

# Accountability for Sexual and Gender-Based Crimes in Libya



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International Commission of Jurists  
P.o. Box 1270  
Rue des Buis 3  
1211 Geneva 1  
Switzerland

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## Acronyms

AComHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
ECtHR	European Court of Human Rights
FFM	UN Independent Fact-Finding Mission on Libya
GBV	gender-based violence
HoR	House of Representatives
HRC	Human Rights Council
HRCOM	Human Rights Committee
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICPPED	International Convention on the Protection of all Persons from Enforced Disappearance
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
ICRC	International Committee of the Red Cross and the Red Crescent
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IIIM	International, Impartial and Independent Mechanism to Assist the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic
OHCHR	Office of the United Nations High Commissioner for Human Rights

OTP	Office of the Prosecutor of the International Criminal Court
SGBC	sexual and gender-based crimes
SGBV	sexual and gender-based violence
UN	United Nations
UNDP	United Nations Development Programme
UNSMIL	United Nations Support Mission in Libya
WHO	World Health Organization

## Glossary

Given the evolving nature of international law pertaining to sexual and gender-based crimes (SGBC), there are few commonly accepted definitions for the terms used in this report. Accordingly, this report relies upon a variety of sources, including international human rights bodies, investigative authorities and courts, to provide examples of definitions that represent the most developed, progressive and authoritative in the field. The terms used throughout the report are assigned the meanings below for purposes of this report alone, and do not necessarily reflect the International Commission of Jurists' (ICJ) position.

- **Gender:** There is no single, prevailing definition of gender. However, significant progress has been made in understanding gender under international human rights law and international criminal law. Gender has been increasingly recognized as an evolving social and ideological construct associated with being male and female, and serving as means to categorize, order, and symbolize power relations.<sup>1</sup> As such, gender varies within societies and from society to society.<sup>2</sup> This understanding of gender differentiates gender from sex, ensuring critical engagement with rigid categorizations of sex that are often taken for granted.<sup>3</sup>
- **Sex:** Sex is the classification of a person as having female, male and/or intersex biological characteristics, often ascribed on the basis of individuals' reproductive function.<sup>4</sup> While infants are usually assigned the sex of male or female at birth based on the appearance of their external anatomy alone, a person's sex is a combination of a range of bodily sex characteristics.

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<sup>1</sup> UN Special Procedures, *Re: Comments to the Draft Crimes Against Humanity Convention*, Joint Statement, 30 November 2018, p. 2, available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Executions/LetterGender.pdf> (last accessed 3 March 2025); Special Rapporteur on extrajudicial, summary or arbitrary killings, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary killings*, UN Doc. A/HRC/3523, 6 June 2017, ¶ 17. See also, International Criminal Court, Office of the Prosecutor (OTP), *Policy on Gender-Based Crimes*, December 2023 ("OTP Policy on Gender-Based Crimes"), ¶¶ 16-17. For a previous version of the policy paper see ICC, OTP, *Policy Paper on Sexual and Gender-Based Crimes*, June 2014.

<sup>2</sup> ICC, OTP, *Policy Paper on the Crime of Gender Persecution*, 7 December 2022, p. 3. See also, OTP Policy on Gender-Based Crimes, ¶ 17.

<sup>3</sup> UN Special Procedures, *Re: Comments to the Draft Crimes Against Humanity Convention*, Joint Statement, 30 November 2018, p. 2.

<sup>4</sup> International, Impartial and Independent Mechanism to Assist the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic (IIIM), *Gender Strategy and Implementation Plan (technical version)*, 30 September 2022, p. 8.



- **Gender-based crimes:** The International Criminal Court’s (ICC) Office of the Prosecutor (OTP) lists gender-based crimes within the ICC’s jurisdiction as “sexual violence, reproductive violence, and/or other forms of gender-based violence”.<sup>5</sup>
- **Gender-based violence:** The ICC OTP defines gender-based violence (GBV) as “an umbrella term for any harmful act that is perpetrated based on socially ascribed differences based on gender, usually because of a person’s actual or perceived gender, sex, or sexual orientation”.<sup>6</sup> They note that it:

[I]ncludes acts that inflict physical, sexual or mental harm or suffering, threats of such actions, coercion, and other deprivations of liberty. This conduct can occur in public or in private. It violates a person’s human rights. Rooted in structural gender inequalities and power imbalances, gender-based violence is both a symptom of gender inequity and a tool to reinforce it. [It] includes sexual violence and reproductive violence.<sup>7</sup>

The International, Impartial and Independent Mechanism to Assist the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic (IIIM) defines gender-based violence as “structural violence directed towards or disproportionately affecting someone because of their gender or sex, including perceived transgression of the gender norms in their community or society”.<sup>8</sup>

- **Sexual violence:** According to the ICC OTP, “[s]exual violence is a form of gender-based violence that involves the commission or attempted commission of sexual acts. An act can be ‘sexual’ even without physical contact, such as psychological violence that arises from threats of rape or genital mutilation. An act may be sexual regardless of whether sexual gratification was part of the intent or result. Finally, sexual violence can be committed by and against any person regardless of sex or gender; they may also involve persons of the same sex”.<sup>9</sup> The OTP goes on to state that “there is no single understanding of the term ‘sexual’, nor should one be imposed. Rather, in many ways, the sexual nature and gravity of an act is determined by myriad factors such as age, gender, sex characteristics, culture, religion, historical

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<sup>5</sup> OTP Policy on Gender-Based Crimes, ¶ 42.

<sup>6</sup> Ibid, ¶ 27.

<sup>7</sup> Ibid, ¶¶ 28-29.

<sup>8</sup> IIIM, *Gender Strategy and Implementation Plan (technical version)*, 30 September 2022, p. 13.

<sup>9</sup> OTP Policy on Gender-Based Crimes, ¶¶ 31-32.

precedents, ethnicity and indigenous status”.<sup>10</sup> It is also critical to take into account survivors’ own perspectives as to what constitutes an “act of a sexual nature”.<sup>11</sup>

- **Sexual and gender-based crimes:** SGBC include both sexual crimes and other gender-based crimes that are not of a sexual nature. In turn, all sexual crimes are gender-based crimes. SGBC refer to acts of GBV/conducts that international law requires States to criminalize, including crimes under international law, while sexual and gender-based violence (SGBV) relates to a broader phenomenon and is not limited to conduct that gives rise to criminal liability. The term SGBC emphasizes the sexual nature of certain crimes – notwithstanding their gender-based character.
- **Gender perspective:** The ICC refers to gender perspective as “the understanding of differences in status, power, roles, and needs between men and women, including/and LGBTQI+ [lesbian, gay, bisexual, transgender, queer and intersex] persons, and how gender inequality and discrimination on the basis of sex, gender identity or sexual orientation may impact people’s opportunities, interactions, and experiences in a given context. This understanding includes an awareness of how gender-related norms can vary within and across contexts”.<sup>12</sup> The IIM gender strategy also considers how these differences impact individuals with diverse sexual orientations or gender identities.<sup>13</sup>
- **Intersectionality:** The ICC OTP describes intersectionality as “the way distinct forms of discrimination can combine and compound to result in consequences that differ from those resulting from any one of the individual forms of discrimination. An intersectional analysis, therefore, surfaces the way multiple systems or structures of oppression can accumulate to produce unique outcomes for those individuals or communities bearing multiple, overlapping identities or characteristics. In the context of international criminal law, intersectionality describes how multiple aspects of a person’s identity (for example, gender, sex characteristics, sexual orientation, religion, age, ethnicity or indigenous status) can render them particularly vulnerable to specific or overlapping systems of discrimination, oppression or violence”.<sup>14</sup>

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<sup>10</sup> Ibid, ¶ 33.

<sup>11</sup> Ibid, ¶ 33.

<sup>12</sup> Ibid, ¶ 20.

<sup>13</sup> IIM, *Gender Strategy and Implementation Plan (technical version)*, 30 September 2022, p. 9.

<sup>14</sup> OTP Policy on Gender-Based Crimes, ¶¶ 40-41. See also, IIM, *Gender Strategy and Implementation Plan (technical version)*, 30 September 2022, p. 43.

- **LGBTQI+:** According to the ICC OTP, “[t]he acronym LGBTQI+ refers to a diversity of sexual orientations, gender identities and expressions, and sex characteristics. Specifically, it stands for: lesbian, gay, bisexual, transgender, queer and intersex persons, with a plus sign to indicate the non-exhaustive nature of this list”.<sup>15</sup>

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<sup>15</sup> OTP Policy on Gender-Based Crimes, ¶ 38.

## 1. Introduction

This international Commission of Jurists (ICJ) report aims to be a practical tool to advise Libyan criminal justice actors and the legislature on the investigation, prosecution, trial, adjudication and punishment of sexual and gender-based crimes (SGBC). Based on international criminal law, international human rights law, international standards and current best practice, the analysis and recommendations developed in this report have been specifically tailored to the Libyan context.

In section one, below, this report examines the patterns of sexual and gender-based violence (SGBV) in Libya and the closing of the civil society space in the country for those working to combat such violence.

In section two, the report outlines States' duty to investigate, prosecute, try, adjudicate and punish SGBC under international law.

Then, in section three, this report examines the compliance with international law, including international human rights law and standards, and with current best practice of the criminalization under Libyan criminal law of:

- (i) a number of sexual and gender-based crimes;
- (ii) consensual sexual conduct in certain circumstances, including in such contexts as sex outside marriage and sex work; and
- (iii) abortion.

As discussed in this report, the mere existence of the latter two categories of domestic offences has a knock-on effect on the investigation, prosecution, trial, adjudication and punishment of SGBC in the country. The criminal proscription of abortion and, in certain circumstances, of consensual sexual conduct, has a harmful impact on victims/survivors of SGBC, mainly because it hinders their access to the criminal justice system and to effective remedies.<sup>16</sup>

Finally, in section four, the report considers the compliance of procedural laws and practices relating to SGBC in Libya with international law.

### 1.1. Patterns of sexual and gender-based violence in Libya

The United Nations (UN) Human Rights Council (HRC)-mandated Independent Fact-Finding Mission on Libya (FFM), which operated from June 2020 to March 2023, found that, in Libya,

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<sup>16</sup> See below, sections 4.1.2.2.3 Prosecution of victims/survivors and 4.1.2.2.4 Retaliation.

sexual violence was prevalent in the context of deprivation of liberty,<sup>17</sup> particularly during interrogations.<sup>18</sup> Detained displaced women, female migrants, asylum-seekers or refugees have been forced into prostitution or to have sex in exchange for food.<sup>19</sup> Given the widespread and systematic commission sexual violence, rape and sexual slavery against male and female migrants, asylum seekers and refugees, the FFM considered that such conducts amounted to crimes against humanity.<sup>20</sup>

Sexual violence is used by the Libyan authorities and non-State actors to silence journalists, detainees, migrants, women,<sup>21</sup> or anyone “perceived to speak against their interests [i.e., those of the authorities or non-State actors] or appearing to challenge social norms or acceptable gender roles”.<sup>22</sup> The Penal Code, which is deeply flawed,<sup>23</sup> is “weaponized by powerful individuals ... to punish women, while also forcing women and girls into exploitative and coercive relationships with them”.<sup>24</sup>

Other forms of gender-based violence against women and girls are also rife in Libya. Following her December 2022 visit to Libya, the UN Special Rapporteur on violence against women and girls, its causes and consequences (“Special Rapporteur on violence against women and girls”) declared that she was “disturbed by the widespread, systematic and grave levels of violence faced by Libyan women and girls”.<sup>25</sup> She noted that feminicides and physical, economic and political violence against women and girls by family members, institutions and individuals affiliated with the authorities and armed groups were on the rise.<sup>26</sup> In the same vein, regarding political violence, the FFM noted with concern that attacks against prominent women activists and politicians, including the enforced disappearance of

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<sup>17</sup> In the context of detention, the FFM noted the following forms of sexual violence: sexual slavery, rape, sexualized torture (including electricity being applied to genital areas), cutting off genitals, coercion into engaging in sexual abuse against other inmates, intrusive body searches amounting to rape, threats of rape and other sexual violence, and forced nudity. HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/48/83, 29 November 2021, ¶ 46; HRC, *Detailed findings on the situation in Tarhuna*, UN Doc. A/HRC/50/CRP.3, 1 July 2022, ¶ 109; HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/50/63, 27 June 2022, ¶ 54; HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/52/83, 3 March 2023, ¶ 52.

<sup>18</sup> HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/48/83, ¶ 46.

<sup>19</sup> UN Security Council (UNSC), *Conflict-related sexual violence: Report of the Secretary-General*, UN Doc. S/2024/292, 4 April 2024, ¶ 45-46.

<sup>20</sup> HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/50/63, ¶ 75; HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/52/83, ¶¶ 2 and 41.

<sup>21</sup> UNSC, *Conflict-related sexual violence: Report of the Secretary-General*, UN Doc. S/2024/292, ¶ 44.

<sup>22</sup> HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/48/83, ¶ 52.

<sup>23</sup> See below, section 3.1 Offences under the Libyan Penal Code.

<sup>24</sup> HRC, *Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem* (“Report of the Special Rapporteur on violence against women and girls”), UN Doc. A/HRC/53/36/Add.2, 4 May 2023, ¶ 30; Interviews by the ICJ of Libyan stakeholders, May-October 2024.

<sup>25</sup> Report of the Special Rapporteur on violence against women and girls, ¶ 39.

<sup>26</sup> Ibid.

Sihem Sergiwa<sup>27</sup> and the killings of Fariha El Berkawi,<sup>28</sup> Hanan Al Barassi,<sup>29</sup> Intissar Al Hasairi<sup>30</sup> and Salwa Bugaighis,<sup>31</sup> “sent out shockwaves among activists and aspiring [political] candidates [and] had a chilling effect on women wanting to engage in public life”.<sup>32</sup> From April 2023 to March 2024, women running as candidates for municipal elections, especially in the East of the country, experienced “severe harassment”, which forced them to flee to other locations within Libya.<sup>33</sup>

Violence against women and girls, including political violence, is also manifesting as online gender-based violence.<sup>34</sup> As noted by the UN Special Rapporteur on violence against women and girls, online violence is used as a “means of intimidating women and girls and preventing them from freely expressing their views, ... to name and shame victims of violence within the community or to initiate defamatory smear campaigns”.<sup>35</sup> One victim/survivor of such campaigns is Noura Eljerbi, a journalist and women’s human rights advocate, who is the target of online abuse and violent threats and is sexually harassed and stalked when she posts online or makes public commentaries. She recently filed a submission to the Committee on the Elimination of Discrimination against Women (“CEDAW Committee”).<sup>36</sup> Such attacks pressure many women and girls into leaving online platforms or into self-censorship.<sup>37</sup>

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<sup>27</sup> Uniformed men, allegedly from the Libyan National Army or affiliated armed groups, abducted Sihem Sergiwa, a member of the House of Representatives, on 17 July 2019. Her fate and whereabouts remain unknown. HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/48/83, ¶ 64.

<sup>28</sup> Fariha El Berkawi, a politician, was killed in Derna, in the East of the country, in 2014. HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/49/4, 23 March 2022, ¶ 78.

<sup>29</sup> Hanan Al Barassi, a lawyer, was gunned down in broad daylight in Benghazi by two unidentified masked men on 10 November 2020. HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/48/83, ¶ 65.

<sup>30</sup> Intissar Al Hasairi, an activist and co-founder of the Tanweer movement, a civil society organization working to spread the principles of human rights, equality and non-discrimination, was found dead in Tripoli in 2014. HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/49/4, ¶ 78.

<sup>31</sup> Salwa Bugaighis, a lawyer, was killed in her house in Benghazi in 2014. *Ibid.*, ¶ 78.

<sup>32</sup> *Ibid.*, ¶ 79.

<sup>33</sup> HRC, *Technical assistance and capacity-building to improve human rights in Libya*, UN Doc. A/HRC/56/70, 3 June 2024, ¶ 42.

<sup>34</sup> Online gender-based violence against women and girls is any act of gender-based violence that is committed, assisted or aggravated in part or fully by the use of information and communication technology, such as mobile phones and smartphones, the internet, social media platforms or email, against a woman because she is a woman, or that affects women disproportionately and, as such, is a violation of their human rights. ICJ, *OGBV Law Checklist*, 2023.

<sup>35</sup> Report of the Special Rapporteur on violence against women and girls, ¶ 42. See also, UNSC, *Conflict-related sexual violence: Report of the Secretary-General*, UN Doc. S/2024/292, ¶ 44.

<sup>36</sup> Lawyers for Justice in Libya, *Libya has failed to comply with its CEDAW obligations in a case of severe online violence against Noura Eljerbi*, 2 July 2024.

<sup>37</sup> Report of the Special Rapporteur on violence against women and girls, ¶ 42. See also, Lawyers for Justice in Libya, *‘We will not be silenced:’ Online Violence Against Women in Libya*, March 2021.

Other forms of gender inequality and discriminatory practices towards women and girls, short of physical violence, include, among many other examples:

- The male guardianship system, which obliges women to (1) seek approval from their male guardian (father, husband, brother or son) to make decisions, including concerning marriage<sup>38</sup> and travel,<sup>39</sup> (2) to leave their home only if accompanied by a male chaperone;<sup>40</sup>
- The mandatory wearing of the *hijab* – a garment worn by some Muslim women to cover their hair – for women;<sup>41</sup>
- The inability of Libyan women married to a foreigner to (1) pass on their Libyan nationality to their children,<sup>42</sup> (2) to run for political office or to (3) keep their own national identity number,<sup>43</sup> therefore complicating the renewal of their passport as such renewal requires a national identity number – normally their Libyan husband’s identity number – that women married to a foreigner do not have;
- The inheritance system, which provides for a daughter to receive half the amount that a son would receive;<sup>44</sup>
- The legality of polygamy in domestic law.<sup>45</sup>

## 1.2. Closing of the civic space around sexual and gender-based violence in Libya

Despite the country having acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1989,<sup>46</sup> the Libyan authorities are not

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<sup>38</sup> Law No. 10 of 1984 regarding Provisions Relating to Marriage, Divorce and their Effects, art. 9, which provides for the male guardian’s approval to marry.

<sup>39</sup> In 2023, the western Internal Security Agency imposed on women travelling alone to fill in a questionnaire justifying why they were not accompanied by a male chaperon. Although the questionnaire was scrapped, airport staff continue to ask women why they are not accompanied. Libya Crimes Watch, *Libya Crimes Watch’s LOI to the Committee on the Elimination of Discrimination against Women (CEDAW) regarding Libya*, 26 April 2024, p. 4.

<sup>40</sup> ICJ, *Libya: The “Morality” Police Must Not Be Re-Established*, 13 November 2024.

<sup>41</sup> Ibid.

<sup>42</sup> Law No. 24 of 2010 on provisions of Libyan Nationality, art. 3, translation by the Geneva Centre for Security Sector Governance (DCAF), available at <https://security-legislation.ly/latest-laws/law-no-24-of-2010-on-provisions-of-libyan-nationality/> (last accessed 3 March 2025).

<sup>43</sup> HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/52/83, ¶ 78.

<sup>44</sup> UNDP, *Libya: Gender Justice and the Law*, 2018, p. 18.

<sup>45</sup> Law No. 10 of 1984 regarding Provisions Relating to Marriage, Divorce and their Effects, art. 13.

<sup>46</sup> Upon accession to the CEDAW, Libya entered a purported reservation to the Convention, namely, that “[Accession] is subject to the general reservation that such accession cannot conflict with the laws on personal status derived from the Islamic *Shariah*”. On 5 July 1995, Libya withdrew its first purported reservation but entered two others relating to article 2 and 16(1)(c) and (d), namely that “Article 2 of the Convention shall be implemented with due regard for the peremptory norms of the Islamic *Shariah* relating to determination of the inheritance portions of the estate of a deceased person, whether female or male. The implementation of article 16, paragraph 1 (c) and (d), of the Convention shall be without prejudice to any of the rights guaranteed

meaningfully committed to addressing violence against women. Libya submitted its last periodic report under the Convention to the CEDAW Committee in December 2008,<sup>47</sup> and has thus far failed to respond to its request for further information.<sup>48</sup>

Women’s human rights defenders and organizations are vilified.<sup>49</sup> In October 2021, when the Minister in charge of Women’s Affairs, with the support of the internationally-recognized Government of National Unity (GNU), signed a memorandum of understanding with UN Women,<sup>50</sup> the backlash against the memorandum – portrayed as against Islam by figures widely perceived as conservatives – resulted in its suspension and the opening of an investigation against the Minister.<sup>51</sup> Since then, it has proven even more difficult for international actors, including the UN, to engage with the Libyan authorities on issues relating to women’s human rights and gender equality.

In October 2023, the Fatwa House, the official institution responsible for issuing religious legal opinions (fatwas),<sup>52</sup> prohibited the use of the term “gender”, purportedly because it contradicts Islamic law.<sup>53</sup> This has prompted women’s human rights defenders to rebrand their work as “women empowerment”, rather than focused on “sexual and gender-based violence” or even on “violence against women” as these terms have become too contentious.<sup>54</sup>

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to women by the Islamic *Shariah*”. The CEDAW Committee expressed concern at the remaining reservation, considering they were contrary to the object and purpose of the Convention. It urged Libya to “take all necessary steps ... for the withdrawal of all of its reservations to the Convention”. UN Treaty Collection, *Convention on the Elimination of All Forms of Discrimination against Women*, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en) (last accessed 3 March 2025); CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Libya*, UN Doc. CEDAW/C/LBY/CO/5, 6 February 2009 ¶¶ 13-14. See also, CEDAW Committee, *List of issues and questions prior to the submission of the combined sixth to ninth periodic reports of Libya*, UN Doc. CEDAW/C/LBY/QPR/6-9, 4 November 2024, ¶ 4.

<sup>47</sup> UN Human Rights Treaty Bodies Database, *Reporting status for Libya*, available at [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=LBY&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=LBY&Lang=EN) (last accessed 3 March 2025).

<sup>48</sup> CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Libya*, 6 February 2009, UN Doc. CEDAW/C/LBY/CO/5, ¶ 50; CEDAW Committee, *Follow-up letter sent to the State party: Libya*, Reference AA/Follow-up/43/Libya/57, 18 February 2014. Libya is now on the CEDAW Committee’s agenda again. Their report is due by 3 November 2025. *Ibid.*

<sup>49</sup> Report of the Special Rapporteur on violence against women and girls, ¶ 23.

<sup>50</sup> The memorandum provided for UN Women to support Libya in devising a National Action Plan in light of the UN Security Council resolution 1325 on Women, Peace and Security.

<sup>51</sup> HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/49/4, ¶ 82.

<sup>52</sup> Law No. 15 of 2012 establishing the Fatwa House.

<sup>53</sup> The Libyan Observer, *Libya's Sharia Research and Studies Council says using term gender is “Haram”*, 3 October 2023. See further, on religious discourses against women’s human rights, Jazia Jibril Shiitir, *The influence of the prevailing value system on laws with a legal philosophy: “A draft law to protect women from violence” as a model (“A draft law to protect women from violence”)*, August 2023, p. 12.

<sup>54</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.



## 2. The duty to investigate, prosecute, try, adjudicate and punish sexual and gender-based crimes under international law

States have an obligation to investigate, prosecute, try, adjudicate and punish certain crimes under international law, such as war crimes, crimes against humanity and other gross human rights violations and egregious human rights abuses.<sup>55</sup> Such obligation arises from international treaties,<sup>56</sup> customary international law<sup>57</sup> and declaratory instruments and other international legal documents,<sup>58</sup> and has been recognized by international and regional human rights courts and bodies,<sup>59</sup> including the African Commission on Human and

<sup>55</sup> States also have a duty to provide victims/survivors with an effective remedy and reparation. For an analysis of the right to an effective remedy and reparation for SGBC amounting to crimes under international law in Libya, see ICJ, *Accountability for Serious Crimes under International Law in Libya: An Assessment of the Criminal Justice System*, 2019, chapter 5.

<sup>56</sup> Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, arts IV, V and VI, Libya acceded to the Genocide Convention on 16 May 1989; International Covenant on Civil and Political Rights (ICCPR), UN Doc. A/RES/2200A(XXI), 16 December 1966, art. 2(3) (as interpreted by the Human Rights Committee (HRC) in *General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant* (“HRC General Comment No. 31”), UN Doc. CCPR/C/21/Rev.1Add.13, 26 May 2004, ¶ 15), Libya acceded to the ICCPR on 15 May 1970; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), UN Doc. A/RES/39/46, 10 December 1984, art. 12, Libya acceded to the CAT on 16 May 1989; Convention on the Rights of Persons with Disabilities (CRPD), UN Doc. A/RES/61/106, 12 December 2006, art. 16(5), Libya ratified the CRPD on 13 February 2018; International Convention on the Protection of all Persons from Enforced Disappearance (ICPPED), 20 December 2006 (arts 3, 10, 12, and 13), to which Libya is not a party; Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, 12 August 1949, art. 146, Libya ratified the Fourth Geneva Convention on 22 May 1956. See also, Rome Statute of the International Criminal Court, Preamble, “Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”.

<sup>57</sup> The International Committee of the Red Cross (ICRC) has also held that this obligation is a customary international law norm applicable in both international and non-international armed conflicts. See ICRC Customary International Humanitarian Law Database, rule 158.

<sup>58</sup> 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; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (“UN Basic Principles”), UN Doc. A/RES/60/147, 21 March 2006, ¶ 4; Minnesota Protocol on the Investigation of Potentially Unlawful Death (“Minnesota Protocol”), UN Doc. HR/PUB/17/4, 2017, ¶ 15; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, UN Doc. E/1989/89, January 1991, principle 9; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. A/RES/55/89, 4 December 2000, principle 2; 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 34.

<sup>59</sup> This obligation has also been extensively upheld in international jurisprudence. See for example, IACtHR, *Trujillo Oroza v. Bolivia*, 27 February 2002, ¶ 99; IACtHR, *Goiburú and others v. Paraguay*, 22 September 2006, ¶ 128; ECtHR, *McCann and others v. United Kingdom*, Application No. 18984/91, 27 September 1995, ¶ 161; ECtHR, *El-Masri v. the former Yugoslav Republic of Macedonia*, Application No. 39630/09, 13 December 2012, ¶ 182; ECtHR, *Marguš v. Croatia*, Application No. 4455/10, 27 May 2014, ¶¶ 125 and 127; ECtHR, *Ceesay v. Austria*, Application No. 72126/14, 16 November 2017, ¶¶ 88-91; Committee against Torture, *O. R., M.M., M.S. v. Argentina*, Communications No. 1/1988, 2/1988 and 3/1988, 23 November 1989, ¶ 7.2; Special Rapporteur

Peoples' Rights (AComHPR)<sup>60</sup> and the UN Human Rights Committee (HRCCom).<sup>61</sup> Investigations should be prompt, effective, thorough, independent, impartial and transparent.<sup>62</sup> The duty to investigate, prosecute, try, adjudicate and punish obliges States to criminalize crimes under international law in their domestic criminal law.<sup>63</sup> The domestic definition of the crime must reflect the core elements that characterize the definition of the crime established by international law.<sup>64</sup>

Provided the underlying acts concerned are committed in certain circumstances and meet certain specific requirements, rape and other forms of sexual assault may constitute crimes against humanity,<sup>65</sup> genocide<sup>66</sup> or war crimes,<sup>67</sup> or crimes under international law, such as torture or other ill-treatment.<sup>68</sup>

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on the promotion of truth, justice, reparation and guarantees of non-recurrence, *Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes*, UN Doc. A/HRC/48/60, 9 July 2021, ¶ 22. See also, ICJ, *Practitioners' Guide No. 7: International Law and the Fight Against Impunity*, 2015, chapters IV and V. For an analysis of international and regional human rights bodies' case law, see ICJ, *Practitioners' Guide No. 2: The Right to a Remedy and Reparation for Gross Human Rights Violations*, revised edition, 2018, pp. 88-96.

<sup>60</sup> AComHPR, *Malawi African Association et al. v. Mauritania*, Communications No. 54/91 et al., 11 May 2000, recommendation 1.

<sup>61</sup> HRCCom, *General Comment No. 36: The right to life*, UN Doc. CCPR/C/GC/36, 30 October 2018, ¶ 27; HRCCom, *General Comment No. 6: Right to Life*, 30 April 1982, ¶ 4; HRCCom, *General Comment No. 20: Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 March 1992, ¶¶ 13-14; HRCCom General Comment No. 31, ¶¶ 15-18. See also, HRCCom, *Bautista de Arellana v. Colombia*, Communication No. 563/1993, 27 October 1995, ¶ 10; and HRCCom, *Coronel et al v. Colombia*, Communication No. 778/1997, 24 October 2002, ¶ 10.

<sup>62</sup> UN Basic Principles, ¶ 3(b); Minnesota Protocol, ¶¶ 22-33; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 9.

<sup>63</sup> See for example, CAT, art. 4; ICCPED, arts 7 and 25; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 1.

<sup>64</sup> IACtHR, *Goiburú and others v. Paraguay*, 22 September 2006, ¶ 92.

<sup>65</sup> See, for example, Rome Statute, art. 7(1)(g).

<sup>66</sup> See, for example, International Criminal Tribunal for Rwanda (ICTR), Trial Chamber, *Prosecutor v. Akayesu*, ICTR96-4-T, Judgment, 2 September 1998, ¶¶ 732-734.

<sup>67</sup> See, for example, Rome Statute, arts 8(2)(b)(xxii) and 8(2)(e)(vi).

<sup>68</sup> On rape: for example, although in the context of determining whether torture as a crime against humanity had been committed, in the *Kunarac et al.* case the International Criminal Tribunal for the former Yugoslavia (ICTY), the Trial Chamber stated: "Generally speaking, some acts establish per se the suffering of those upon whom they were inflicted. Rape is obviously such an act. The Trial Chamber could only conclude that such suffering occurred even without a medical certificate. Sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterisation as an act of torture". ICTY, Appeals Chamber, *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Judgment, 12 June 2002, ¶ 150. See also, ICTY, Trial Chamber, *Prosecutor v. Zejnir Delalić et al.*, IT-96- 21-T, Judgment, 16 November 1998, ¶¶ 495-496; ICTY, Trial Chamber, *Prosecutor v. Stanišić & Župljanin*, IT-08-91-T, Judgment, 27 March 2013, ¶ 48; ICTR, Trial Chamber, *Prosecutor v. Akayesu*, ICTR96-4-T, Judgment, 2 September 1998, ¶ 597. See also, HRCCom, *Casafranca De Gómez v. Peru*, Communication No. 981/2001, 22 July 2003, ¶ 7.1; IAComHR, *Raquel Martín de Mejía v. Peru*, 25 November 2016; ECtHR, *Aydin v. Turkey*, Application No. 23178/94, 25 September

Under international human rights law, States are obligated to criminalize, investigate, prosecute, try, adjudicate and punish rape and other forms of sexual assault precisely because they constitute, in any event, grave human rights violations/abuses,<sup>69</sup> even when they do not amount to crimes against humanity, genocide or war crimes. Under international human rights law and international criminal law, such a duty to criminalize, investigate, prosecute, try, adjudicate and punish also arises, for example, with respect to trafficking in persons,<sup>70</sup> domestic violence<sup>71</sup> and sexual harassment,<sup>72</sup> on the basis of States' obligation to protect women from discrimination,<sup>73</sup> including in respect of gender-based violence perpetrated by private actors.

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1997, ¶ 83; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on Torture*, UN Doc. E/CN.4/1986/15, 19 February 1986, ¶ 119.

On other forms of sexual violence short of rape: ICTY, Trial Chamber, *Prosecutor v. Furundžija*, IT-95-17/1-T, Judgment, 10 December 1998, ¶¶ 264 and 267-268; ICTY, Trial Chamber, *Prosecutor v. Kvočka et al.*, ICTY-98-30/1-T, Judgment, 2 November 2001, ¶ 149; ICTY, Trial Chamber, *Prosecutor v. Brđanin*, IT-99-36-T, Judgment, 1 September 2004, ¶¶ 498 and 500. See also, CEDAW, *General Recommendation No. 19: Violence against Women* ("CEDAW General Recommendation No. 19"), 1992, ¶ 7(b); ECtHR, *Valasinas v. Lithuania*; Application No. 44558/98, 24 July 2001, ¶¶ 117-118; IACtHR, *Miguel Castro-Castro Prison v. Peru*, 25 November 2016, ¶¶ 306 and 308; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on Torture*, UN Doc. E/CN.4/1986/15, ¶ 119; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/79/181, 18 July 2024, ¶ 17 and ff.

<sup>69</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("Maputo Protocol"), 11 July 2003, arts IV(2)(a) and IV(2)(e), Libya ratified the Maputo Protocol on 23 May 2004; AComHPR, *Guidelines on Combating Sexual Violence and its Consequences in Africa*, 5 November 2017, ¶¶ 9 and 39.1. See also, CEDAW General Recommendation No. 19, ¶ 24(a). Under international human rights law, States' duty to investigate crimes is a duty of conduct and means, not a duty of result. ECtHR, *Finucane v. the United Kingdom*, Application No. 29178/95, 1 July 2003, ¶ 69.

<sup>70</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ("Palermo Protocol"), UN Do.c A/RES/55/25, 8 January 2001, art. 5, Libya ratified the Palermo Protocol on 24 September 2004; CEDAW, art. 6; Maputo Protocol, art. IV(2)(g); Convention on the Rights of the Child, 20 November 1989, art. 35; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add. 1, ¶¶ 12-17.

<sup>71</sup> CEDAW Committee, *Fatma Yildirim v. Austria*, UN Doc. CEDAW/C/39/D/6/2005, 1 October 2007, ¶ 12.3(b); CEDAW Committee, *S.T. v. Russian Federation*, UN doc. CEDAW/C/72/D/65/2014, 8 April 2019, ¶ 11.

<sup>72</sup> CEDAW General Recommendation No. 19, ¶ 24(t), regarding sexual harassment in the workplace; Istanbul Convention, art. 40.

<sup>73</sup> On the obligation to adopt appropriate legislative and other measures prohibiting all discrimination against women, see CEDAW, art. 2(b), Libya acceded to the CEDAW on 16 May 1989; Maputo Protocol, art. II(b).

### 3. Criminalization of sexual and gender-based crimes; consensual sexual conduct in certain circumstances; and abortion in Libyan criminal law in light of international law and standards

Substantial reforms are required to align Libya’s Penal Code with international criminal law, international human rights law, international standards and current best practice. Penal Code reforms would have to form part of a broader legislative reform process aimed at achieving gender justice and equality in Libya.

#### **The notion of consent in the context of sexual conduct and SGBC in international law**

At a minimum, consent sets the boundary between justifiable and unjustifiable State interference in certain conduct and contexts. Ascertaining the presence or absence of consent is a matter of evidence and factual investigation, with due regard to the strictures of the law and one’s capacity to consent. In the context of sexual conduct, the absence of consent may give rise to criminal liability for the conduct concerned. Consent distinguishes sexual assault offences, including rape, from consensual sexual conduct free of criminal liability. Consent, this core material element of some SGBC, deserves an attentive analysis.<sup>74</sup>

Consent must be given voluntarily, as a result of the person’s free will, and should be “assessed in the context of the surrounding circumstances”,<sup>75</sup> including coercive circumstances.<sup>76</sup> Violence or force is therefore not necessary to prove SGBC and there should be no presumption that because the crime was not committed using force or

<sup>74</sup> For an extensive analysis of the notion of consent, see ICJ and al., [The notion of consent in the UN Treaty Bodies’ general comments and jurisprudence](#), 2023.

<sup>75</sup> Istanbul Convention, art. 36(2).

<sup>76</sup> CEDAW, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19* (“CEDAW General recommendation No. 35”), UN Doc. CEDAW/C/GC/35, 26 July 2017, ¶ 29(e); CEDAW Committee, *Vertido v. The Philippines*, UN Doc. CEDAW/C/46/D/18/2008, 16 July 2010, ¶ 8.9(b)(ii)(b); ECtHR, *M.C. v. Bulgaria*, Application No. 39272/98, 4 December 2003, ¶ 163; UN Women, *Handbook for Legislation on Violence against Women*, UN Doc. ST/ESA/329, 2012, p. 24. Regarding sexual violence constituting a crime against humanity, genocide or a war crime, the ICC’s jurisprudence clarified that “coercion” does not require physical force but includes “threats, intimidation, extortion, and other forms of duress that prey on fear or desperation”. Several factors may contribute to creating a coercive environment, for instance, “the number of people involved in the commission of the crime, or whether the rape is committed during or immediately following a combat situation, or is committed together with other crimes”. In relation to the existence of a “coercive environment”, it must be proven that the perpetrator’s conduct involved “taking advantage” of such a coercive environment. See, ICC, Pre-Trial Chamber I, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Confirmation of Charges, ICC-01/04-01/07, 30 September 2008, ¶ 440; ICC, Pre-Trial Chamber II, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Article 61(7) (a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ICC-01/05-01/08, 15 June 2009, ¶ 162; ICC, Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/08, 21 March 2016, ¶ 104.

violence, the victim/survivor consented.<sup>77</sup> Moreover, while the victim/survivor’s resistance or attempt to escape could be relevant, they are not required to prove SGBC.<sup>78</sup> The CEDAW Committee has cautioned against judicial stereotyping and misconceptions regarding the existence of “a rational and ‘ideal victim’” who would, for example, resist and/or attempt to escape.<sup>79</sup> Consent may be withdrawn at any stage, rendering non-consensual the continuation of the sexual activity even if it started off as consensual.<sup>80</sup>

### 3.1. Offences under the Libyan Penal Code

A number of international instruments and documents – such as the International Criminal Court (ICC) *Elements of Crimes*;<sup>81</sup> the Convention on Preventing and Combating Violence against Women and Domestic Violence (“Istanbul Convention”);<sup>82</sup> and the UN Special Representative of the Secretary-General on Sexual Violence in Conflict’s *Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-Related Sexual Violence*<sup>83</sup> – extensively outline the elements of crimes pursuant to international law.<sup>84</sup> Therefore, this section will directly examine whether the Libyan legal framework relevant to the investigation, prosecution, trial, adjudication and punishment of SGBC complies with international law, standards and current best practice without rehearsing the elements of such crimes under international law.

In summary, the Libyan Penal Code criminalizes some SGBC but fails to criminalize all conduct that should be criminally proscribed pursuant to international law, and when it does, the specific criminal proscription provisions do not comply with international law and standards. Conversely, the Penal Code criminalizes conduct that should not be criminalized, such as consensual sexual activities in certain circumstances - including in such contexts as sex outside marriage and sex work - as well as abortion. Criminalization, in

<sup>77</sup> CEDAW Committee, *Vertido v. The Philippines*, UN Doc. CEDAW/C/46/D/18/2008, 16 July 2010, ¶ 8.5.

<sup>78</sup> Ibid; CEDAW Committee, *R.P.B. v. The Philippines*, UN Doc. CEDAW/C/57/D/34/2011, 21 February 2014, ¶¶ 8.9-8.10.

<sup>79</sup> CEDAW Committee, *Vertido v. The Philippines*, UN Doc. CEDAW/C/46/D/18/2008, 16 July 2010, ¶ 8.5.

<sup>80</sup> ICJ and al., *The notion of consent in the UN Treaty Bodies’ general comments and jurisprudence*, 2023, p. 24.

<sup>81</sup> *Elements of Crimes of the International Criminal Court*, 3-10 September 2002.

<sup>82</sup> *Convention on Preventing and Combating Violence against Women and Domestic Violence*, 11 May 2011.

<sup>83</sup> UN Special Representative of the Secretary-General on Sexual Violence in Conflict, *Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-Related Sexual Violence*, 18 June 2021.

<sup>84</sup> See also, the following ICJ publications: ICJ, *Practitioners’ Guide No 12: Women’s Access to Justice for Gender-Based Violence*, February 2016; ICJ, *Strengthening accountability through the Specialized Criminal Chambers in Tunisia: Principles and Recommended Practices on the investigation, prosecution and adjudication of sexual and gender-based crimes*, 2021; ICJ, *Sexual and Gender-based Violence Offences in Lebanon: Principles and Recommended Practices on Evidence*, 2021; ICJ, *Accountability for Sexual and Gender-Based Violence in Lebanon: Guidance and Recommendations for Criminal Justice Actors*, 2020.

those circumstances, has a harmful impact on victims/survivors of SGBC, mainly because it hinders their access to the criminal justice system and to effective remedies.

### 3.1.1. Sexual and gender-based crimes

#### 3.1.1.1. “Sexual intercourse by force”

Article 407, paragraph 1, of the Penal Code provides:

Anyone who has sexual intercourse with another by force, threat, or deceit shall be punished with a penalty of imprisonment not exceeding ten years.<sup>85</sup>

The provision fails to comply with international human rights law and standards in a number of respects.

First, while the terminology of article 407, paragraph 1, is gender-neutral, the provision has been interpreted in a manner that is inconsistent with international human rights law and standards.<sup>86</sup> The judiciary conceives penetration as relating only to the “the vaginal or anal penetration by the male reproductive organ”,<sup>87</sup> therefore, excluding oral penetration of a sexual nature, vaginal or anal penetration with any bodily part or an object, and rape committed by women perpetrators.<sup>88</sup>

Secondly, the absence of consent should not be deduced only from the use of force, threat or deceit. As explored above,<sup>89</sup> consent “must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances”,<sup>90</sup> including, but not limited to, coercive circumstances. The victim/survivor’s physical resistance or attempt to escape is not a required element of rape. With respect to this, the CEDAW Committee, for example, has called on States to “ensure that the definition of sexual crimes, including marital and acquaintance/date rape is based on lack of freely given consent, and takes account of coercive circumstances”.<sup>91</sup>

Based on the Penal Code’s approach to consent (i.e., merely limited to the absence of force, threat, or deceit) as featured in article 407, paragraph 1, Libyan judges have considered that

<sup>85</sup> Unofficial translation by DCAF, available at <https://security-legislation.ly/latest-laws/penal-code/> (last accessed 3 March 2025).

<sup>86</sup> Istanbul Convention, art. 36(1)(a). See also, Elements of Crimes of the International Criminal Court (“ICC Elements of Crimes”), arts 7(1)(g)-1, 8(2)(b)(xxii)-1 and 8(2)(e)(vi)-1.

<sup>87</sup> HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/52/83, ¶ 85.

<sup>88</sup> See ICC Elements of Crimes of the International Criminal Court, arts 7(1)(g)-1(1), 8(2)(b)(xxii)-1(1) and 8(2)(e)(vi)-1(1).

<sup>89</sup> See above, The notion of consent in the context of sexual conduct and SGBC in international law, under section 3 Criminalization of sexual and gender-based crimes; consensual sexual conduct in certain circumstances; and abortion in Libyan criminal law in light of international law and standards.

<sup>90</sup> Istanbul Convention, art. 36(2).

<sup>91</sup> CEDAW General recommendation No. 35, ¶ 29(e).

women consented to having sexual relations with a male family member, for example, by the simple act of stepping into his car alone, because their family member had not used force, threat, or deceit to make the victim/survivor get inside the car.<sup>92</sup> In addition to failing to take into account surrounding circumstances, this approach assesses consent at the wrong time and in respect of the wrong act – consenting to getting into someone’s car does not presuppose consent to engaging in sexual relations with them.

Article 407, paragraph 1, has further been interpreted as not proscribing marital rape,<sup>93</sup> effectively legitimizing and allowing husbands to rape their wives, without fear of prosecutions. Under international law, including treaties by which Libya is bound, such as the International Covenant on Civil and Political Rights (ICCPR) and CEDAW, however, marital rape is rape, irrespective of the perpetrator’s relationship with the victim/survivor, and should be criminalized in domestic law as such.<sup>94</sup>

Thirdly, the terminology used is inadequate as the article does not refer to “rape”<sup>95</sup> but “sexual intercourse by force”, nor does it frame the crime as a crime against the physical and mental integrity,<sup>96</sup> and sexual autonomy of the victim/survivor but, rather, it characterizes it as an offence against their “honour” and “morals” since article 407, paragraph 1, as all crimes examined in this section 3.1, is featured in the Penal Code’s section entitled “Offences against Freedom, Honour, and Morals”.<sup>97</sup>

Another problematic aspect of the way in which the Libyan Penal Code “criminalizes” rape is that article 407, paragraph 1, may be rendered moot in light of article 424, which, in turn, provides for the exoneration of the perpetrator of the offence if he marries the victim/survivor and the marriage lasts more than three years. The CEDAW Committee has authoritatively held that such provisions are discriminatory against women and encourage, facilitate, justify and tolerate gender-based violence.<sup>98</sup> It has repeatedly called on States to ensure that criminal proceedings against rapists are not terminated when they marry their victims.<sup>99</sup>

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<sup>92</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.

<sup>93</sup> HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/52/83, ¶ 85.

<sup>94</sup> CEDAW General recommendation No. 35, ¶ 29(e); Istanbul Convention, art. 36(3). See also, UN General Assembly, Resolution 48/104, *Declaration on the Elimination of Violence against Women*, 20 December 1993, art. 2(a).

<sup>95</sup> In Arabic, “اغتصاب”.

<sup>96</sup> CEDAW General recommendation No. 35, ¶ 29(e); CEDAW Committee, *Vertido v. The Philippines*, UN Doc. CEDAW/C/46/D/18/2008, 16 July 2010, ¶ 8.7.

<sup>97</sup> Unofficial translation by DCAF, see above, footnote 85.

<sup>98</sup> CEDAW General recommendation No. 35, ¶ 29(c)(ii).

<sup>99</sup> On Libya, see CEDAW Committee, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Libya*, UN Doc. CEDAW/C/LBY/CO/5, ¶ 24. See also, CEDAW Committee, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Morocco*, UN

In light of the above, the Libyan authorities should:

- **Rename part 3 of book 1 of the Penal Code to reflect that those crimes in this section of the Code concern offences against the person and, in particular, attacks against the personal security, physical and mental integrity and sexual and bodily autonomy of the victims/survivors, rather than their “honour” and “morals”;**
- **Amend article 407, paragraph 1, of the Penal Code to:**
  - **Provide that consent must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances, including coercive circumstances, and not be conceived merely as an absence of use of force, threat, or deceit;**
  - **Expressly provide that the key definitional criterion for sexual offences, including rape, is the lack of/absence of consent, or the fact that consent is vitiated;**
  - **Expressly provide that rape is criminally proscribed irrespective of the gender of the victim/survivor and the perpetrator;**
  - **Expressly provide that rape is criminally proscribed when the perpetrator invades<sup>100</sup> the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body;**
  - **Expressly criminalize marital rape;**
  - **Rename the crime “rape”;**
- **Abrogate article 424 of the Penal Code.**

### 3.1.1.2. “Indecent assault”

Article 408, paragraph 1, of the Penal Code provides:

Anyone who, by any of the means mentioned in the previous article [force, threat, or deceit], commits indecent assault<sup>101</sup> on another shall be punished by imprisonment not exceeding five years.<sup>102</sup>

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Doc. CEDAW/C/MAR/CO/4, 8 April 2008, ¶ 21; CEDAW Committee, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Lebanon*, UN Doc. CEDAW/C/LBN/CO/3, 8 April 2008, ¶ 27.

<sup>100</sup> The concept of “invasion” is intended to be broad enough to be gender-neutral. See ICC Elements of Crimes, arts 7(1)(g)-1(1), 8(2)(b)(xxii)-1(1) and 8(2)(e)(vi)-1(1).

<sup>101</sup> “Indecent assault” could also be translated here by “violating the honour”.

<sup>102</sup> Unofficial translation by DCAF, see above, footnote 85.



As mentioned above,<sup>103</sup> the Penal Code’s approach to consent (i.e., merely limited to the absence of force, threat, or deceit), is inconsistent with international human rights law and standards. Under such law and standards, while force, violence, threat or deceit are indicative of an absence of consent, sexual assault may nonetheless be committed without resorting to those means. Consent should be assessed in the context of the surrounding circumstances.

Additionally, the terminology used in article 408, paragraph 1, is inadequate as it does not frame the crime as a crime against the physical and mental integrity,<sup>104</sup> and sexual autonomy of the victim/survivor but, rather, against decency/honour.

Further, article 408, paragraph 1, does not provide a definition of what constitutes “indecent assault”, which may result in divergent interpretations by judges and thus violates the principle of legality<sup>105</sup> and victims’ right to access to justice and effective remedies. The Istanbul Convention, for example, defines other forms of sexual violence, short of rape, as “other non-consensual acts of a sexual nature with a person”,<sup>106</sup> which may include “causing another person to engage in non-consensual acts of a sexual nature with a third person”.<sup>107</sup>

**In light of the above, the Libyan authorities should:**

- **Amend article 408, paragraph 1, of the Penal Code to:**
  - **Provide that consent must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances, including coercive circumstances, and not as an absence of use of force, threat, or deceit;**

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<sup>103</sup> See above, section 3.1.1.1 “Sexual intercourse by force”. See also, The notion of consent in the context of sexual conduct and SGBC in international law, under 3 Criminalization of: sexual and gender-based crimes; consensual sexual conduct in certain circumstances; and abortion in Libyan criminal law in light of international law and standards.

<sup>104</sup> CEDAW General recommendation No. 35, ¶ 29(e); CEDAW Committee, *Vertido v. The Philippines*, UN Doc. CEDAW/C/46/D/18/2008, 16 July 2010, ¶ 8.7.

<sup>105</sup> The principle of legality (*nullum crimen sine lege*) requires that crimes be classified and described in precise and unambiguous language that narrowly defines the punishable offence with a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from conduct that is not criminally proscribed. Criminal law must not proscribe any act or omission in terms that are vague, imprecise, arbitrary or overly broad. Criminal law must not be construed broadly to an accused person’s disadvantage. In the case of ambiguity, the definition of a particular offence should be interpreted in favour of the accused. ICJ, [8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty](#), March 2023, principle 1; ICJ, [Practitioners’ Guide No. 7: International Law and the Fight Against Impunity](#), 2015, pp. 392-397.

<sup>106</sup> Istanbul Convention, art. 36(b).

<sup>107</sup> *Ibid*, art. 36(c).

- **Define the criminal conduct with exactitude and in a manner that complies with international human rights law and general principles of criminal law;**
- **Rename the crime “sexual assault”.**

### **3.1.1.3. “Incitement of a minor to indecent acts”**

Article 409 of the Penal Code provides:

Anyone who incites a minor under the age of eighteen, whether male or female, to commit indecent acts or assists, enables or facilitates the minor in any way to commit a lewd act or commits the same in front of the minor on a person of the same or opposite sex, shall be punished by detention [not exceeding three years].<sup>108</sup>

The lack of definition of what constitutes an “indecent” or “lewd” act contravenes the principle of legality.<sup>109</sup> In its *General comment No. 13: The rights of the child to freedom from all forms of violence*, when examining what sexual abuse and exploitation of children includes, the UN Committee on the Rights of the Child, for example, referred to the “inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity”.<sup>110</sup>

**In light of the above, the Libyan authorities should:**

- **Amend article 409 of the Penal Code to:**
  - **Define the criminal conduct with exactitude and in a manner that complies with international human rights law and general principles of criminal law;**
  - **Rename the crime “sexual abuse and exploitation of children”;**

### **3.1.1.4. “International trafficking of women”**

Article 418 of the Penal Code provides:

Anyone who compels a woman by force or threat to emigrate to a location abroad with the knowledge that she will practise prostitution there shall be punished by

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<sup>108</sup> Unofficial translation by DCAF, see above, footnote 85, adapted by the ICJ. Detention means the confinement of a person for a period not exceeding three years (Penal Code, art. 22).

It should be noted that because sexual relationships outside marriage (*zina*) are prohibited in Libya, there is no legal age for consenting to sexual relations *per se*. The legal age to get married is 20 years old but people younger than 20 years old can get married with the authorization of the legal guardian and a court. Law No. 10 of 1984 regarding Provisions Relating to Marriage, Divorce and their Effects, art. 6.

<sup>109</sup> For a definition of the principle of legality see above, footnote 105.

<sup>110</sup> Committee on the Rights of the Child, *General comment No. 13: The rights of the child to freedom from all forms of violence*, UN Doc. CRC/C/GC/13, 18 April 2011, ¶ 25(a).

imprisonment for a period not exceeding ten years and a fine between LYD 100 and LYD 500 [about 20 and 100 USD].

The same penalty shall apply to anyone who induces a minor or a mentally defective adult woman by any means to emigrate to a location abroad with the knowledge that she will practise prostitution there.<sup>111</sup>

While women and girls are disproportionately victims/survivors of trafficking in persons, especially for the purpose of sexual exploitation, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (“Palermo Protocol”), which Libya ratified in 2004,<sup>112</sup> recognizes that anyone, irrespective of their gender, may be victim of this crime.

Furthermore, the Palermo Protocol provides that trafficking in persons is characterized as a crime when committed “for the purpose of exploitation”, and that such exploitation includes, “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.<sup>113</sup> Article 418, therefore, does not comply with the Protocol as one of the key elements of the crime of trafficking in persons is that the perpetrator must have intended to exploit the victim/survivor’s “prostitution” (“or other forms of sexual exploitation”), not merely to have had knowledge that the victim/survivor would “practise prostitution”. Additionally, exploitation cannot be limited to the exploitation of “prostitution” but must encompass other forms of sexual exploitation and other forms of exploitation such as forced labour, slavery, servitude or the removal of organs.

As per the Palermo Protocol, the means constitutive of trafficking in persons are not limited to the threat or use of force but include “other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”.<sup>114</sup> When committed against a child (i.e., under 18 years of age), trafficking in persons is characterized even if the recruitment, transportation, transfer, harbouring or receipt of the child does not involve any of the means mentioned above.<sup>115</sup>

Finally, the reference to “mental defectiveness” in article 418 is highly derogatory compared to the terminology internationally agreed upon as per the 2006 Convention on the Rights of

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<sup>111</sup> Unofficial translation by DCAF, see above, footnote 85, adapted by the ICJ.

<sup>112</sup> Libya ratified the Palermo Protocol on 24 September 2004.

<sup>113</sup> Palermo Protocol, art. 3(a). See also, art. 5 providing for the trafficking in persons to be committed intentionally.

<sup>114</sup> Ibid, art. 3(a).

<sup>115</sup> Ibid, arts 3(c) and (d).

Persons with Disabilities and the Committee on the Rights of Persons with Disabilities’ practice which refers to persons with psychosocial or intellectual disabilities.<sup>116</sup>

**In light of the above, the Libyan authorities should:**

- **Amend article 418 of the Penal Code to:**
  - **Make it gender-neutral;**
  - **Provide that trafficking in persons is characterized as a crime when intentionally committed for the purpose of exploitation - including the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs -, and whether or not the exploitation actually takes place;**
  - **Provide that the crime is characterized when committed by coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or giving or receiving payments or benefits to achieve the consent of a person having control over another person; except when committed against a child as the conduct does not need to involve any of the means set above; and**
  - **Ensure that there is no conflation between sex work and trafficking for sexual exploitation;**
  - **Change “mentally defective adult” to more appropriate language such as “adult with psychosocial or intellectual disability”.**

#### **3.1.1.5. “Words, acts, or gestures that violate a woman’s decency”**

Article 420 bis of the Penal Code provides:

Anyone who subjects a woman to words, acts, or gestures that violate her decency in a public street or accessible location, and anyone who incites passers-by to indecency by gestures, words, or acts shall be punished by detention for a period of no less than one month and not exceeding six months.<sup>117</sup>

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<sup>116</sup> Article 1 of the Convention on the Rights of Persons with Disabilities refers to “mental or intellectual disabilities”, but the Committee on the Rights of Persons with Disabilities has since then preferred the terminology of “psychosocial or intellectual disabilities”. Convention on the Rights of Persons with Disabilities, 12 December 2006, art. 1, Libya ratified the CRPD on 13 February 2018; Committee on the Rights of Persons with Disabilities, *General comment No. 3 (2016) on women and girls with Disabilities*, UN Doc. CRPD/C/GC/3, 25 November 2016, ¶ 5.

<sup>117</sup> Unofficial translation by DCAF, see above, footnote 85.

Again, the absence of a precise and unambiguous definition of what constitutes “words, acts, or gestures that violate decency” contravenes the principle of legality.<sup>118</sup> The Istanbul Convention, for example, defines sexual harassment as “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”.<sup>119</sup>

Although women are disproportionately victims of sexual harassment, men and non-binary people can also fall victims of this crime. However, as article 420 bis is not gender-neutral and, as a result, the proscribed conduct gives rise to criminal liability only when it is committed against women.

**In light of the above, the Libyan authorities should:**

- **Amend article 420 bis of the Penal Code to:**
  - **Make it gender-neutral;**
  - **Define the criminal conduct with exactitude and in a manner that complies with international human rights law and general principles of criminal law;**
  - **Rename the crime “sexual harassment”.**

#### **3.1.1.6. Failure to criminalize domestic violence**

Libyan criminal law does not criminalize domestic violence, which leaves victims/survivors without any effective legal protection. Although Law No. 10 of 1984 regarding Provisions Relating to Marriage, Divorce and their Effects asserts that a wife has a right to be free from harm at the hands of her husband, whether physical or moral,<sup>120</sup> such right is not reflected in the Penal Code. As seen above,<sup>121</sup> marital rape is not criminalized, and article 375 of the Libyan Penal Code mitigates the penalties of so-called honour crimes.

Pursuant to article 372 of the Penal Code, committing homicide against a descendant, a spouse or a sister is considered an aggravating circumstance, punishable by life imprisonment. However, article 375 of the Penal Code states that:

Anyone who surprises his wife, daughter, or sister in the act of sexual intercourse outside wedlock or in any unlawful sexual intercourse and thereupon kills her, her

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<sup>118</sup> For a definition of the principle of legality see above, footnote 105.

<sup>119</sup> Istanbul Convention, art. 40.

<sup>120</sup> Law No. 10 of 1984 regarding Provisions Relating to Marriage, Divorce and their Effects, art. 17(3).

<sup>121</sup> See above, section 3.1.1.1 “Sexual intercourse by force”.

[sexual] partner, or both together, in response to the attack upon his honour or that of his family, shall be punished by detention [not exceeding three years].<sup>122</sup>

The penalty is therefore reduced if the homicide was committed purportedly to protect the perpetrator's or his family's "honour".

Article 375 further provides that assault causing "gross harm" or "serious harm", when committed after "surpris[ing ones'] wife, daughter, or sister in the act of sexual intercourse outside wedlock or in any unlawful sexual intercourse", is only punished by detention not exceeding two years. In comparison, article 380 of the Penal Code provides that causing "serious harm", in any other context, is punished by imprisonment not exceeding five years. Moreover, article 375 provides that, in the above-mentioned circumstances, "[m]erely beating or causing simple harm", does not incur any punishment.

Article 375 of the Penal Code and the absence of provisions criminalizing domestic violence violate international human rights law and standards, which require the criminalization of domestic violence,<sup>123</sup> and pursuant to which "honour" may not be regarded as a purported justification for any acts of violence against women, including domestic violence.<sup>124</sup>

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has found that domestic violence amounts to torture or ill-treatment whenever the State acquiesces in the crime by failing to protect victims/survivors, for example when it "legitimise[s] domestic violence by, for instance, allowing husbands to "chastize" [sic] their wives or failing to criminalize marital rape".<sup>125</sup>

#### **In light of the above, the Libyan authorities should:**

- **Abrogate article 375 of the Penal Code;**
- **Criminalize domestic violence in line with international human rights law and standards.**

<sup>122</sup> Unofficial translation by DCAF, see above, footnote 85, adapted by the ICJ. Detention means the confinement of a person for a period not exceeding three years (Penal Code, art. 22).

<sup>123</sup> CEDAW Committee, *Fatma Yildirim v. Austria*, UN Doc. CEDAW/C/39/D/6/2005, 1 October 2007, ¶ 12.3(b); CEDAW Committee, *S.T. v. Russian Federation*, UN doc. CEDAW/C/72/D/65/2014, 8 April 2019, ¶ 11. See also, CEDAW General recommendation No. 35, ¶ 29(a), which recommends that States Parties to the Convention ensure that "all forms of gender-based violence against women in all spheres, which amount to a violation of their physical, sexual or psychological integrity, are criminalized".

<sup>124</sup> Istanbul Convention, art. 42; CEDAW General recommendation No. 35, ¶ 29(c)(ii).

<sup>125</sup> HRC, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016, ¶ 55; HRC, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/13/39/Add.5, 5 February 2010, ¶¶ 195-196 and 258. See also, CEDAW General recommendation No. 35, ¶ 16.

### 3.1.2. Offences detrimentally affecting the rights of victims/survivors of sexual and gender-based crimes

#### 3.1.2.1. Criminalization of “prostitution”

Article 417 bis (a) of the Penal Code provides:

Any woman who makes prostitution her means of livelihood and gain shall be punished by detention for a period of no less than one year.

Anyone who opens or manages a house of indecency or house of prostitution or assists in any manner in the management thereof shall be punished for a period of no less than one year and a fine or no less than LYD 100 [around 20 USD] and not exceeding LYD 300 [around 60 USD], and the house shall be sentenced to be closed and the goods found therein confiscated.<sup>126</sup>

Additionally, article 417 bis (b) of the Penal Code criminalizes renting, “providing in any capacity a house or location”, owning or managing any location where “indecency” or “prostitution” is practiced,<sup>127</sup> and article 417 criminalizes living on the earnings of “prostitution”.<sup>128</sup>

Based on general principles of criminal law and international human rights law and standards,<sup>129</sup> consensual sexual conduct, including sex work, should not be criminalized.<sup>130</sup> Thus, the exchange of sexual services between consenting adults for money, goods or services and communication with another about, advertising an offer for, or sharing premises with another for the purpose of exchanging sexual services between consenting adults for money, goods or services, whether in a public or private place, may not be criminalized, absent coercion, force, abuse of authority or fraud.

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<sup>126</sup> Art. 417 bis (a) provides a definition of a house of prostitution and indecency: “any location normally used for the practice of prostitution or indecent acts by others”. Unofficial translation by DCAF, see above, footnote 85.

<sup>127</sup> Penal Code, art. 417 bis (b), unofficial translation by DCAF, see above, footnote 85.

<sup>128</sup> Penal Code, art. 417.

<sup>129</sup> See, e.g., ICJ, [8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty](#), March 2023.

<sup>130</sup> Article 6 of the CEDAW provides that States Parties shall take all appropriate measures to suppress all forms of “exploitation of prostitution”, as opposed to “prostitution” itself, highlighting that the latter may not be criminalized. The CEDAW Committee’s General Recommendation 33 recognizes that the criminalization of prostitution is a barrier to women’s access to justice: see, CEDAW *General Recommendation No 33, “General recommendation on women’s access to justice”* (“CEDAW General Recommendation No. 33”), UN Doc. CEDAW/C/GC/33, 2015, ¶ 9. See also, ICJ, [Practitioners’ Guide No 12: Women’s Access to Justice for Gender-Based Violence](#), February 2016, pp. 46-48; ICJ, [8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty](#), March 2023, principle 17.

With respect to third parties in the context of sex work, based on general principles of criminal law and international human rights law and standards, criminal law should not proscribe their conduct, directly or indirectly, for receipt of a financial or material benefit, under fair conditions – without coercion, force, abuse of authority or fraud – facilitate, manage, organize, communicate with another, advertise, provide information about, provide or rent premises for the purpose of the exchange of sexual services between consenting adults for money, goods or services.<sup>131</sup>

In the context of the investigation, prosecution, trial, adjudication and punishment of SGBC, the criminalization of “prostitution” harms sex workers who are victims/survivors and/or witnesses of SGBC, as well as other victims/survivors and/or witnesses of SGBC who are wrongfully believed to engage in sex work since, as examined below,<sup>132</sup> the criminalization of sex work discourages them from reporting and filing complaints about the SGBC committed against them as they, in turn, fear exposing themselves to prosecution on “prostitution” charges.

**In light of the above, the Libyan authorities should:**

- **Abrogate articles 417, 417 bis (a) and (b) of the Penal Code.**

#### **3.1.2.2. Criminalization of *zina* (consensual sexual relations outside wedlock)**

Articles 407, paragraph 4, and 408, paragraph 4, of the Penal Code, as amended by Law No. 70 of 1973 establishing the Hudud Punishment for *Zina*, concern consensual sexual conduct between people who are not married to one another. They provide, respectively:

Anyone who engages in sexual intercourse with another person, with their consent, is subject to a prison term not exceeding five years.

Anyone who violates the honour of another person with their consent shall be liable to imprisonment along with the partner involved.<sup>133</sup>

Although articles 407, paragraph 4, and 408, paragraph 4, do not specify in themselves that they apply to consensual sexual relations outside wedlock, they should be read in conjunction with all of Law No. 70 of 1973, which incorporated them in the Penal Code. As such, article 1 of Law No. 70 of 1973 provides:

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<sup>131</sup> ICJ, [8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty](#), March 2023, principle 17.

<sup>132</sup> See below, sections 4.1.2.2.3 Prosecution of victims/survivors and 4.1.2.2.4 Retaliation.

<sup>133</sup> Unofficial translation by DCAF, see above, footnote 85, adapted by the ICJ.



*Zina* is defined as sexual relations between a man and a woman outside of a lawful marriage.<sup>134</sup>

In addition to the penalty provided in the Penal Code, individuals convicted of *zina* can receive the following penalties, although they are rarely enforced:<sup>135</sup>

- One hundred lashes;<sup>136</sup>
- When the perpetrator is a child (i.e., under 18 years of age), aged between 7 and 15: “guidance, awareness programs, and reprimand”, in addition to beating “in a manner suitable to the offender’s age”,<sup>137</sup> if they are older than 10 years old;
- When the perpetrator is a child older than 10 years old who reoffends: beating “in a manner suitable to the offender’s age” and being sent to “a legal reformatory”.<sup>138</sup>

Since the law itself prohibits and severely punishes *zina*, certain individuals may feel empowered to attack women as well as lesbian, gay, bisexual, transgender, queer, intersex and other (LGBTIQ+) individuals who are perceived as not respecting the “sanctity of marriage”.<sup>139</sup>

The criminalization of *zina* is a grave human rights violation, whether enforced in the context of pre-marital heterosexual consensual sexual relations and adultery or against consensual same-sex sexual relations.

### 3.1.2.2.1. Pre-marital heterosexual consensual sexual relations and adultery

The criminalization of *zina* violates the right not to be subjected to arbitrary or unlawful interference with one’s privacy, as provided by article 17 of the ICCPR. Indeed, in 1994, the Human Rights Committee, in the *Nicholas Toonen v. Australia* case, found that the criminalization of consensual sexual relationships between adults, in that case between same-sex individuals, violated article 17.<sup>140</sup> The criminalization of consensual sexual conduct violates a broad range of human rights, especially the rights to: freedom from discrimination, equality before the law and equal protection of the law without

<sup>134</sup> Unofficial translation by the ICJ.

<sup>135</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.

<sup>136</sup> Law No. 70 of 1973 establishing the Hudud Punishment for *Zina*, art. 2.

<sup>137</sup> *Ibid*, art. 3, unofficial translation by the ICJ.

<sup>138</sup> *Ibid*.

<sup>139</sup> The FFM noted that it “heard first-hand accounts of people being targeted for arrest and abuse, including sexual violence, solely on the basis of their sexual orientation or gender identity. Some armed groups with ostensible Salafist leaning views, including those affiliated to the State, seek to enforce their own interpretation of religious or societal norms and act with the stated objective to cleanse Libyan of “deviant” behaviour”. HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/49/4, ¶ 42.

<sup>140</sup> HRCCom, *Nicholas Toonen v. Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992, 31 March 1994, ¶¶ 8.2-8.6.

discrimination; liberty and security of person; private and family life; and freedom of expression, among others.<sup>141</sup>

Articles 407, paragraph 4, and 408, paragraph 4, further violate the right to sexual and reproductive health as recognized by article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>142</sup>

Finally, based on general principles of criminal law and international human rights law and standards, including the principle that criminal law may only proscribe conduct that inflicts or threatens substantial harm to the fundamental rights and freedoms of others or to certain fundamental public interests,<sup>143</sup> consensual sexual conduct should not be criminalized.<sup>144</sup>

In practice, as women are prosecuted for *zina* more than men,<sup>145</sup> the implementation of articles 407, paragraph 4, and 408, paragraph 4, additionally violates the non-discrimination prohibition in article 2(1), as well as article 3, on the right to equality between women and

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<sup>141</sup> ICJ, [8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty](#), March 2023, principle 16, “Consensual sexual conduct, irrespective of the type of sexual activity, the sex/gender, sexual orientation, gender identity or gender expression of the people involved or their marital status, may not be criminalized in any circumstances. Consensual same-sex, as well as consensual different-sex sexual relations, or consensual sexual relations with or between trans, non-binary and other gender-diverse people, or outside marriage – whether pre-marital or extramarital – may, therefore, never be criminalized.

With respect to the enforcement of criminal law, any prescribed minimum age of consent to sex must be applied in a non-discriminatory manner. Enforcement may not be linked to the sex/gender of participants or age of consent to marriage. Moreover, sexual conduct involving persons below the domestically prescribed minimum age of consent to sex may be consensual in fact, if not in law. In this context, the enforcement of criminal law should reflect the rights and capacity of persons under 18 years of age to make decisions about engaging in consensual sexual conduct and their right to be heard in matters concerning them. Pursuant to their evolving capacities and progressive autonomy, persons under 18 years of age should participate in decisions affecting them, with due regard to their age, maturity and best interests, and with specific attention to non-discrimination guarantees”.

<sup>142</sup> As such, the Committee on Economic, Social and Cultural Rights, in its 2016 *General comment No. 22 on the right to sexual and reproductive health*, noted that such criminalization was “a clear violation of human rights” and contravened States’ obligation to respect the right of everyone to sexual and reproductive health. Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 22 (2016): The right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)* (“CESCR General comment No. 22”), UN Doc. E/C.12/GC/22, 2 May 2016, ¶¶ 23 and 57. Libya acceded to the ICESCR on 15 May 1970.

<sup>143</sup> See, e.g., ICJ, [8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty](#), March 2023, principle. 2. See also, principles 7 (Human rights restrictions on criminal law), 8 (Legitimate exercise of human rights), 9 (Criminal law and prohibited discrimination), and 10 (Criminal liability may not be based on discriminatory grounds).

<sup>144</sup> *Ibid*, principle 16.

<sup>145</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.

men, and article 26 of the ICCPR, on the right to equality and non-discrimination, in so far as women are more targeted.<sup>146</sup>

### 3.1.2.2.2. Consensual same-sex sexual relations

Since same-sex marriage is not legal in Libya,<sup>147</sup> and consensual sexual relations outside marriage are criminalized, consensual same-sex sexual conduct is *de facto* criminalized, and the Libyan authorities use articles 407, paragraph 4, and 408, paragraph 4, to prosecute and punish consensual same-sex sexual relations. As such, articles 407, paragraph 4, and 408, paragraph 4, also contravene the right to equality and non-discrimination as protected under articles 2(1) and 26 of the ICCPR.<sup>148</sup>

As further examined below,<sup>149</sup> as far as the investigation, prosecution, trial, adjudication and punishment of SGBC are concerned, the criminalization of *zina* deters victims/survivors of SGBC, especially women and LGBTIQ+ persons, from reporting and filing complaints about the SGBC they have suffered as they fear that in doing so they would expose themselves to prosecution for *zina*.

**In light of the above, the Libyan authorities should:**

- **Amend article 407 of the Penal Code to:**
  - **Abrogate the fourth paragraph criminalizing *zina*;**
- **Amend article 408 of the Penal Code to:**
  - **Abrogate the fourth paragraph criminalizing *zina*;**
- **Abrogate Law No. 70 of 1973 establishing the Hudud Punishment for *Zina*.**

Criminalization of abortion

Articles 391 and 392 of the Penal Code provide, respectively:

Anyone who causes the abortion of a pregnant woman with her consent shall be punished by detention for a period of no less than six months, and the same penalty shall apply to the woman who consented to the abortion.

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<sup>146</sup> On adultery specifically, see, Working Group on the issue of discrimination against women in law and in practice, *Adultery as a criminal offence violates women's human rights*, October 2012.

<sup>147</sup> Law No. 10 of 1984 regarding Provisions Relating to Marriage, Divorce and their Effects, art. 2.

<sup>148</sup> The HRCOM recognized that the protection against discrimination included discrimination based on sexual orientation. HRCOM, *Nicholas Toonen v. Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992, 31 March 1994, ¶ 8.7. See further, ICJ, [Practitioners Guide No. 4: Sexual Orientation, Gender Identity and International Human Rights Law](#), 2009, pp. 29 and ff.

<sup>149</sup> See below, section 4.1.2.2.3 Prosecution of victims/survivors.

A pregnant woman who induces her own abortion shall be punished by detention for a period of no less than six months.<sup>150</sup>

According to Islamic law and jurisprudence applied in Libya, an abortion is tolerated if the mother's life is at stake.

The Committee on Economic, Social and Cultural Rights, in its 2016 *General comment No. 22 on the right to sexual and reproductive health*, found that the criminalization of abortion violated States' obligation to respect the right of everyone to sexual and reproductive health.<sup>151</sup> It noted that denial of abortion, which often leads to maternal mortality as individuals resort to unsafe abortion, constitute a violation of the right to life or security and can amount to torture or cruel, inhuman and degrading treatment.<sup>152</sup> Similarly, the CEDAW Committee, in its 1999 *General Recommendation No. 24 on Women and Health* had noted that States had the duty to ensure women's human right to emergency obstetric services, and should withdraw punitive measures imposed on women who undergo abortion.<sup>153</sup>

Additionally, the criminalization of abortion undermines the right to equality and non-discrimination<sup>154</sup> on the grounds of gender, but also social origin as individuals from poorer socio-economic backgrounds<sup>155</sup> or from rural areas<sup>156</sup> will be disproportionately affected due to a lack of access to safe abortion services (e.g., and having to travel to other countries to access abortion services).

Based on general principles of criminal law, on international human rights law and standards, and on the World Health Organization (WHO) 2022 *Abortion Care Guideline*, criminal law should not proscribe abortion. Abortion should be taken entirely out of the purview of the criminal law, including for having, aiding, assisting with, or providing an

<sup>150</sup> Unofficial translation by DCAF, see above, footnote 85.

<sup>151</sup> CESCR General comment No. 22, ¶ 57. See also, World Health Organization (WHO), *Abortion care guideline*, 2022, p. 8.

<sup>152</sup> CESCR General comment No. 22, ¶ 10. See also, CEDAW General recommendation No. 35, ¶ 18; WHO, *Abortion care guideline*, 2022, pp. 8-9; Maputo Protocol, art. XIV(2)(c).

<sup>153</sup> CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, UN Doc. A/54/38/Rev.1, 1999, ¶¶ 27 and 31(c). See also, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, and the Working group on discrimination against women and girls, *Bodily autonomy, dignity and freedom of choice must be respected, say UN experts*, 25 September 2024.

<sup>154</sup> CESCR General comment No. 22, ¶ 34.

<sup>155</sup> Working Group on the issue of discrimination against women in law and in practice, *Women's Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends*, October 2017, p. 2.

<sup>156</sup> CEDAW, *General recommendation No. 34 (2016) on the rights of rural women*, UN Doc. CEDAW/C/GC/34, 7 March 2016, ¶ 38; WHO, *Abortion care guideline*, 2022, p. 8.

abortion, or abortion-related medication or services, or providing evidence-based abortion-related information. In addition, no other criminal offence, such as murder, manslaughter or any other form of unlawful homicide, should proscribe or be applied to having, aiding, assisting with, or providing an abortion, or abortion-related medication or services, or providing evidence-based abortion-related information.<sup>157</sup>

The criminalization of abortion and, more generally, the lack of access to safe and legal abortion harm victims/survivors of SGBC when their pregnancy is the result of a rape. Moreover, if they do resort to an abortion, they will be deterred from reporting and filing a complaint about the SGBC they have suffered to avoid drawing attention to their actions and exposing themselves to the risk of being prosecuted on abortion charges.

**In light of the above, the Libyan authorities should:**

- **Abrogate articles 391 and 392 of the Penal Code.**

### **3.2. Criminalization envisaged by the Draft Law on Protecting Women from Violence**

In 2020, a committee of Libyan experts<sup>158</sup> supported by the GNU Minister for Women’s Affairs started preparing a Draft Law on Protecting Women from Violence (“Draft Law”), which it finalized in 2023.<sup>159</sup> The legislative committee of the House of Representatives (HoR), Libya’s legislative body elected in 2014, endorsed the Draft Law<sup>160</sup> but it appears to be currently blocked by the HoR’s presidency.

The objective of the Draft Law, as presently formulated, is to combat violence against women by addressing the current deficiencies in the Libyan legal system through legal and institutional reforms. Among other things, if adopted in its current formulation, the Draft Law would criminalize “all forms of violence against women, whether occurring in public or private spheres”,<sup>161</sup> including, but not limited to:

- Rape,<sup>162</sup> including marital rape;<sup>163</sup>

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<sup>157</sup> ICJ, [8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty](#), March 2023, principle 15, “Criminal law may not proscribe abortion. Abortion must be taken entirely out of the purview of the criminal law, including for having, aiding, assisting with, or providing an abortion, or abortion-related medication or services, or providing evidence-based abortion-related information”.

<sup>158</sup> The committee included academics, judges, lawyers and activists. See, Jazia Jibril Shiitir, “A draft law to protect women from violence”, p. 17.

<sup>159</sup> See *ibid*, pp. 17-21.

<sup>160</sup> HRC, *Technical assistance and capacity-building to improve human rights in Libya*, UN Doc. A/HRC/56/70, ¶ 50.

<sup>161</sup> Draft Law, art. 1(3), unofficial translation by the ICJ.

<sup>162</sup> *Ibid*, art. 43.

<sup>163</sup> *Ibid*, art. 2(8)(a).

- Domestic violence;<sup>164</sup>
- Sexual harassment,<sup>165</sup> including online;<sup>166</sup>
- Violence against women in armed conflicts;<sup>167</sup>
- Political<sup>168</sup> and economic<sup>169</sup> violence against women.

The Draft Law clarifies that “proceedings, trials, or execution of sentences shall not cease” if the perpetrator of an offence under the Draft Law marries the victim/survivor.<sup>170</sup> Therefore, if it were enacted as currently formulated, then the Draft Law would, for example, prohibit the exoneration of a rapist pursuant to his marriage to the victim as currently envisaged under article 424 of the Penal Code.<sup>171</sup>

However, the Draft Law leaves the criminalization of abortion intact, save for the following narrow exceptions: (1) “if the continuation of the pregnancy is dangerous to the woman's life or health, as certified by a medical professional”; (2) in cases of pregnancies resulting from rape or incest”; or (3) “if a medical certificate proves that the foetus has a congenital defect affecting the possibility of life after birth”.<sup>172</sup>

But for the ongoing criminalization of abortion, the adoption of the Draft Law by the HoR in its current formulation and its prompt implementation would therefore be a significant advancement for women’s human rights and for Libya’s compliance with international human rights law and standards in this regard. The adoption of the Draft Law would challenge socially agreed norms and mentalities as it would unequivocally codify that all forms of violence against women, including forms that are widely practiced and tolerated today in the country, are unacceptable and criminally reprehensible.

**In light of the above, the Libyan authorities should:**

- **Adopt the Draft Law on Protecting Women from Violence in accordance with international human rights law and standards with respect to violence against women.**

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<sup>164</sup> Ibid, art. 42.

<sup>165</sup> Ibid, art. 46.

<sup>166</sup> Ibid, art. 57.

<sup>167</sup> Ibid, art. 54.

<sup>168</sup> Ibid, art. 60.

<sup>169</sup> Ibid, art. 61.

<sup>170</sup> Ibid, art. 63.

<sup>171</sup> See above, 3.1.1.1 “Sexual intercourse by force”.

<sup>172</sup> Draft Law, art. 53, unofficial translation by the ICJ.

### 3.3. Transitional justice framework

The ICJ explored how Libya’s current transitional justice framework addresses SGBV in its 2022 *Towards Gender-Responsive Transitional Justice in Libya* report.<sup>173</sup> The organization found that Law No. 29 of 2013 on Transitional Justice failed to address SGBV in line with international human rights law and standards. For instance, article 2, defining the material scope of the Law, did not include any mention of SGBC.<sup>174</sup>

In its 2024 *An Opportunity for Accountability and Justice* Report,<sup>175</sup> the ICJ also analyzed the latest Draft Reconciliation Law.<sup>176</sup> The Draft Reconciliation Law was submitted to the HoR in January 2024<sup>177</sup> and, in its current formulation, would be an improvement compared to Law No. 29 of 2013, which it would replace.<sup>178</sup> The Draft Reconciliation Law explicitly includes rape and “gender-based violations” as crimes falling under the jurisdiction of the Chambers on Transitional Justice Cases, the bodies in charge of criminal prosecutions and trials.<sup>179</sup> However, as presently formulated, it does not refer to the definition of rape under international law, as its preamble provides instead for the Penal Code, which does not comply with international standards,<sup>180</sup> to apply. Furthermore, it fails to expressly mention forms of sexual violence other than rape, conflict-related sexual violence (CRSV), and gender persecution as a crime against humanity.<sup>181</sup>

**In light of the above, the Libyan authorities should:**

- **Amend the Draft Reconciliation Law to:**

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<sup>173</sup> ICJ, *Towards Gender-Responsive Transitional Justice in Libya: Addressing Sexual and Gender-Based Crimes against Women*, March 2022.

<sup>174</sup> See further ICJ, *Towards Gender-Responsive Transitional Justice in Libya: Addressing Sexual and Gender-Based Crimes against Women*, March 2022, pp. 21-22.

<sup>175</sup> ICJ, *Libya: An opportunity for accountability and justice, A commentary on Libya’s Draft Reconciliation Law*, June 2024.

<sup>176</sup> The Draft Reconciliation Law was prepared by a legal committee appointed by the Presidential Council (PC), a three-person body sharing the executive authority with the Government of National Unity.

<sup>177</sup> HRC, *Technical assistance and capacity-building to improve human rights in Libya*, UN Doc. A/HRC/56/70, ¶ 55.

<sup>178</sup> Draft Reconciliation Law, art. 53.

<sup>179</sup> *Ibid.*, arts 1 and 4.

<sup>180</sup> See above, section 3.1.1.1 “Sexual intercourse by force”.

<sup>181</sup> See Rome Statute, art. 7(1)(h). In its *Policy on the Crime of Gender Persecution*, the OTP explained that gender persecution can take the form of sexual violence, physical violence, physical contact, psychological abuse. ICC, OTP, *Policy on the Crime of Gender Persecution*, 7 December 2022, ¶ 23.

- **Define the crimes under international law over which the Chambers on Transitional Justice Cases are competent, including by an express reference to customary international law;<sup>182</sup>**
- **Clarify that, in addition to rape, the Chambers on Transitional Justice Cases would have jurisdiction over other forms of sexual violence, including conflict-related sexual violence and gender persecution as a crime against humanity.**

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<sup>182</sup> For more on explicitly referencing crimes over which the Chambers on Transitional Justice Cases are competent according to international law, including customary international law, see ICJ, [Libya: An opportunity for accountability and justice, A commentary on Libya's Draft Reconciliation Law](#), June 2024, pp. 24-26.



## 4. Libyan procedural laws and practices relating to the investigation, prosecution, trial, adjudication and punishment of sexual and gender-based crimes in light of international standards

International criminal law, international human rights law, international standards and current best practice relating to criminal procedure with respect to SGBC have been extensively examined - including by the United Kingdom's *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practices on the Documentation of Sexual Violence as a Crime or Violation of International Law*,<sup>183</sup> Nobel Peace Prize winner Nadia Murad's *Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence* ("Murad Code"),<sup>184</sup> the ICC Office of the Prosecutor's (OTP) *Policy on Gender-Based Crimes*, and the AComHPR *Guidelines on Combating Sexual Violence and its Consequences in Africa*.<sup>185</sup> Therefore, this section will directly analyze the Libyan procedural framework and practices in light of such law, standards and best practice without reiterating them.

### 4.1. Current criminal procedural framework and practices

#### 4.1.1. Lack of gender perspective and recognition of sexual crimes' severity

To ensure that SGBC be accurately characterized, and that the harm suffered by the victims/survivors be fully recognized, it is crucial for all criminal justice actors to conduct an intersectional analysis,<sup>186</sup> and to understand, adopt and apply a gender perspective<sup>187</sup> to their work,<sup>188</sup> including by refraining from adopting and promoting harmful gender stereotypes discriminating against women and men.<sup>189</sup>

<sup>183</sup> UK Foreign and Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practices on the Documentation of Sexual Violence as a Crime or Violation of International Law*, second edition, March 2017 ("International Protocol on Sexual Violence in Conflict").

<sup>184</sup> Nadia Murad, *Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence*, 13 April 2022.

<sup>185</sup> See also, IIM, *Gender Strategy and Implementation Plan (technical version)*, 30 September 2022; UN Special Representative of the Secretary-General on Sexual Violence in Conflict, *Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-Related Sexual Violence*, 18 June 2021.

<sup>186</sup> For more, see the glossary at the beginning of this report.

<sup>187</sup> Ibid.

<sup>188</sup> See ICJ, [Strengthening accountability through the Specialized Criminal Chamber in Tunisia: Principles and Recommended Practices on the investigation, prosecution and adjudication of sexual and gender-based crimes](#), 2021, pp. 26-27 for an analysis of international standards and best practice relating to adopting a gender perspective to the investigation, prosecution and adjudication of SGBC. See also, OTP Policy on Gender-Based Crimes, ¶¶ 20-22; Maputo Protocol, art. II(1)(c).

<sup>189</sup> Michelle Jarvis, Najwa Nabti, *Chapter 4: Policies and Institutional Strategies for Successful Sexual Violence Prosecutions*, in *Prosecuting Conflict-Related Sexual Violence at the ICTY*, edited by Serge Brammertz and Michelle Jarvis, Cambridge University Press, April 2016, pp. 82-90.

To date, however, Libya has not yet developed, let alone adopted and implemented any comprehensive gender policies, operational guidelines and specialized approaches to investigating, prosecuting, trying, adjudicating and punishing SGBC.<sup>190</sup> In addition, Libyan criminal justice actors are not trained in international law and standards applying to the investigation, prosecution, trial, adjudication and punishment of SGBC, nor are they supported by specialists. Despite the announcement of the establishment, in 2020, of two Specialized Courts on Violence against Women and Children, in Benghazi and Tripoli, intended to try and adjudicate criminal cases,<sup>191</sup> to date, only the Tripoli court is operational. Moreover, thus far, it has only been hearing civil cases pertaining to family law. As a result, as of the time of writing, victims/survivors of SGBC have still not had access to a specialized judiciary.<sup>192</sup>

In Libya, only the most violent cases of rape, often relating to older men raping children (i.e., under 18 years of age)<sup>193</sup> or followed by murder<sup>194</sup> are prosecuted. The FFM noted that, in the rare cases in which the perpetrator is prosecuted, the sentence is rarely commensurate with the gravity of the offence.<sup>195</sup> Other SGBC are either not prosecuted altogether or, instead, especially with respect to domestic violence instances, are heard by tribal leaders who may oblige the perpetrator to compensate his wife and/or agree to a divorce.<sup>196</sup>

**In light of the above, the Libyan authorities should:**

- **Develop, adopt and implement comprehensive gender policies, operational guidelines and specialized approaches to investigating, prosecuting, trying, adjudicating and prosecuting SGBC;**
- **Provide continuous training on the application of international law and standards that are relevant for the investigation, prosecution, trial, adjudication and punishment of SGBC to all criminal justice actors;**
- **Ensure that the Specialized Courts on Violence against Women and Children adjudicate criminal cases across the whole country and not only civil cases;**
- **Ensure that judges and prosecutors integrate a gender perspective and expertise in all aspects of their work from the investigation to sentencing phase;**

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<sup>190</sup> On the need for such policies and guidelines, Michelle Jarvis, Najwa Nabti, “Chapter 4: Policies and Institutional Strategies for Successful Sexual Violence Prosecutions”, p. 105.

<sup>191</sup> UNSMIL, *UNSMIL welcomes appointment of five women judges*, 13 October 2020.

<sup>192</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.

<sup>193</sup> UNDP, *Libya: Gender Justice and the Law*, 2018, p. 13.

<sup>194</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.

<sup>195</sup> HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/52/83, ¶ 75.

<sup>196</sup> Suliman Ibrahim, Jazia Jibril Shiitir et al., *The Long and Winding Road: Justice seeking and access to justice in Libya*, 22 December 2022, p. 20.

- **Investigate, prosecute, try, adjudicate, punish and adequately characterize all SGBC and not only the most violent ones.**

#### **4.1.2. Lack of a victim-centered approach**

##### **4.1.2.1. Stigma and fear of family’s “honour” being “soiled”**

Criminal justice actors should create a “safe, private and supportive environment in which victims/survivors and witnesses of sexual violence feel sufficiently secure and comfortable to come forward and report crimes”.<sup>197</sup> They should be aware that shame and stigma could give rise to an unwillingness to testify on the part of SGBC victims/survivors. Therefore, appropriate measures to surmount this reticence should be envisaged. At the same time, criminal justice actors should not preemptively assume that victims/survivors of SGBC always experience shame and stigma.<sup>198</sup>

In the context of Libya, the FFM found that unveiling sexual violence was a “trying task”. It noted that:

Libya is a patriarchal society, whose culture overlaps with deeply rooted ideas of masculinity, militarism and elements of religious conservatism. As a corollary, sexuality is taboo and sexual violence carries with it social stigma.<sup>199</sup>

Victims/survivors often decline to lodge complaints of SGBC because they fear the ensuing stigma.<sup>200</sup> In addition to the victims/survivors themselves, their families can also feel the pressure of stigma. As noted by the Special Rapporteur on violence against women and girls following her visit to Libya in December 2022, reliance on article 424 of the Penal Code, exonerating rapists of criminal liability if they subsequently marry their victim, is encouraged by families themselves, to “protect the victims from social stigma and marginalization and to ensure clarity of lineage if the victim becomes pregnant”.<sup>201</sup> Because of the fear of damage to the family’s name and their purported honour, family members can further pressure the victim/survivor to withdraw their complaint,<sup>202</sup> which, according to the Libyan Code of Criminal Procedure, can be withdrawn at any time until a final verdict is rendered.<sup>203</sup> If the

<sup>197</sup> International Protocol on Sexual Violence in Conflict, p. 20.

<sup>198</sup> Michelle Jarvis, Kate Vigneswaran, “Chapter 3: Challenges to Successful Outcomes in Sexual Violence Cases”, in *Prosecuting Conflict-Related Sexual Violence at the ICTY*, edited by Serge Brammertz and Michelle Jarvis, Cambridge University Press, April 2016, p. 70.

<sup>199</sup> HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/48/83, ¶ 53. See also, Suliman Ibrahim, Jazia Jibril Shiitir et al., *The Long and Winding Road: Justice seeking and access to justice in Libya*, p. 19.

<sup>200</sup> UN Secretary-General, *Conflict-related sexual violence*, UN Doc. S/2024/292, ¶ 17; see also, ¶ 45.

<sup>201</sup> Report of the Special Rapporteur on violence against women and girls, ¶ 26.

<sup>202</sup> Suliman Ibrahim, Jazia Jibril Shiitir et al., *The Long and Winding Road: Justice seeking and access to justice in Libya*, pp. 19-20.

<sup>203</sup> Code of Criminal Procedure, art. 10.

victim/survivor does pursue justice, their family members sometimes excuse and defend the perpetrator during the trial.<sup>204</sup> Family members will also refrain from reporting when a female family member goes missing – in spite of the victim/survivor being unable to file the complaint herself – because they fear that the family’s “honour” may be “soiled” if the woman or girl’s abduction or disappearance becomes known.<sup>205</sup>

#### 4.1.2.2. Risks faced by victims/survivors and witnesses

The filing of a complaint, opening of a criminal investigation and, potentially, ensuing prosecutions of alleged perpetrators for SGBC often give rise to a real risk of acts of retaliation against victims/survivors and witnesses.<sup>206</sup> Such risk is exacerbated in case of armed conflict, where armed groups rule, and the judiciary is paralyzed. In order to protect victims/survivors and witnesses as the criminal process unfolds, States should provide for protection mechanisms,<sup>207</sup> while simultaneously ensuring the right of the accused to a fair trial, guaranteeing in particular their rights to examine and cross-examine witnesses and to equality of arms.<sup>208</sup> That said, protection measures should be afforded to victims/survivors and witnesses as soon as a SGBC complaint is filed, for example, by issuing protection or restraining orders,<sup>209</sup> but also during an ensuing trial of the alleged perpetrator. Other protection measures that might be warranted in certain circumstances include the possibility for victims/survivors and witnesses to give their testimony in closed session, by audio-video link, with voice and/or face distortion, using pseudonyms and/or redacting their names and identifying information from public records, and prohibiting disclosure to third parties.<sup>210</sup>

In Libya, several factors compound the risks faced by victims/survivors and witnesses, including the absence of protective measures, the ongoing armed conflict, the prosecution of victims/survivors, retaliation against victims/survivors and witnesses, and the male guardianship system.

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<sup>204</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.

<sup>205</sup> See for example, in the case of disappearances in Tarhuna, HRC, *Detailed findings on the situation in Tarhuna*, UN Doc. A/HRC/50/CRP.3, ¶ 73.

<sup>206</sup> International Protocol on Sexual Violence in Conflict, p. 115.

<sup>207</sup> For a comprehensive list of protective measures, see, International Protocol on Sexual Violence in Conflict, pp. 63 and 117. See also, OTP Policy on Gender-Based Crimes, ¶ 136.

<sup>208</sup> See for example, ICJ, *Trial Observation Manual*, June 2002, pp. 22 and ff.

<sup>209</sup> Istanbul Convention, art. 53; CEDAW General Recommendation No. 33, ¶ 51(j). Such orders must be: available for immediate protection; without undue financial or administrative burdens on the victim; issued for a specified period, or until modified or discharged; available for issue on an *ex parte* basis with immediate effect; available irrespective of, or in addition to, any other legal proceedings; and allowed to be introduced in subsequent legal proceedings. Istanbul Convention, art. 53.

<sup>210</sup> OTP Policy on Gender-Based Crimes, ¶ 136; International Protocol on Sexual Violence in Conflict, p. 63.

#### 4.1.2.2.1. Absence of protective measures

The absence of any protective mechanisms for SGBC victims/survivors and witnesses under the Libyan criminal framework, such as restraining orders, is a significant challenge that exacerbates their precarious security situation. Mechanisms that had been created with the goal to protect women and girls from violence have, instead, become tools of oppression. For instance, at the beginning of the 1990s, the State established government-run “social rehabilitation centers” as shelters.<sup>211</sup> However, these centers are now “for the mandatory detention of women and girls who have been raped, subjected to domestic violence or abandoned by their families, supposedly for their own protection”.<sup>212</sup> Women and girls can be placed in such centers pursuant to prosecutors’ or judges’ orders.<sup>213</sup> Instead of offering a place of safety and healing to victims/survivors of SGBC, Libya’s forcible confinement of women and girls in these “social rehabilitation centers” violates their human rights, including to liberty and security of person, to access to justice and effective remedies and to liberty of movement.<sup>214</sup>

#### 4.1.2.2.2. Ongoing armed conflict

In Libya, the security situation, coupled with the prevalence of weapons in households, present a significant challenge to the effective enforcement of the law, since the authorities lack the capacity to enforce the rule of law throughout the country and are prevented from doing so by armed groups. In his latest report on CRSV, the UN Secretary-General noted that, “[i]n 2023, sporadic clashes between armed groups, illicit arms proliferation, persistent divisions among Libyan political actors<sup>215</sup> and governance deficits created an environment in which conflict-related sexual violence was perpetrated with impunity”.<sup>216</sup> Similarly, the FFM noted that, because of this polarized context, armed groups, which are implicated in SGBC, such as sexual violence and trafficking for sexual exploitation,<sup>217</sup> remain unaccountable.<sup>218</sup> More generally, armed groups controlling detention centers prevent the enforcement of court orders for the transfer of defendants to court or for the release of

<sup>211</sup> Jazia Jibril Shiitir, “A draft law to protect women from violence”, p. 13; Report of the Special Rapporteur on violence against women and girls, ¶ 29.

<sup>212</sup> Report of the Special Rapporteur on violence against women and girls, ¶ 29.

<sup>213</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.

<sup>214</sup> ICCPR, arts 2, 9 and 12.

<sup>215</sup> Despite of a ceasefire between the internationally recognized, western Government of National Accord (GNA), which later became the Government of National Unity (GNU) and the Libyan National Army (LNA) on 23 October 2020, armed groups continue to engage in periodic clashes, exacerbating the country’s instability. HRC, *Technical assistance and capacity-building to improve human rights in Libya*, UN Doc. A/HRC/56/70, ¶ 45.

<sup>216</sup> UNSC, *Conflict-related sexual violence: Report of the Secretary-General*, UN Doc. S/2024/292, ¶ 44.

<sup>217</sup> See, for example, *ibid*, ¶ 45: the head of Mitiga prison, in Tripoli, a member of the Deterrence Apparatus for Combating Terrorism and Organized Crime (DACTO), manages the forced prostitution of detainees.

<sup>218</sup> HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/52/83, ¶ 6.

convicts on completion of their sentences. Further, armed groups attack judges, prosecutors and lawyers.<sup>219</sup> Such attacks sometimes even lead to enforced disappearances.<sup>220</sup> In cases of domestic violence, court judgments are unenforceable due to fear of reprisals.<sup>221</sup> Because of such attacks, interferences and pressure, the judiciary is unable to independently and effectively investigate, prosecute, try, adjudicate and punish SGBC.<sup>222</sup>

#### 4.1.2.2.3. Prosecution of victims/survivors

Victims/survivors of SGBC can face prosecution themselves. For instance, because “prostitution”<sup>223</sup> and *zina* (consensual sexual relations outside wedlock)<sup>224</sup> are criminalized, victims/survivors can be charged with those crimes, especially if they decide to seek justice for the abuse they have suffered, as they may expose themselves to counter accusations. For example, prosecution for “prostitution” is particularly common in cases relating to migrants, refugees and asylum seekers who are victims/survivors of SGBC. They are also further targeted with charges of “illegally” entering and staying in the country.<sup>225</sup> Moreover, family members against whom a victim/survivor filed a complaint may accuse them of *zina*, and plead that their “honour” was tarnished or that the crime was a “morally upright exercise of their right to discipline”,<sup>226</sup> which is accepted and legitimized by the Penal Code.<sup>227</sup> Charges against the perpetrator may be dropped and/or the victim/survivor themselves may, instead, be prosecuted.<sup>228</sup> The fear of prosecution if the victim/survivor files a complaint arises not only in respect of victims/survivors of sexual offences, but of all forms of gender-based crimes, and it often deters them from filing a complaint in the first place.

<sup>219</sup> HRC, *Technical assistance and capacity-building to improve human rights in Libya*, UN Doc. A/HRC/56/70, ¶¶ 45-46.

<sup>220</sup> Farouq Alsqidig Abdulsalam Ben Saeed, a military prosecutor, disappeared after DACTO, a militia, accused him of “manipulating” security cases”. See, Amnesty International, *Libya: Military prosecutor forcibly disappeared*, 25 July 2023.

<sup>221</sup> Report of the Special Rapporteur on violence against women and girls, ¶ 41.

<sup>222</sup> See also, HRC, *Technical assistance and capacity-building to improve human rights in Libya*, UN Doc. A/HRC/56/70, ¶ 48, on laws and decrees enacted by the HoR that “alter the structure and functioning of key judicial organs, blurring the lines between the executive and the judiciary and undermining the separation of powers”.

<sup>223</sup> See above, 3.1.2.1 Criminalization of “prostitution”.

<sup>224</sup> See above, section 3.1.2.2 Criminalization of *zina* (consensual sexual relations outside wedlock).

<sup>225</sup> Law No. 19 of 2010 on Combatting Illegal Immigration. Libya did not ratify the 1951 Convention Relating to the Status of Refugees.

<sup>226</sup> Suliman Ibrahim, Jazia Jibril Shiitir et al., *The Long and Winding Road: Justice seeking and access to justice in Libya*, p.19.

<sup>227</sup> See above, section 3.1.1.6 Failure to criminalize domestic violence.

<sup>228</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.

#### 4.1.2.2.4. Retaliation

In this context, it is common for alleged perpetrators and other implicated parties to deter victims/survivors from filing complaints by retaliation through physical violence, threats or, as developed above,<sup>229</sup> by pressing counter charges against them. For example, the FFM documented the case of a Libyan female journalist, survivor of rape and torture while in detention, who was threatened with arrest for “prostitution” by the Deterrence Apparatus for Combating Terrorism and Organized Crime (DACTO), a militia, if she filed a complaint.<sup>230</sup> Threats can take the form of circulating photographs and videos of the violence online,<sup>231</sup> which could amount to the SGBC of online gender-based violence.<sup>232</sup> Police officers will also often deter the victim/survivor from filing complaints by appealing to the victim/survivor’s purported honour and that of her family or husband, emphasizing the “shame” that they would bring upon themselves and their family if it were to become known that they were victims/survivors of SGBC.<sup>233</sup>

#### 4.1.2.2.5. Male guardianship system

Because, in line with the male guardianship system in place in Libya, women and girls need the authorization of their male guardian (father, husband, brother or son) to make certain decisions, including in relation to marriage<sup>234</sup> and travel,<sup>235</sup> or even to leave their home,<sup>236</sup> they cannot afford to anger or cut ties with him. Whether because their guardian is the perpetrator himself, or because he will want to restrict the victim/survivor’s freedom of movement and/or punish her because he believes she has tarnished his/their family purported “honour”, the victim/survivor may decide to keep silent and not to press charges.

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<sup>229</sup> See above, section 4.1.2.2.3 Prosecution of victims/survivors.

<sup>230</sup> HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/52/83, ¶ 86.

<sup>231</sup> See for example, FFM, *Detailed findings on the situation in Tarhuna*, UN Doc. A/HRC/50/CRP.3, ¶ 109; HRC, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc. A/HRC/49/4, ¶ 43.

<sup>232</sup> For guidance on laws to prevent and address online gender-based violence against women”, see ICJ, [OGBV Law Checklist](#), 2023.

<sup>233</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.

<sup>234</sup> Law No. 10 of 1984 regarding Provisions Relating to Marriage, Divorce and their Effects, art. 9, which provides for the male guardian’s approval to marry.

<sup>235</sup> In 2023, the western Internal Security Agency imposed on women travelling alone to fill in a questionnaire justifying why they were not accompanied by a male chaperon. Although the questionnaire was scrapped, airport staff continues to ask women why they are not accompanied. Libya Crimes Watch, *Libya Crimes watch’s LOI to the Committee on the Elimination of Discrimination against Women (CEDAW) regarding Libya*, 26 April 2024, p. 4.

<sup>236</sup> ICJ, [Libya: The “Morality” Police Must Not Be Re-Established](#), 13 November 2024.

#### 4.1.2.3. Re-traumatization

As victims/survivors and witnesses of SGBC participate in criminal proceedings, they are exposed to the risk of being re-traumatized.<sup>237</sup> To minimize such risk, any engagement with victims/survivors and witnesses must be handled with great sensitivity, which includes, among other measures, to ensure referral pathways are available to provide access to psychosocial, medical, legal or other forms of support the victim/survivor may require.<sup>238</sup>

In Libya, however, the State does not offer any kind of support to victims/survivors and witnesses of SGBC. As mentioned above,<sup>239</sup> the “social rehabilitation centers”, meant as shelters to support women and girls who are victims/survivors of SGBC, have in fact been diverted from their initially stated intended use and are now used to arbitrarily confine women and girls, with no provision of psychosocial or medical support. Victims/survivors are also not provided with medical support outside the “social rehabilitation centers”, including access to safe and legal abortion.<sup>240</sup>

**In light of the above, the Libyan authorities should:**

- **Establish a protection measures framework for victims/survivors and witnesses of SGBC, and dedicate enough resources for such measures to be effective;**
- **Ensure “social rehabilitation centers” are actual shelters for victims/survivors of SGBV that they can freely leave;**
- **Ensure criminal justice actors effectively process complaints of SGBC and do not deter victims/survivors from filing them;**
- **Pending the abrogation of Law No. 70 of 1973 establishing the Hudud Punishment for *Zina*, and articles 407, paragraph 4, 408, paragraph 4, and 417 bis (a) of the Penal Code as recommended above, refrain from prosecuting victims/survivors of SGBC for such offences;**
- **Abrogate the male guardianship system;**
- **Provide free psychosocial, medical and legal support to victims/survivors of SGBC.**

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<sup>237</sup> OHCHR, *Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice*, 2018, pp. 18 and 25.

<sup>238</sup> International Protocol on Sexual Violence in Conflict, pp. 98-102; Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”), third edition, 2022, ¶¶ 375-377.

<sup>239</sup> See above, section 4.1.2.2.1 Absence of protective measures.

<sup>240</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.



### 4.1.3. Evidence

As for any crimes, witnesses, documentary, digital and physical evidence are important sources with probative value,<sup>241</sup> which may corroborate and help prove the commission of rape or other acts of sexual violence and the criminal liability of the perpetrator(s), as well as evidencing relevant contextual circumstances.

However, the Libyan Code of Criminal Procedure only recognizes witness testimonies, material evidence found during searches, and expert reports as probative evidence. Because it does not recognize digital evidence<sup>242</sup> and DNA evidence, these two critical types of evidence are generally not accepted before Libyan courts.<sup>243</sup>

Furthermore, in practice, medical reports from a specialized criminal forensic doctor are the evidence that has the most weight in the judges' eyes.<sup>244</sup> However, forensic evidence should not be a prerequisite for the conviction of the perpetrator.<sup>245</sup> Sexual violence often leaves no detectable physical signs and is difficult to prove with forensic evidence, especially if the crime happened a long time ago and no forensic evidence was collected immediately following the commission of the crime. Moreover, in spite of this not being a requirement under the Code of Criminal Procedure, prosecutors do not accept the medical report of any doctor but only that of specialized criminal forensic doctors to whom they refer the victim. As a result, the collection of biological evidence is often delayed. Additional delays can be caused by the victim/survivor's lack of awareness about their rights and the type of evidence required.<sup>246</sup> By the time the victim/survivor sees the forensic doctor, some injuries might have healed, making it difficult or impossible to rely only on forensic evidence. Because of this difficulty or impossibility, witness evidence is a key aspect to any investigation of SGBC.

When SGBC cases reach criminal courts, justice actors need to pay particular attention not to let harmful gender stereotypes and cultural norms rooted in patriarchy influence

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<sup>241</sup> Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/79/181, ¶ 56.

<sup>242</sup> Digital evidence is information and data that are stored on, received from, or transmitted by an electronic device. Digital evidence can be found in images on cameras, on the internet, computers, mobile phones, and other digital media, such as USB sticks. Internet and mobile phone service providers frequently keep their data (such as call records) for only a certain period of time, such that access to the data can be difficult if not impossible if there is a delay between the crime being committed and the commencement of the investigation. See ICJ, [Accountability Through the Specialized Criminal Chambers Principles and Best Practices on the Collection, Admissibility and Assessment of Evidence, Practical Guide 3](#), December 2020, pp. 15-16.

<sup>243</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.

<sup>244</sup> Suliman Ibrahim, Jazia Jibril Shiitir and al., *The Long and Winding Road: Justice seeking and access to justice in Libya*, p. 20; Interviews by the ICJ of Libyan stakeholders, May-October 2024.

<sup>245</sup> International Protocol on Sexual Violence in Conflict, p. 158; UN Women, *Handbook for Legislation on Violence against Women*, p. 40. See also, ICC, *Rules of Procedure and Evidence*, 2019, rule 63(4).

<sup>246</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.

admissibility and exclusion of evidence. For instance, questions and evidence that pertain to the victim/survivor’s sexual history should generally be prohibited.<sup>247</sup>

In practice in Libya, if the victim/survivor does not come with evidence of the SGBC when submitting their complaint, the prosecutor will often not pursue the case further. They will refrain from carrying out investigations, including by not referring the victim/survivor to a doctor for the gathering of biological evidence.<sup>248</sup> This fails to comply with international human rights law and standards, and compounds the difficulties victims/survivors face, as detailed above.<sup>249</sup> Victims/survivors therefore often lose faith in the justice system and become reluctant to even file complaints, as they know that judicial actors will rarely be supportive of their pursuit of justice, accountability and remedies.

**In light of the above, the Libyan authorities should:**

- **Ensure all types of evidence, including witness testimonies, be relied upon to prove SGBC.**

#### **4.2. Procedural Provisions of the Draft Law on Protecting Women from Violence**

As mentioned above,<sup>250</sup> a Draft Law on Protecting Women from Violence has been pending before the HoR since 2023. Among other things, it provides for:

- The development of a “robust judicial system that facilitates women's access to prompt justice in accordance with fair trial standards”;<sup>251</sup>
- The right of victims/survivors to, among others:
  - Secure a protection order;<sup>252</sup>
  - Be assisted by a lawyer, chosen by the victim/survivor or provided by the State;<sup>253</sup>
  - Relocate to shelters along with their minor children;<sup>254</sup>
  - Access physical and psychological medical services;<sup>255</sup>
  - Seek reparation and compensation from the perpetrator;<sup>256</sup>

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<sup>247</sup> International Protocol on Sexual Violence in Conflict, p. 62; Istanbul Convention, art. 54.

<sup>248</sup> Interviews by the ICJ of Libyan stakeholders, May-October 2024.

<sup>249</sup> See above, section 4.1.2.2 Risks faced by victims/survivors and witnesses.

<sup>250</sup> See above, section 3.2 Criminalization envisaged by the Draft Law on Protecting Women from Violence.

<sup>251</sup> Draft Law, art. 35(2), unofficial translation by the ICJ. See also, art. 1(4) and 1(6).

<sup>252</sup> Ibid, art. 15.

<sup>253</sup> Ibid.

<sup>254</sup> Ibid. See also, art. 28 providing for the establishment of institutions which would provide support and rehabilitation services to victims/survivors, including urgent service centers, hotlines, safe shelters.

<sup>255</sup> Ibid, art. 15. See also, art. 29 providing for the establishment of centers which would offer free services to victims/survivors, including health counseling and psychological support.

<sup>256</sup> Ibid, art. 15.

- The establishment of:
  - A Specialized Public Prosecutor's Office, Specialized Adjudication Departments and the recruitment of Specialized Judicial Police Officers,<sup>257</sup> who would receive training on how to handle victims/survivors;<sup>258</sup>
  - A National Committee for the Protection of Women from Violence, which would develop a national plan of action<sup>259</sup> and issue annual reports to track progress in its implementation.<sup>260</sup>

The HoR's adoption of the Draft Law in its current formulation and its prompt implementation would therefore bring significant improvements to criminal proceedings relating to SGBC.

**In light of the above, the Libyan authorities should:**

- **Adopt the Draft Law on Protecting Women from Violence in accordance with international human rights law and standards with respect to violence against women.**

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<sup>257</sup> Ibid, arts 4 and 5.

<sup>258</sup> Ibid, art. 38.

<sup>259</sup> The national strategy should encompass, among other elements: a nationwide program to enhance legal awareness among girls and women, as well as to raise public awareness about all forms of violence covered by the Draft Law; a review of amendment of existing legislation to align it with the Constitution and international/regional instruments ratified by Libya; establishing an observatory responsible for creating a statistical database of women victims of violence and annually sharing cases as reported by police stations and courts to the Parliament and the Presidency of the Council of Ministers; and collaborating with the Ministry of Justice, the Judicial Institute, the Bar Association, and research centers of Libyan universities to conduct studies and research to monitor the implementation of the Draft Law. Ibid, art. 37.

<sup>260</sup> Ibid, art. 36.

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**International  
Commission  
of Jurists**

P.O. Box 1270  
Rue des Buis 3  
1211 Geneva 1  
Switzerland

**t** +41 22 979 38 00  
**f** +41 22 979 38 01  
[www.icj.org](http://www.icj.org)