

Fractured and Weakened

How the judiciary's crisis
undermines the rule of law
and human rights in Libya

Questions & Answers

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International
Commission
of Jurists

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Introduction

Following the ouster of Libya's former Head of State, Muammar Gadhafi in 2011, and the emergence in 2014 of two rival administrations based in the West and the East of the country, respectively, the judicial system remained nonetheless unified, until recently. Libya's Supreme Judicial Council (SJC), which is based in Tripoli, in the West of the country, and is the body tasked with organizing the affairs of the judiciary, including appointments and promotions – except of Supreme Court judges¹ – had remained unified. In this respect, the UN Human Rights Council Independent Fact-Finding Mission on Libya concluded in June 2022, that, "[i]n a context characterized by division and polarization, the fact that the Libyan judiciary remains largely unified [...] is a positive aspect".²

Since early 2023, however, Libya's House of Representatives (HoR) – the legislative body elected in 2014, based in Tobruk, in the East of the country – has adopted a series of laws undermining the unity and independence of Libya's judiciary. As a result, at the time of writing, there are two competing constitutional judicial bodies – the Constitutional Chamber of the Supreme Court (hereafter the Constitutional Chamber) in Tripoli, and the Supreme Constitutional Court in Benghazi, in the East of the country, which became operational in December 2025. Each of them has been trying to assert its own, sole and exclusive constitutional jurisdiction in Libya to the detriment of the other. Two SJC's have also been competing over control of the Libyan judiciary, including over the SJC's own headquarters.

In this Questions and Answers (Q&A), the International Commission of Jurists (ICJ) analyses how this fragmentation of the judiciary has occurred and discusses its consequences. In particular, this Q&A:

- analyses the conditions under which the Libyan judicial system has fragmented;
- assesses the compliance of recent HoR judicial reforms with Libya's obligations under international law; and
- evaluates the impact of the fragmentation of the judiciary on the rule of law, including on the integrity of the electoral process, and on the protection of human rights, including the right to equality before the courts and to a fair trial.

Why are there two constitutional jurisdictions competing with one another in Libya?

Libya's Supreme Court, which is based in Tripoli, has been the country's highest court: it is endowed with sole jurisdiction on constitutional matters and appellate jurisdiction over all lower courts. Its decisions are binding.³ Pursuant to Law No. 6 of 1982, the General People's Congress – the legislature during the Gadhafi regime – appointed the judges of the Supreme Court.⁴ As the General People's Congress no longer exists, its successors, first the General National Congress (GNC) – Libya's first elected legislature following the fall of Gadhafi's regime – and then the HoR, have continued to appoint Supreme Court judges.

On 11 March 2014, the GNC – the predecessor of the HoR – adopted "the seventh amendment" to the 2011 Constitutional Declaration,⁵ paving the way for national legislative elections.⁶ Elections were held on 25 June 2014 and the HoR held its inaugural session on 4 August 2014 in Tobruk.

On 6 November 2014, however, the Constitutional Chamber declared both "the seventh amendment" to the Constitutional Declaration and the HoR's inaugural session unconstitutional on procedural grounds, noting that "the seventh amendment" had been adopted by a simple majority, as opposed to by a qualified majority of two-thirds of the legislature as required by the Constitutional Declaration.⁷ The HoR and its supporters heavily criticized this decision, despite the fact that it was based on clear legal provisions. Critics argued that powerful militias present in Tripoli had influenced the

1. [Law No. 6 of 2006 on the Judicial System](#), 5 March 2006, as amended by [Law No. 4 of 2011 amending Law No. 6 of 2006 on the Judicial system](#), art. 49; ICJ, [Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality](#), July 2016, pp. 23 and 33.

2. [Report of the Independent Fact-Finding Mission on Libya](#), UN Doc. A/HRC/50/63, 27 June 2022, § 104.

3. ICJ, [Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality](#), July 2016, p. 15.

4. [Law No. 6 of 1982 on reorganizing the Supreme Court](#), 25 May 1982, art. 6.

5. In 2011, the National Transitional Council, Libya's first government since the fall of Gadhafi's regime, adopted the [Constitutional Declaration](#). From inception, the Declaration was going to be temporary and only serve "as a basis for the exercise of power in the transitional stage until a permanent Constitution by popular referendum is adopted".

6. [Constitutional Amendment No. 7 of 2014](#), 11 March 2014.

7. Supreme Court, Constitutional Chamber, [Appeal No. 17/61](#), 6 November 2014 (only in Arabic).

Constitutional Chamber,⁸ and complained that the Court itself lacked independence because it was mainly composed of judges from the West of the country. They also pointed out that the Constitutional Chamber was only competent to review the conformity of laws with the Constitution, as opposed to the constitutional conformity of the Constitutional Declaration itself or its amendments.

In December 2015, the Libyan Political Agreement, a UN-brokered accord amending the Constitutional Declaration and aiming to “build a democratic civil state through national consensus”,⁹ provided that the HoR, in agreement with the State Council,¹⁰ would appoint the Head of the Supreme Court.¹¹ The HoR thus continued operating despite the Constitutional Chamber’s 6 November 2014 ruling.

In response to this constitutional crisis, in October 2016, the Supreme Court’s General Assembly¹² suspended the Constitutional Chamber’s powers of constitutional review.¹³ However, the Supreme Court did not review or suspend its Constitutional Chamber’s previous decisions, including the 6 November 2014 decision declaring the inaugural session of the HoR unconstitutional and thus invalidating the HoR’s mandate.

In an attempt to control the Supreme Court and its constitutional review powers, during 2022, the HoR sought to alter the Supreme Court’s composition by appointing a significant number of new judges. These appointments enabled a majority of judges to block, for a time, efforts within the Supreme Court to eventually reactivate the Constitutional Chamber’s powers of constitutional review, which had been suspended since October 2016, as mentioned above. However, on 18 August 2022, the Supreme Court’s General Assembly successfully ended the suspension of the Constitutional Chamber’s constitutional review powers, in a move the United Nations Support Mission in Libya (UNSMIL) hoped would “help resolve disputes over the legitimacy of decisions taken by Libyan institutions”.¹⁴

In enforcing what seemed to be a new strategy to control constitutional review powers, on 6 December 2022, the HoR passed a law, which was later enacted and published on 29 March 2023 as Law No. 5 of 2023, establishing a new Supreme Constitutional Court with jurisdiction over constitutional matters, in Benghazi, and replacing the very same Constitutional Chamber that had invalidated the mandate of the HoR in 2014.¹⁵ Law No. 5 of 2023 provided that the Supreme Constitutional Court’s General Assembly, the SJC, the HoR’s Presidency, and the President of the State would appoint the 13 Supreme Constitutional Court judges.¹⁶ However, the law provided that the HoR alone would appoint the first cohort of Supreme Constitutional Court judges.¹⁷ On 23 September 2024, in application of Law No. 5 of 2023, the HoR appointed eight judges to the Supreme Constitutional Court.¹⁸

The Law was enacted and implemented despite the fact that, on 5 March 2023 and 31 May 2023, the Constitutional Chamber had found the 6 December 2022 law and Law No. 5 of 2023 of 29 March 2023, respectively, unconstitutional on the grounds, among others, that the HoR did not have the power to establish a constitutional judicial body.¹⁹ Based on those rulings, the Constitutional Chamber continued operating.

8. ICJ, *Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality*, July 2016, p. 12.

9. *Libyan Political Agreement*, 17 December 2015, introduction.

10. The State Council, or High Council of State, is “the highest consultative Assembly of the State” and, among other things, express binding opinions to the Government of National Accord on draft laws, before submission to the HoR. it comprises 145 members who were elected during the 2012 GNC elections. See Libyan Political Agreement, art. 19 and annex 3.

11. Ibid, article 15(f).

12. The Plenary Assembly comprises the President of the Court and all its Counsellors: see, *Law No. 6 of 1982 on reorganizing the Supreme Court*, 25 May 1982, art. 51.

13. Supreme Court, Decision No. 7/2016, October 2016; see, Cairo Institute for Human Rights Studies, *When Force Becomes Law: Armed Groups and Judicial Breakdown in Libya*, March 2026, p. 43.

14. UNSMIL, *Support for Libya Must Help Break Political Stalemate, Serve to Unite, Not Divide Parties, Senior Official Tells Security Council*, 30 August 2022.

15. *Law No. 5 of 2023 on the establishment of a Supreme Constitutional Court in Libya*, 29 March 2023 (only in Arabic).

16. Ibid., art. 2.

17. Ibid, art. 6.

18. HoR, *Supreme Constitutional Court judges take their oath before the House of Representatives*, 23 September 2024 (only in Arabic).

19. Supreme Court, Constitutional Chamber, Constitutional Appeal No. 4/70, 5 March 2023; Supreme Court, Constitutional Chamber, Constitutional Appeal No. 5/70, 31 May 2023.

In response, in December 2025, the Supreme Constitutional Court abolished the Constitutional Chamber and ordered that all constitutional matters be referred to itself, i.e., the Supreme Constitutional Court.²⁰ On 22 December 2025, the same Supreme Constitutional Court declared the Constitutional Chamber's decisions on the unconstitutionality of the law of 6 December 2022 and of Law No. 5 of 2023 to be legally void because the Constitutional Chamber had erred in reviewing the 2022 law, which had not yet acquired legal force, and because its jurisdiction had expired with the entry into force of Law No. 5 of 2023 on 29 March 2023.²¹ On 18 January 2026, the Supreme Constitutional Court also annulled the Constitutional Chamber's 6 November 2014 decision declaring both "the seventh amendment" to the Constitutional Declaration and the HoR's inaugural session unconstitutional.²²

Why are there two Supreme Judicial Councils competing with one another in Libya?

Established by Law No. 4 of 2011, the SJC replaced the High Council of Judicial Bodies, a Gadhafi-era judicial body. Law No. 4 of 2011 enhanced the independence of the judiciary by removing the Minister of Justice, who presided the Gadhafi-era High Council of Judicial Bodies, from the SJC's composition.²³ According to Law No. 4 of 2011, SJC members comprised the President of the Supreme Court, the Prosecutor General and the Presidents of the country's Courts of Appeal.²⁴ The SJC was therefore exclusively composed ex officio of members of the judiciary.

GNC Law No. 14 of 2013 altered the composition of the SJC by adding the Heads of the Litigation Department, the Public Legal Defence Department, the Law Department, and the Judicial Body Inspection Department (JBID).²⁵ Although these departments are, by law, considered part of the judiciary, they fall within the remit and authority of the Ministry of Justice, and their heads are accountable to said Ministry.²⁶

In a positive development towards furthering judicial independence, however, Law No. 14 of 2013 required that the Presidents of the Supreme Court and of the Courts of Appeal would no longer automatically be members of the SJC, but rather that the respective courts' General Assembly would each elect one judge to sit on the SJC. The Law further provided that SJC members would elect their President and Vice President among SJC members.²⁷ At the time, the ICJ considered that the composition of the SJC represented a significant break from Gadhafi-era practices and went a long way in conforming to international standards.²⁸ Eventually, GNC Law No. 6 of 2015 provided that the President of the Supreme Court would be automatically appointed as President of the SJC, and that the Head of the JBID would automatically be the Vice President.²⁹

However, similarly to what it had done to control the powers of constitutional review, the HoR initiated concrete steps to assert control over the SJC and remove any Supreme Court influence. With respect to this, the HoR adopted Law No. 11 of 2021, which provided that the JBID Head, rather than the President of the Supreme Court, would automatically be appointed President of the SJC and that the Prosecutor General, rather than the JBID Head, would automatically be appointed Vice President.³⁰

20. See, Cairo Institute for Human Rights Studies, *When Force Becomes Law: Armed Groups and Judicial Breakdown in Libya*, March 2026, p. 45. The ICJ could not get a copy of this decision or analyse the Supreme Constitutional Court's reasoning.

21. Supreme Constitutional Court, Constitutional Appeal No. 4 of 2025, 22 December 2025.

22. See, Libya Review, *Supreme Constitutional Court Confirms Legitimacy of Libya's Parliament*, 19 January 2026; and UNSMIL, *Remarks of the Special Representative of the Secretary-General for Libya, Hanna S. Tetteh, to the Security Council on the situation in Libya*, 18 February 2026. The ICJ could not get a copy of this decision or analyse the Supreme Constitutional Court's reasoning.

23. ICJ, *Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality*, July 2016, p. 18.

24. *Law No. 4 of 2011 amending Law No. 6 of 2006 on the Judicial system*, 16 November 2011, art. 3.

25. *Law No. 14 of 2013 amending some provisions of Law No. 6 of 2006 on the Judicial system*, 27 May 2013, art. 1.

26. *Law No. 6 of 2006 on the Judicial system*, as amended, 5 March 2006, art. 1(4); see, ICJ, *Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality*, July 2016, p. 27.

27. *Law No. 14 of 2013 amending some provisions of Law No. 6 of 2006 on the Judicial system*, 27 May 2013, art. 1.

28. ICJ, *Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality*, July 2016, pp. 23 and ff.

29. *Law No. 6 of 2015 amending some provisions of the Law on the Judicial system*, 14 April 2015 (only in Arabic).

30. *Law No. 11 of 2021 amending some provisions of the Law on the Judicial system*, 12 December 2021 (only in Arabic). See also, OHCHR, *Technical assistance and capacity-building to improve human rights in Libya*, UN

However, on 23 July 2023, the Constitutional Chamber declared Law No. 11 of 2021 unconstitutional.³¹ In a further attempt to cement its control over the SJC, in July 2023, the HoR adopted Law No. 22 of 2023, which provided that the SJC President would be appointed by the HoR, and that Libya's Prosecutor General would automatically be the SJC's Vice President.³²

In December 2023, the HoR adopted yet another piece of legislation on the SJC, Law No. 32 of 2023, which provided that the General Assemblies of the Supreme Court and of the Courts of Appeal would no longer each elect a judge to sit at the SJC. The SJC, led by a President appointed by the HoR and the Prosecutor General as Vice-President, would, instead, be exclusively composed of the Heads of the Litigation Department, the Public Legal Defence Department, the Law Department, and of the JBID. Given that the JBID is responsible for investigating complaints filed against judges and initiating disciplinary procedures before the SJC,³³ Law No. 32 of 2023 provided that, in case of a conflict of interests with this department's "administrative duties", the JBID Head could still participate in the SJC session but not vote.³⁴

On 22 December 2025, the Supreme Constitutional Court upheld Laws No. 22 and No. 32 of 2023.³⁵ However, on 28 January 2026, the Constitutional Chamber found both laws unconstitutional.³⁶ It found that Laws No. 22 and No. 32 of 2023 breached the provisions of the 2011 Constitutional Declaration on separation of powers, on equal opportunity, and on the independence of the judiciary.³⁷ However, on 15 February 2026, the Supreme Constitutional Court annulled the Constitutional Chamber's 28 January 2026 decision.³⁸

Three days later, on 18 February 2026, Justice Abdullah Abu Rizeza, the President of the Supreme Court,³⁹ who remains President of the SJC according to the Constitutional Chamber's decisions of 23 July 2023 and 28 January 2026, took control of the SJC headquarters in Tripoli. On 25 February 2026, citing *force majeure*, Justice Muftah El Gawui, the JBID Head and the President of the SJC based on his appointment by the HoR pursuant to Laws No. 22 and No. 32 of 2023, relocated the SJC seat to Benghazi.⁴⁰

How does the HoR's interference with judicial independence undermine Libya's legal obligations under international human rights law?

The independence of the judiciary, a fundamental guarantee of the right to a fair trial, is enshrined in the international human rights instruments by which Libya is bound, including the International Covenant on Civil and Political Rights,⁴¹ and the African Charter on Human and Peoples' Rights.⁴² It

Doc. A/HRC/56/70, 3 June 2024, § 48; ICJ, [Libya: Supreme Judicial Council's reshuffling threatens the rule of law](#), 21 December 2021.

31. Supreme Court, Constitutional Chamber, Constitutional Appeal No. 5/69, 23 July 2023; see, Supreme Court announcement published on its [Facebook page](#) (only in Arabic). See also, OHCHR, [Technical assistance and capacity-building to improve human rights in Libya](#), UN Doc. A/HRC/56/70, 3 June 2024, § 48. The ICJ could not get a copy of this decision or analyse the Constitutional Chamber's reasoning.

32. [Law No. 22 of 2023 amending some provisions of the Judicial system law](#), 26 July 2023 (only in Arabic).

33. [Law No. 6 of 2006 on the Judicial system](#), 5 March 2006, as amended, art. 78. On the disciplinary procedure before the JBID, see ICJ, [Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality](#), July 2016, pp. 54-55.

34. [Law No. 32 of 2023 amending some provisions of the Judicial system law](#), 19 December 2023 (only in Arabic).

35. Supreme Constitutional Court, [Constitutional Appeal No. 9 of 2025](#), 22 December 2025 (only in Arabic).

36. Supreme Court, Constitutional Chamber, [Constitutional Appeal No. 6/73](#), 28 January 2026 (only in Arabic).

37. On the status of the 2011 Constitutional Declaration, see above, fn 5.

38. See, UNSMIL, [Remarks of the Special Representative of the Secretary-General for Libya, Hanna S. Tetteh, to the Security Council on the situation in Libya](#), 18 February 2026. The ICJ could not get a copy of this decision or analyse the Supreme Constitutional Court's reasoning.

39. Following Justice Abdullah Abu Rizeza's election by the Supreme Court's General Assembly, the HoR, after consulting with the State Council, had appointed him as President of the Supreme Court in September 2022, as per article 15(f) of the Libyan Political Agreement.

40. UNSMIL, [Report of the Secretary-General](#), UN Doc. S/2026/281, 6 April 2026, § 14.

41. [International Covenant on Civil and Political Rights](#), 16 December 1966 (ICCPR), art. 14; Libya acceded to the ICCPR on 15 May 1970.

42. [African Charter on Human and Peoples' Rights](#), 27 June 1981 (ACHPR), art. 26; Libya ratified the ACHPR on 19 July 1986. See also, [Universal Declaration of Human Rights](#), 10 December 1948 (UDHR), art. 10; [Basic Principles on the Independence of the Judiciary](#), 6 September 1985, principles 1-2, and 4; [Universal Charter of the Judge](#), arts 1-2; African Commission on Human and Peoples' Rights, [Principles and Guidelines on the](#)

is a “key element of human rights protection and serves as a procedural means to safeguard the rule of law,”⁴³ as judges “are charged with the ultimate decision” over human rights.⁴⁴

Independence is required of all judges, including those ruling on constitutional issues. It is indeed even more important for judges of higher courts who must be able to conduct independent constitutional review free of political interference. As affirmed by the Inter-American Court of Human Rights, “under the rule of law, the independence of all judges must be guaranteed and, in particular, that of constitutional judges, owing to the nature of the matters submitted to their consideration.”⁴⁵

An independent and impartial Constitutional Court can play an essential role in ensuring enhanced respect for the rule of law and human rights. Given this role, it is all the more important that the judges of a Constitutional Court meet international standards guaranteeing judicial independence, including those prohibiting political interference in, or influence over the judicial process.

In respect to this, the current UN Special Rapporteur on the independence of judges and lawyers at the time of writing, Margareth Satterthwaite, warned against the involvement of the legislature in the selection of judges as “a direct pathway for partisan influence”, underscoring that “[t]he risks are more acute for judicial leadership posts”.⁴⁶ She recommended that such involvement “be ceremonial or narrowly confined and is best exercised based on proposals from an independent selection body”.⁴⁷

She further advised that, “[j]udicial selection and appointment processes for apex courts and tribunals (supreme courts and constitutional tribunals) should be open to scrutiny, including through structured opportunities for civil society and other relevant stakeholders to access information, present reasoned observations and raise well-founded concerns.”⁴⁸ She also underscored that appointment systems should include safeguards to prevent institutional paralysis, including appropriate anti-deadlock mechanisms.⁴⁹

Accordingly, the ICJ considers the role of the HoR in selecting and appointing the members of the Supreme Constitutional Court, as well as in appointing the judges of the Supreme Court, including the Constitutional Chamber, to be inconsistent with international standards on judicial independence. The ICJ also considers that the various laws adopted by the HoR and described above alter the composition of the SJC to such an extent that they contravene Libya’s legal obligations under international human rights law. In this connection, in its *General Comment No. 32 on the right to equality before courts and tribunals and to a fair trial*, the UN Human Rights Committee (HRC) has authoritatively concluded that a situation where the executive is able to control or direct the judiciary is incompatible with the notion of an independent tribunal.⁵⁰ The Committee has further considered that bodies tasked with the recruitment and the discipline of judges have to be independent,⁵¹ including so as not to “expose judges to political pressure and jeopardize their independence and impartiality”.⁵²

In its 2018 report on judicial councils, the then UN Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, recognized that there was no standard model for judicial councils. Yet, he noted that the composition of such bodies had to guarantee their independence from

[Right to a Fair Trial and Legal Assistance in Africa](#), 29 May 2003, principle A(4).

43. UN Human Rights Committee (HRC), [General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial](#), UN Doc. CCPR/C/GC/32, 23 August 2007, § 2.

44. [Basic Principles on the Independence of the Judiciary](#), 6 September 1985, preamble.

45. Inter-American Court of Human Rights, *Case of the Constitutional Court v. Peru*, [Judgment](#), 31 January 2001, § 75.

46. Special Rapporteur on the independence of judges and lawyers, [Principles for judicial appointments, Report of the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite](#), UN Doc. A/HRC/62/43, 14 April 2026, §§ 30-31.

47. Ibid, § 30, underscoring that “[a]ny power to choose among, or to refuse to appoint, proposed candidates is particularly ‘critical’ and, if retained at all, should be reasoned, formally justified and legally constrained” and referring to Venice Commission, Opinion No. 747/2013, document CDL-AD(2013)034, § 16.

48. Ibid, § 98.

49. Ibid, § 26.

50. HRC, [General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial](#), UN Doc. CCPR/C/GC/32, 23 August 2007, § 19.

51. HRC, [Concluding observations on the second periodic report of the Congo](#), UN Doc. CCPR/C/79/Add.118, 25 April 2000, § 14.

52. HRC, [Concluding Observations on Azerbaijan](#), UN Doc. CCPR/CO/73/AZE, 12 November 2001, § 14.

the executive and legislative branches, and to allow them to effectively carry out their functions.⁵³ Hence, he found that there was a “tendency at the international level for judicial councils to have a mixed composition, and for a majority of members to be judges elected by their peers”.⁵⁴ He added that political authorities, such as parliament or the executive, should not be involved in the selection process at any stage,⁵⁵ and that the selection and appointment process should take place in an “open and transparent way in order to eliminate the risks of political interference and appropriation of the process by the *de facto* powers.”⁵⁶

Given the role of the SJC in managing the career of judges, including appointment and discipline, it is crucial for SJC members to be independent from the executive and the legislative branches of the State. The fact that the membership of judicial bodies comprises individuals who are subordinated to the executive, combined with the appointment of the SJC’s President by the HoR run counter to Libya’s obligations under international law.

How does the fragmentation of the Libyan judiciary undermine the rule of law?

On 18 January 2026, the Supreme Constitutional Court upheld Law No. 1 of 2020, which had annulled all laws enacted by the GNC – the HoR’s predecessor – after the end of its mandate in August 2014.⁵⁷ Ten days later, on 28 January 2026, the Constitutional Chamber annulled Law No. 1 of 2020, thereby upholding the GNC laws.⁵⁸

The rule of law requires that “a sufficient degree of legal certainty and predictability [be] provided in the application of the law, in order to avoid any arbitrariness”,⁵⁹ and that constitutional courts’ decisions be final, binding and enforced by all public authorities. Under the rule of law, laws and other norms should be clear, predictable, and applied uniformly. Individuals can then understand and foresee the legal consequences of their actions and regulate their behaviour accordingly.

The above-mentioned decisions of the Supreme Constitutional Court and the Constitutional Chamber create a situation of legal chaos under which human rights can be threatened, where individuals are unable to know with certainty which laws are applicable to them, when and where. In the absence of

53. Special Rapporteur on the independence of judges and lawyers, [Report of the Special Rapporteur on the independence of judges and lawyers](#), UN Doc. HRC/38/38, 2 May 2018, §§ 48, 66 and 107. See also, Special Rapporteur on the independence of judges and lawyers, [Principles for judicial appointments](#), [Report of the Special Rapporteur on the independence of judges and lawyers](#), Margaret Satterthwaite, UN Doc. A/HRC/62/43, 14 April 2026, § 32, 37.

54. Special Rapporteur on the independence of judges and lawyers, [Report of the Special Rapporteur on the independence of judges and lawyers](#), UN Doc. HRC/38/38, 2 May 2018, §§ 66 and 107. See also, Special Rapporteur on the independence of judges and lawyers, [Principles for judicial appointments](#), [Report of the Special Rapporteur on the independence of judges and lawyers](#), Margaret Satterthwaite, UN Doc. A/HRC/62/43, 14 April 2026, § 28, highlighting that entrusting judicial selection processes to an independent body, such as a judicial council, is a good practice and § 34, referring to the Venice Commission’s consistent statements that “councils should be composed of a majority of judges elected by their peers, ensuring the widest possible representation across court levels and reflecting diversity (including with regard to gender and region)” (Venice Commission, Opinion No. 1233/2025, document CDL-AD(2025)021, § 36). At the European level, see, Council of Europe, [European Charter on the Statute of Judges](#), 10 July 1998, art. 1.3; Consultative Council of European Judges, [Opinion No. 10 \(2007\) on the council for the judiciary at the service of society](#), 23 November 2007, §§ 15-20; Consultative Council of European Judges, [Magna Carta of Judges \(Fundamental Principles\)](#), 17 November 2010, § 13. See also, [Universal Charter of the Judge](#), 17 November 1999, arts 9 and 11.

55. Special Rapporteur on the independence of judges and lawyers, [Report of the Special Rapporteur on the independence of judges and lawyers](#), UN Doc. HRC/38/38, 2 May 2018, §§ 76 and 99. See also, Special Rapporteur on the independence of judges and lawyers, [Report on Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy](#), UN Doc. A/HRC/56/62, 21 June 2024, § 24; and Special Rapporteur on the independence of judges and lawyers, [Principles for judicial appointments](#), [Report of the Special Rapporteur on the independence of judges and lawyers](#), Margaret Satterthwaite, UN Doc. A/HRC/62/43, 14 April 2026, § 34.

56. Special Rapporteur on the independence of judges and lawyers, [Report of the Special Rapporteur on the independence of judges and lawyers](#), UN Doc. HRC/38/38, 2 May 2018, §§ 75 and 109. See also, African Commission on Human and Peoples’ Rights, [Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa](#), 29 May 2003, principle A(4)(h).

57. See, UNSMIL, [Remarks of the Special Representative of the Secretary-General for Libya, Hanna S. Tetteh, to the Security Council on the situation in Libya](#), 18 February 2026.

58. Supreme Court, Constitutional Chamber, Constitutional Appeal No. 1/73, 28 January 2026.

59. UN Commission on Human Rights, [Resolution 2005/32 on Democracy and the rule of law](#), 19 April 2005, § 14(b)(v); UN Human Rights Council, [Resolution 19/36 on Human Rights, democracy and the rule of law](#), UN Doc. A/HRC/RES/19/36, 1 April 2012, § 16(c).

clear legal frameworks, the initiation of judicial proceedings and the enforcement of judicial decisions will themselves be subject to political arbitrariness rather than the fair administration of justice, further undermining public trust in Libya's judiciary.

The fact that in practice the powers of constitutional review have been exercised by two bodies competing with one another is of particular concern in the Libyan context as it can further prejudice the country's chances of holding national elections in the future. With respect to this, Presidential elections, for example, had been planned in December 2018 and then in December 2021,⁶⁰ but have since been endlessly postponed. In August 2025, UNSMIL announced that its political roadmap to national presidential and parliamentary elections was built on three core pillars, including "unifying institutions".⁶¹

According to "the seventh amendment" to the 2011 Constitutional Declaration, the judiciary supervises the High National Elections Commission, the body responsible for organizing elections.⁶²

With a fragmented judiciary and courts competing with one another handing down conflicting interpretations of electoral frameworks, the integrity of the electoral process will be challenged.

How does the fragmentation of the Libyan judiciary undermine human rights protection?

The fragmentation of the judiciary will result in significantly weakening, if not undermining altogether, of human rights protections, including those guaranteed by the principle of legality, fair trial rights, and the right to take part in the conduct of public affairs.

The principle of legality, which, among other things, requires that criminal liability be clearly foreseeable, is enshrined in article 15 of the ICCPR and in article 7(2) of the African Charter on Human and Peoples' Rights (ACHPR), both of which are binding on Libya, as well as other international human rights treaties.⁶³ Given its importance, the principle is expressly characterized as non-derogable.⁶⁴ The blanket annulment of all post-August 2014 GNC and HoR laws by the Supreme Constitutional Court and the Constitutional Chamber, respectively, creates uncertainty about the enforceability of all the laws adopted by the two legislative bodies on criminal matters, in violation of the principle of legality.

More generally, when considering human rights guarantees beyond the criminal law realm, such uncertainty is contrary to the principle of legality, which requires that any action or omission by the State be clearly prescribed by law to avoid arbitrariness. Such uncertainty is, therefore, inconsistent with and undermines the rule of law. In addition, it violates the principle of equality before the law enshrined in article 26 of the ICCPR.

The independence of courts, and therefore the right of all to a fair trial, is undermined when the procedures and criteria, if any, for judicial appointment are subject to political influence and interference, as it is the case under the HoR laws on the Supreme Constitutional Court and the SJC. In its *General Comment No. 32 on the right to equality before courts and tribunals and to a fair trial*, the HRCComm explained that, as for the right to a fair trial before an independent court, the right to equality before the courts and tribunals is a "key element of human rights protection".⁶⁵ It found that equality before courts and tribunals entails that "similar cases are dealt with in similar proceedings".⁶⁶ The fragmentation of Libyan courts makes such equality void and of no effect, in breach of Libya's obligations under international law.

60. The LPDF's Roadmap provided for the organization of presidential and parliamentary elections by December 2021. LPDF, [Roadmap "For the Preparatory Phase of a Comprehensive Solution"](#), 2020, art. 3(2).

61. UNSMIL, [Political Roadmap](#), August 2025.

62. [Constitutional Declaration](#), art. 30, as amended by the seventh constitutional amendment, 10 March 2014.

63. ACHPR, art. 7(2); European Convention on Human Rights (ECHR), art. 7; American Convention on Human Rights (ACHR), art. 9; Rome Statute of the International Criminal Court, art. 22.

64. Article 4(2) of the ICCPR includes article 15 among the dispositions that cannot be subject to derogation. HRCComm, [General Comment 29 States of emergency \(article 4\)](#), UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, § 7. See also, ECHR, art. 15(2) ; ACHR art. 27(2).

65. HRCComm, [General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial](#), UN Doc. CCPR/C/GC/32, 23 August 2007, § 2.

66. *Ibid*, § 14.

Judicial fragmentation has also the potential to undermine Libyans' right to take part in the conduct of public affairs.⁶⁷ Article 25 of the ICCPR recognizes and protects the rights of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. With courts competing with one another and conflicting rulings, any electoral process, and any process of adoption of a new constitution in Libya, following more than 15 years of political gridlock, has little to no chance of being conducted fairly, impartially and in accordance with established norms compatible with Libya's obligations under international law.

Conclusion and recommendations

Libya's prolonged political stalemate has spread across the judiciary, with eastern authorities, in particular the HoR, reshaping the composition of existing courts and judicial institutions with a view to asserting control over them, rather than guaranteeing their independence, and establishing new judicial bodies that usurp the jurisdiction and competencies of existing ones.

The HoR's laws on the SJC and the Supreme Constitutional Court violate international standards and Libya's obligations under international law, and create a situation of structural legal uncertainty, if not chaos, where human rights in the country are at further risk; where the limited existing checks and balances are further weakened; and where the integrity of any future electoral and constitutional arrangements is in peril.

The ICJ has documented and analysed judicial developments and related legal frameworks in Libya since the ouster of Ghadafi.⁶⁸ While the Constitutional Declaration and Law No. 4 of 2013 on the SJC failed to fully meet international standards and Libya's obligations under international law, the ICJ reiterates that they have the potential to strengthen judicial independence, and, if reformed, to cement the SJC's role in acting as an effective check on the legislature and the executive during the transition period and until a new constitution is adopted.

In light of the above, the ICJ calls on the Libyan authorities to:

- **Repeal and annul all effects of the HoR's laws on the SJC and the Supreme Constitutional Court;**
- **Ensure that any legislative arrangements on the judiciary during the transition period be developed through a transparent and inclusive process that reflect the views of all relevant stakeholders across Libya, including the judges themselves and other representatives of the legal community, with a view to:**
 - a. **Protecting and safeguarding the independence and unity of the Libyan judiciary, under the authority of the Supreme Court, including its Constitutional Chamber, and the oversight of an independent SJC;**
 - b. **Unequivocally affirming that the decisions of the Constitutional Chamber are final, cannot be subject to any form of review or appeal and are binding on, and must be enforced by all public authorities.**
 - c. **Ensuring that the scope of the Constitutional Chamber's review include any constitutional, legislative, judicial and electoral measures during the transition period and until a new constitution is adopted;**
 - d. **Reforming the legislative framework relating to the SJC and ensuring that this Council be:**
 - **independent from the executive and the legislature, including by amending its composition to ensure that: (i) the majority of its members be from the legal profession and be elected by judges; (ii) it be pluralistic and reflective of Libyan society as a whole, including all its regional and ethnic groups, and gender representative; and (iii) it be protected against institutional paralysis through anti-deadlock mechanisms;**
 - **competent to decide on all issues relating to the career of judges; and**
 - **empowered to uphold the independence of the judiciary;**
 - e. **Guaranteeing the independence of both the Supreme Court as an institution and of its individual judges and, to that end, revoke any powers of the legislature to**

67. ICCPR, art. 25; UDHR, art. 21; ACHPR, art. 13; HRCComm, [General Comment No. 25, Article 25: The right to participate in public affairs, voting rights and the right of equal access to public service](#), UN Doc. CCPR/C/21/Rev.1/Add.7, 27 August 1996, §§ 8 and 20.

68. ICJ, [Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality](#), July 2016.

- directly appoint its members and ensure security of tenure and fair accountability mechanisms;**
- f. Ensuring that an independent and competent SJC be authorized to screen candidates and select, or make binding recommendations of candidates for appointment as judges of the Supreme Court, including the Constitutional Chamber, recommendations which the legislature and the executive follow in practice; and**
- g. Including guarantees requiring that SJC's procedures be transparent, open, fair and non-discriminatory, and that decisions be based on transparent and objective procedures and criteria, and open to civil society scrutiny, to ensure that political considerations do not play a role in the selection proceedings.**



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