is not only tolerated but actively encouraged. This, in turn, has fostered a hostile environment for women in Libya that has deteriorated even further in recent years in the absence of regular monitoring and reporting.

The situation of migrants, asylum-seekers and refugees in Libya remains particularly dire, especially for women and those from sub-Saharan Africa. The FFM documented overwhelming evidence of systematic torture and sexual slavery, among other violations, against migrants, asylum-seekers and refugees in detention centres,<sup>34</sup> which are nominally under authorities' control (for example, the Directorate for Combating Illegal Migration operating under the Ministry of Interior) even though some

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29 Ibid.; Op. cit., A/HRC/52/83, 2023, paras 67-69.

30 Op. cit., LFJL, 'Suppressed and marginalised: Systematic violence against civil society in Libya', p. 23.

31 Ibid.

are, in fact, under the direct control of militias.<sup>35</sup> The involvement in these abuses of State authorities, which are financially and materially supported by the European Union and its Member States,<sup>36</sup> such as the Libyan Coast Guard (LCG), raises profound

concerns about the complicity of the Libyan State and European institutions in the violations and crimes committed against migrants, asylum-seekers and refugees in Libya.

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32 Op. cit., A/HRC/52/83, 2023, paras 74-81; HRC, 'Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem', A/HRC/53/36/Add.2, 4 May 2023. The Libyan State's failure to investigate cases like the assassination of Salwa Bugaighis, a prominent lawyer and human rights activist, in 2014, the enforced disappearance of MP Sihem Sergiwa in 2019, and the extrajudicial killing of Hannan Barassi in 2020, all underscore the grave situation for women in the country. On 25 June 2014, five gunmen attacked and killed the lawyer and women's rights activist Salwa Bugaighis, breaking into her house in Benghazi. Between 25 to 30 armed men wearing masks and uniforms forcibly abducted Sihem Sergiwa from her home in Benghazi in 2019. The day before her abduction, she had given an interview opposing the Libyan Arab Armed Forces (LAAF). The FFM concluded that, "the scale and sophistication of the operation suggest that the top Libyan Arab Armed Forces leadership knew or should have known of the abduction and fate of Ms. Sergiwa." In 2020, two armed and masked men killed Hannan Barassi, in the city centre of Benghazi. The day before the extrajudicial killing, she had announced she would have released information about the son of Khalifa Haftar. For both cases, the FFM concluded that, "the Libyan Arab Armed Forces leadership failed to take reasonable measures to submit those cases to competent authorities for effective, genuine and independent investigation and prosecution." [LFJL, 'LFJL pays its respect to women's rights activist Salwa Bugaighis following her tragic murder'](#), 25 June 2014; OMCT and International Federation for Human Rights (FIDH), ['Libya: Outrage following the assassination of prominent lawyer and women activist Salwa Bouguiguis'](#), 27 June 2014, Op. cit., A/HRC/52/83, 2023, paras 79-81.

33 Al, ['Libya: Authorities must drop plans to impose compulsory veiling amid wider crackdown on 'morality' grounds'](#) 8 November 2024.

34 Op. cit., A/HRC/52/83, 2023, paras 40-53.

35 Ibid., paras 41-45.

36 Hanan Saleh, Human Rights Watch (HRW), ['Already Complicit in Libya Migrant Abuse, EU Doubles Down on Support'](#), 8 February 2023.



## ■ Derna as a case study



The failure by the Libyan authorities to effectively protect human rights is illustrated by their failure to prevent and their (mis) handling of the unprecedented devastation wrought on the city of Derna in eastern Libya, due to the collapse of two poorly maintained<sup>37</sup> dams north of the city in September 2023, following Storm Daniel. The resultant floods caused widespread destruction, reportedly killing more than 4,352 individuals,<sup>38</sup> displacing tens of thousands and obliterating entire neighbourhoods. Derna illustrates the catastrophic consequences of a natural, yet preventable disaster, with its effects significantly exacerbated by human-made factors, including lack of accountability and corruption in previous years when 2.3 million euros had been allocated to maintain the dams, and a company had been contracted for their renovation. Ultimately, however, the dams were never repaired.<sup>39</sup>

The response to the Derna tragedy also laid bare the fragility of Libya's political and institutional frameworks.<sup>40</sup> Civil society and international organisations' rescue and relief efforts were hampered by the lack of coordination among local authorities, fragmented governance structures, and the absence of a robust civil defence mechanism capable of managing such crises.<sup>41</sup> Even worse, deliberate efforts by the authorities to shut down reporting about the disaster and to close down relief efforts further complicated the situation. The Libyan authorities and affiliated armed groups cracked down on protests, criticisms or dissents against the (mis)management following the disaster,<sup>42</sup> including through a widespread campaign of arbitrary arrests and detention as well as enforced disappearances.<sup>43</sup> In the aftermath of the disaster, the Libyan authorities shut down the internet and cell phone services,

37 In November 2022, a hydrologist had warned that, "immediate measures must be taken for routine maintenance of the dams, because in the event of a big flood, the consequences will be disastrous for the residents of the valley and the city." See, [Tarek Megerisi, 'Libyan Floods Reflect a River of Corruption and Negligence In a devastating storm's aftermath, a greedy leadership is to blame', New Lines Magazine](#), 15 September 2023.

38 Al, "In seconds everything changed": Justice and redress elusive for Derna flood survivors', 11 March 2024.

39 Op. cit., Tarek Megerisi, 2023.

40 Bin Musa, Ali, Middle East Council on Global Affairs, ['Division and Disaster: Libya's Political Fragmentation and Response to the Derna Flood'](#), 22 August 2024,

41 Op. cit., Al, 2024.

42 Ibid., p. 26.

43 Ibid.; Libya Crimes Watch (LCW), ['LCW condemns the crackdown on protests in Derna and demands the immediate release of the detainees'](#), 22 September 2023; Al, ['Libya: Lift restrictions on media and facilitate relief efforts in wake of catastrophic floods'](#), 22 September 2023. See also Op. cit., A/HRC/56/70.

and restricted journalists from accessing the city of Derna.<sup>44</sup>

As a result, those attempting to provide aid faced even greater challenges. The tragedy became a focal point for national and international outrage, with families of victims and CSOs demanding accountability for the negligence that had led to the disaster.<sup>45</sup>

The aftermath also exposed widespread negligence and corruption among Libyan authorities, particularly in the management of the Derna Reconstruction Fund led by Belqassim Haftar.<sup>46</sup> Established without robust governance or accountability frameworks, the fund has operated with limited transparency regarding resource

allocation and spending.<sup>47</sup> In the wake of the disaster, there have been calls for an independent international investigation into the causes of the dams' collapse and the overall handling of the crisis, including with a view to establishing responsibilities for any resulting human rights violations.<sup>48</sup> These calls for international accountability reflect a deep-seated mistrust in the national authorities and the widespread conviction that impartial and independent scrutiny is necessary to uncover the truth and hold those responsible to account.

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44 Ibid.; and Vivian Yee, ['Residents See Signs of Crackdown on Dissent After Libya Floods'](#), The New York Times, 21 September 2023.

45 LFJL, ['Accountability Action Group Calls For An Independent International Inquiry Into The Catastrophe In Derna And East Libya'](#), 26 September 2023.

46 Belqassim Haftar is the son of Field Marshall Khalifa Haftar, head of the LAAF.

47 LFJL, ['11 stories from 11 September One year after the Derna tragedy survivors tell their stories'](#), 26 September 2024.

48 Ibid.; and Op. cit., AI, 2024.

### iii. Political and security situation – including why accountability must be a precursor to elections

Libya remains in a deep-seated, complex security and political impasse, fuelling human rights violations and abuses. The country is divided between two main rival administrations,<sup>49</sup> a divide that has contributed to the ongoing legitimacy crisis and has hindered progress toward institution building, credible elections, overall political stability and sustainable peace.

Various armed groups and militias dominate the security landscape in Libya, with often shifting allegiances causing sporadic violence. In August 2024, Libya faced a significant financial and political crisis when the Presidential Council dismissed the governor of the Central Bank. The abrupt change led to widespread disruptions, including delays in salary payments for approximately 2.3 million government employees, further exacerbating economic hardship. Tripoli-based armed groups played a prominent role in enforcing the Presidential Council's decisions, and in appointing a new governor. This highlights the significant influence of armed groups over State institutions. The exclusion of broader societal voices from such a critical decision

reinforced public mistrust and drew criticism from CSOs, which argued that Libya's governance structures remain dominated by political factions and militias rather than being representative of the people.<sup>50</sup>

The presence of foreign fighters, forces and mercenaries, backed by international stakeholders, further complicates the situation.<sup>51</sup> These groups are primarily responsible for ensuring security but have also been implicated in numerous war crimes and human rights abuses,<sup>52</sup> including arbitrary detentions and enforced disappearances.

The political stalemate is exacerbated by the inability of Libyan leaders to agree the terms for holding national elections. Despite efforts by the UN<sup>53</sup> and other international bodies to facilitate dialogue among Libya's major political actors, including the HoR, the High State Council (HSC), the Libyan Arab Armed Forces (LAAF) and the Government of National Unity (GNU), no significant progress has been made. Key figures have set preconditions for their participation in any such dialogue, effectively maintaining the status quo and hindering any progress in relation to the electoral process. Current UN led efforts, including the establishment of an Advisory Committee to prepare a

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49 In late 2015, on the basis of the UN-led Libyan Political Agreement, the Government of National Accord (GNA) was established and based in Tripoli. An eastern parallel Government and administration continued to operate under the House of Representatives (HoR), aligned with the LAAF, led by General Khalifa Haftar. In March 2021, with the support of UNSMIL, Libya formed the current UN-recognized Government of National Unity (GNU), based in Tripoli. In March 2022, the eastern-based Government of National Stability (GNS), aligned with the HoR and the LAAF, was established.

50 International Crisis Group, 'Getting Past Libya's Central Bank Standoff' 1 October 2024.

51 See e.g. M. Abdoulaye Bathily's, the former UN Secretary-General's Special Representative for Libya, press conference following his resignation in April 2024, noting the "worrying deterioration in Libya, primarily due to the lack of political will and good faith from the main Libyan actors, as well as the emerging regional and international dynamics at play" and that the "parallel tracks" taken by international stakeholders undermine the UN's efforts. Libya Update, 'UN Libya Envoy Bathily Resigns, Cites Lack of Political Will and External Interference', 17 April 2024. See also, [Italian Institute for International Political Studies, 'Libya's Stable Instability'](#), 16 May 2024.

52 HRC, 'Report of the Independent Fact-Finding Mission on Libya', A/HRC/50/63, 27 June 2022, paras 7; 31; Op. cit., A/HRC/52/83,



roadmap of elections, are also likely to fail if they do not sufficiently address the need for accountability.<sup>54</sup>

Accountability is a crucial precursor to elections in Libya for several reasons. The ongoing human rights violations and abuses, the deep-seated political divisions, the crackdown on civil society, and the lack of a secure and stable environment undermine the potential for conducting free, fair and credible elections. The current status quo benefits perpetrators of human rights violations and abuses who have much to lose if such presidential and parliamentary elections are held. Many of these actors, including militias and political leaders implicated in serious crimes under international law, have no incentive to support an electoral process that could diminish their power and lead to them being brought to justice. Despite this, Libyan and international actors have relied on these very individuals to come to an agreement and to facilitate national elections, rather than providing for and implementing measures with a view to holding them to account. This approach fails to address the root causes of instability and impunity. Without first holding key actors accountable for their involvement in grave human rights violations and abuses and ensuring a level playing

field, the legitimacy of any electoral process and its outcomes will be fundamentally compromised.

#### iv. **Lack of information-sharing and evidence consolidation despite findings of crimes under international law by FFM and other previous investigative mechanisms**

The investigative and fact-finding mandates the HRC has established on Libya since 2011 were designed to collect information about, monitor and report on human rights violations and abuses and crimes under international law with a view to contributing to individual criminal accountability.<sup>55</sup> This was also the case for the FFM, which was mandated “to preserve evidence with a view to ensuring that perpetrators of violations [...] are held accountable”.<sup>56</sup> Accordingly, the information that the FFM gathered should have served the purpose of supporting competent authorities, domestic or international, to hold alleged perpetrators to account.

With the completion of the FFM mandate, all documents and information collected have been stored into a repository archive of the OHCHR, which has adopted Standard Operating Procedures to streamline the

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2023, paras 37-38. See also, UNSMIL and OHCHR, [‘Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya’](#) 18 December 2018.

53 UNSMIL, [‘Statement at the Security Council’](#), 16 December 2024.

54 UNSMIL, [‘UNSMIL announces the establishment of the Advisory Committee’](#), 4 February 2025; and LFJL, [‘New Plan, Same Mistakes? Four Priorities for UNSMIL’s Advisory Committee to Advance Elections’](#), 24 February 2025.

55 The 2011-2012 International Commission of Inquiry, the 2015-2016 Investigation of the OHCHR and the 2020-2023 FFM.

56 UN Human Rights Council, ‘Technical assistance and capacity-building to improve human rights in Libya’, A/HRC/RES/43/39, 22 June 2020, para. 43 (a).

information-sharing process between the OHCHR and judicial authorities.<sup>57</sup> National jurisdictions, including those competent to exercise jurisdiction for certain crimes pursuant to the principle of universal jurisdiction, and law enforcement authorities investigating serious crimes under international law (e.g., war crimes units), however, are often unaware of the possibility to access the repository archive and, therefore, do not engage with the OHCHR to request access to this information. In addition, the process to request and obtain such documents and information is often unclear, cumbersome and long. According to information available to LFJL and the ICJ, OHCHR does not hold a computerised repository yet, and, in practice, competent authorities could only get hard copies of the requested information thus far. These practical challenges add another layer to the complexity of the information-sharing process.

**v. Constraints faced by the OHCHR and UNSMIL in monitoring and reporting and in the provision of technical assistance and capacity-building**

UNSMIL's Human Rights, Transitional Justice and Rule of Law Service (HRS) serves both as the human rights component of UNSMIL and as the OHCHR's representation in Libya. Accordingly, it operates both under the mandate of United Nations Security Council (UNSC) resolution 2486 (2019)<sup>58</sup> and pursuant to the HRC resolution 52/41. Despite having a significant ground presence in Libya, the HRS faces challenges in implementing its mandated tasks due to several reasons.

First, the tension between the OHCHR's and UNSMIL's mandates is a challenge in the implementation of the HRS's human rights-related activities in Libya. The OHCHR's mandate is inherently human rights-focused, whereas UNSMIL's mandate is political in nature. The political mandate of the Mission and the related need to engage with various political factions and authorities significantly impair the Mission's ability to place human rights at the centre of this engagement. This tension inevitably hampers the effectiveness of human rights public reporting and advocacy-related activities.

Second, neither the HRS nor the OHCHR Field Operations Division in Geneva has sufficient budgetary resources.<sup>59</sup> While there is a need for comprehensive human rights monitoring and reporting in Libya, the allocation of resources falls short of what is required for effective operations, not only in terms of financial and logistical support, but also in terms of human resources. The expertise necessary to address the many serious human rights concerns in Libya does require a greater number of highly specialised personnel. The UN budget freeze has, however, led to strict limitations on recruitment, such that the human resources available to the OHCHR and UNSMIL are inadequate.

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<sup>57</sup> The archive is managed by the OHCHR's Archives and Records Management Section.

<sup>58</sup> UN Security Council, Resolution 2486 (2019), S/RES/2486/2019, 12 September 2019.

<sup>59</sup> For example, out of seven postings assessed to be required to implement HRC's resolution 52/41 of March 2023, it seems that only one Human Rights Officer and one administrative staff were hired.

vi. **Limited scope of ICC investigations, lack of tangible outcomes and completion strategy**

In 2011, pursuant to resolution 1970 (2011), the UNSC referred the situation in Libya to the ICC and tasked the Court to investigate and prosecute Rome Statute crimes committed in Libya since February 2011.<sup>60</sup> In the past 14 years, the OTP has not been able to yield concrete results by bringing justice and accountability to survivors, victims' families and affected communities.<sup>61</sup> According to information publicly available, since 2011, the Court has issued 12 arrest warrants in the Libya situation. The proceedings for four of them have been terminated due to the death of the accused or inadmissibility of the case.<sup>62</sup> One of the first arrest warrants was issued in 2011 against Saif al-Islam Gaddafi and, after 13 years, the suspect remains at large. Six arrest warrants were issued against individuals affiliated to the al-Kaniyat militia between April and July 2023 under seal. They were unsealed in October 2024.<sup>63</sup> A last one has been made public on 22 January 2025, for crimes against humanity and war crimes allegedly perpetrated in Mitiga prison from 2015, following Italy's failure to surrender the arrested suspect to the ICC.<sup>64</sup> Thus, at least

eight arrest warrants remain to be enforced. As a result, so far, the OTP's investigations have not resulted in any trial.<sup>65</sup> This is also because Libyan authorities have to date failed to fully and effectively cooperate with the ICC, including by imposing visa restrictions for OTP staff seeking to investigate in Libya, as well as the continued failure to arrest and surrender suspects to the ICC.<sup>66</sup>

This lack of progress and cooperation notwithstanding, in November 2023, the ICC Prosecutor announced that his Office plans to complete its investigations in the Libya situation by the end of 2025.<sup>67</sup> In May 2024, the Prosecutor presented the roadmap to completion by 2025,<sup>68</sup> and adopted a set of benchmarks to be achieved by the end of 2025 to assess the end of the investigative phase in Libya. The benchmarks include the cooperation with and from the Libyan authorities, the issuance of multiple further arrest warrants and the beginning of at least one set of proceedings before the Court prior the end of 2025.<sup>69</sup>

However, as things stand, the Libyan justice system is still unable and thus far unwilling to investigate and prosecute serious crimes under international law committed

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60 UN Security Council, Resolution 1970 (2011), S/RES/1970 (2011), 26 February 2011.

61 ICJ, 'Tackling impunity for crimes under international law in Libya - [International accountability mechanisms' prospects and challenges](#)', August 2022, pp. 19-23.

62 [Coalition for the International Criminal Court, Libya](#).

63 Ibid.; ICC, '[Libya - Situation in Libya](#)', ICC-01/11: ICC, 'Libya situation: ICC Pre-Trial Chamber I unseals six arrest warrants', 4 October 2024 and LFJL, '[Six arrest warrants unsealed for Libya: what's next?](#)', 11 October 2024.

64 ICC, 'Situation in Libya: [ICC arrest warrant against Osama Elmasry Njeem for alleged crimes against humanity and war crimes](#)', 22 January 2025.

65 Op. cit., ICC-01/11.

66 ICC, '[Statement of ICC Prosecutor Karim A.A. Khan KC to the UN](#)

[Security Council on the Situation in Libya, pursuant to Resolution 1970 \(2011\)](#)', 9 November 2023 (hereafter ICC, [Statement of the Prosecutor, November 2023](#)); see also ICC, Pre-Trial Chamber I, Situation in Libya in the case of the Prosecutor v. Saif al-Islam Gaddafi, '[Decision on the non-compliance by Libya with requests for cooperation by the Court and referring the matter to the United Nations Security Council](#)', 10 December 2014.

67 Op. cit., ICC, [Statement of the Prosecutor, November 2023](#).

68 ICC, '[Twenty-seventh Report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to Resolution 1970 \(2011\)](#)' paras 88 and 92.

69 Ibid., para 59.



in the country that fall within the Court's jurisdiction. One major obstacle to holding accountable those responsible for such crimes is the existence of legislative gaps, as Libyan criminal legislation does not classify Rome Statute crimes as criminal offences. More broadly, there is a lack of political will and appetite for changing the status quo in the country. Furthermore, by its very design, and owing to staff and funding limitations, the ICC can try and adjudicate only a handful of cases per situation, focussing, in particular, on those persons that are allegedly most responsible for serious crimes of international concern, rather than on those individuals in 'lower position' in the chain of command. For its very specific mandate, the ICC OTP's prosecutorial policy does not aim to pursue justice and accountability for all crimes falling under its jurisdiction in a situation, and its investigation in Libya has a limited scope in this respect.

Lastly, the ICC's jurisdiction is limited to Rome Statute crimes, such as war crimes and crimes against humanity, as defined in the Statute. The Court, therefore, does not have jurisdiction to investigate human rights violations and abuses and crimes that do not reach the threshold of serious crimes under international law. The ICC, therefore, does not suffice in pursuing justice and accountability for the plethora of violations and crimes committed throughout Libya until today.

### **III. Possible ways forward for the international community to bridge the accountability gap in Libya**

As detailed above, the OHCHR/UNSMIL and the ICC are insufficient to effectively address the accountability gap for grave human rights violations and abuses in Libya, nor are the Libyan authorities willing and able to do so.

There is a pressing need for the international community to support the Libyan authorities to fulfil their duty to address well-established crimes under international law. This could be done by adopting commensurate accountability and scrutiny measures, including to prevent any further deterioration of the human rights situation in the country and to deter anyone from further undermining the path to peace and political stability. Therefore, LFJL and the ICJ consider that the Council should establish both

- i. an accountability mandate; and
- ii. an independent human rights monitoring and public reporting mandate.

The FFM in its final report recommended as much.<sup>70</sup> If the mandates are conferred upon two different bodies, they should collaborate and share collected information with each other, when appropriate and in compliance with their respective mandates, including through a memorandum of understanding.<sup>71</sup>

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70 Op. cit., A/HRC/52/83, 2023, para. 103(a): "The Mission calls on the United Nations, the international community and third States: (a) To urge the Human Rights Council to establish an independent, international investigation mechanism and to call on the Office of the United Nations High Commissioner for Human Rights to

establish a distinct and autonomous mechanism with an ongoing mandate to monitor and report on gross human rights violations in Libya, with a view to supporting Libyan reconciliation efforts and assisting the Libyan authorities in achieving transitional justice and accountability."

In addition, the HRC must take further steps to

- iii. provide the Libyan authorities with technical assistance and capacity-building.

i. **Accountability mandate**

The HRC has mandated three investigative mechanisms on Libya in the past, namely the 2011-2012 International Commission of Inquiry, the 2015-2016 OHCHR Investigation and the 2020-2023 FFM.<sup>72</sup> However, according to information available to LFJL and the ICJ, and due to the difficulties of relevant national and international authorities to access this data, the information gathered by these mechanisms was not used to support accountability paths in either domestic or international jurisdictions.

Therefore, the Council must urgently establish an accountability mandate. The mandate would build on previously collected information and continue investigating ongoing crimes to pave the way for criminal proceedings and contribute to ending the cycle of impunity. To do so, and consistent with international law standards, it should be tasked with:

- i. collecting and preserving evidence of the most serious crimes and violations of international law, in view of any future criminal proceedings;
- ii. consolidating and analysing this evidence, making use of the information

and evidence previously collected by the three previous investigative mechanisms on Libya;

- iii. establishing a central information and evidence repository;
- iv. preparing case files in order to facilitate and expedite fair and independent national and international criminal proceedings, in accordance with international law; and
- v. developing possible strategies for future accountability processes and advance accountability by supporting judicial and other proceedings within competent jurisdictions, including by proactively sharing information and evidence as appropriate.

Such a mandate should be adequately resourced, including by ensuring a staff complement with relevant expertise, such as Arabic and other relevant languages, to ensure it can function effectively in the Libya context.

It will be critical that such a mandate effectively engages with Libyan civil society by, among others, establishing regular consultations and meetings with Libyan civil society, victims' groups and affected communities. This would allow the mandate to be transparent about its purposes and processes.

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71 See e.g., The memorandum of understanding between the International, Impartial and Independent Mechanism (IIIM) and the Independent International Commission of Inquiry on the Syrian Arab Republic (Col Syria): IIIM, [UN & International Organizations](#).

72 UN Human Rights Council, '[Human Rights Council-mandated Investigative Bodies](#)'.

## ii. Human rights monitoring and public reporting mandate

In parallel to an accountability mandate outlined above, the HRC should also establish a human rights monitoring and public reporting mandate to document and detail the commission of gross human rights violations and abuses in Libya.

It is not unusual for the HRC to establish both an accountability mandate and a monitoring and reporting mandate, when they both become necessary to pursue individual criminal liability as well as the State's responsibility, in situations that warrant both, as has been the case for Syria and Myanmar, among others.<sup>73</sup> LFJL and the ICJ consider that States' obligations under international law call for the HRC to exercise scrutiny over the ongoing human rights violations and abuses perpetrated in Libya. Such monitoring and public reporting mechanism may have a deterrent effect over alleged perpetrators of human rights violations and serious crimes. In light of the Libyan authorities' crackdown on CSOs, which impedes their efforts to effectively report on violations,<sup>74</sup> and of UNSMIL's HRS's limitations, which impairs its capacity to publicly report on all violations taking place in Libya,<sup>75</sup> an international monitoring and reporting mechanism is the only means to maintain independent

international scrutiny over the human rights situation in the country.

The mandate, separate from UNSMIL, should be tasked with:

- i. monitoring and documenting human rights violations and abuses;
- ii. engaging with key actors;
- iii. reporting on its findings; and
- iv. making recommendations through regular reporting to both the Human Rights Council and the General Assembly.

As detailed above, the Derna floods' negative impact on the protection of human rights was aggravated by the authorities' mismanagement of the handling of the disaster. As efforts to achieve accountability at the local level have so far been unsuccessful, lacked transparency and failed to target senior State officials, the Council should expressly task the mandate, among others, to document and report on the violations that arose from the failure to prevent and the mishandling of the response to the Derna floods, in order to establish responsibilities and identify root causes.

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<sup>73</sup> See, e.g., the Col Syria, coexisting with the Independent Investigative Mechanism for Myanmar (IIMM); the Special Rapporteur on the situation of human rights in Myanmar, coexisting with the IIMM; the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, coexisting with the OHCHR DPRK accountability project; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, coexisting with the Independent International Commission of Inquiry on the Occupied Palestinian Territory and Israel, which has a strong accountability component in its mandate. Also of note, the coexistence of an Independent International

Fact-Finding Mission on the Islamic Republic of Iran and of a Special Rapporteur on the situation of human rights in the Islamic Republic of Iran focusing on more specific incidents, including the events leading up to and since the death of Jina Mahsa Amini on 16 September 2022.

<sup>74</sup> See, *inter alia*, Op. cit., LFJL, 'Suppressed and marginalised: Systematic violence against civil society in Libya'; and Op. cit., A/HRC/52/83, 2023, paras 24, 68 and 73.

<sup>75</sup> See section v. above.

### iii. **Technical assistance and capacity-building**

As explored above, at present, the Libyan authorities are unable and, seemingly, unwilling to prosecute alleged perpetrators of gross human rights violations, including those amounting to serious crimes under international law in compliance with their obligations under international law, including human rights law and standards. With a view to enabling Libya to fulfil its duty to investigate, prosecute and punish such violations and crimes, the Council should further request UNSMIL's HRS and OHCHR's representation in Libya to provide strengthened technical assistance and capacity-building to the Libyan authorities. Such technical assistance and capacity-building should:

- i. support the domestic transitional justice process, including the implementation of the Reconciliation Law, providing the text eventually adopted complies with international human rights law and standards;
- ii. aim to enhance cooperation with the ICC; and
- iii. support the development and implementation of a national human rights action plan.

The effective discharge of these tasks entails increasing the UNSMIL's HRS's resources.

Technical assistance and capacity-building should focus on ensuring that the Libyan authorities can effectively investigate and prosecute gross human rights violations, which may amount to serious crimes under international law, in line with their obligations under international law, including the right to a fair trial. This would be the case if the authorities establish a specialised prosecution office and criminal chambers for the prosecution and adjudication of "grave or systematic breach of international human rights law or international humanitarian law", as per the draft Reconciliation Law, which was discussed by the Presidential Council and the HoR in early 2024.<sup>76</sup> With respect to this, technical assistance and capacity-building should include sustained, in situ, international mentoring to transitional justice institutions, as well as advice to adopt the required legislative reforms and to establish a robust witness-and-victim protection programme. UNSMIL's HRS should also implement an effective prior vetting process to ensure that individuals reasonably suspected of involvement in serious human rights violations and abuses are not the recipient of such technical assistance and capacity-building.

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<sup>76</sup> UNSMIL, [With UNSMIL Facilitation, Legislators and Legal Experts Come Together To Unify Approach To Drafting A Reconciliation Law](#), 2 May 2024.



## IV. Recommendations

In light of the above, LFJL and the ICJ call on the Human Rights Council to:

- Establish
  - i. an accountability mandate as described above; and
  - ii. an independent human rights monitoring and public reporting mandate, as set out above;
- Request UNSMIL's HRS and the OHCHR's representation in Libya to provide strengthened technical assistance and capacity-building to the Libyan authorities as outlined above.

## **About Lawyers for Justice in Libya**

Established in 2011, LFJL is a Libyan and international human rights non-governmental organisation that pursues transformative and holistic justice. Its beneficiaries are the people of Libya, be they in country or in the diaspora, and people suffering from violations and crimes committed in Libya. LFJL challenges the underlying social, cultural, economic, ecological and political conditions that give rise to injustice, corruption, and violence in Libya. With the belief that challenging these root causes will transform lives and bring justice to those inside and outside the country.

## **About the International Commission of Jurists**

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.

