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# LEGISLATIVE PRIORITIES FOR REFORM

A Human Rights Roadmap for a New Libya



# **Priorities for Legislative Reform**

A Human Rights Roadmap for a New Libya

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# Introduction

After four decades of authoritarian rule, Libya faces the challenge of reforming outdated and repressive legislation and writing new laws that guarantee the full panoply of citizens' rights. The enduring legacy of Muammar Gaddafi's rule includes laws that have curtailed the freedoms of generations of Libyans. Since the 2011 revolution in Libya, with some exceptions such as repealing a Gaddafi-era law criminalizing the establishment of political parties, the transitional authorities have added to the problem by issuing some new laws that limit freedoms.

The process of legislative reform needs to be Libyan-led. Libyan legislators, after wide consultation, should dismantle the abusive legal architecture of the Gaddafi-era and construct a new system based on rights. At the same time, Libya has international human rights obligations that it is bound to respect. This report highlights the main areas of legislative reform and changes to specific laws needed to bring Libya into compliance with international norms.

## Eleven Areas for Reform

This report identifies eleven key areas for legislative reform in Libya. It is not an exhaustive or comprehensive blueprint. Rather it addresses the key shortcomings of the Penal Code and some Gaddafi-era laws. It also identifies the problematic new laws passed since the ouster of Gaddafi.

**Freedom of expression and speech:** Legislators should protect free speech and expression, including in media and press regulation laws, defamation laws, and laws against offending religion. Legislators should repeal all articles and all other provisions of the Libyan Penal Code, such as criminal penalties for defamation and insult to religion and ensure that any legal limitations that are retained are necessary and proportionate and comport with Libya's international treaty obligations. At present, penal code articles 195, 205 and 245 stipulate prison terms for "insulting" public officials and the Libyan nation or flag. Article 207 imposes the death penalty for "promoting theories or principles" that aim to overthrow the political, social or economic system.

To maintain Libya's vibrant post-2011 media landscape, legislators should also ensure that licensing procedures and regulatory mechanisms applicable to the media guarantee non-discrimination, including on the grounds of language, political or religious views, ethnicity or gender. Access to airwaves should be available for a diversity of information and views, including news and political opinions.

**Crimes against the state:** Legislators should define all crimes clearly so that a person can accurately predict if a specific act will amount to a crime. This particularly applies to so-called "crimes against the state" which are vaguely defined in existing laws and carry heavy penalties.

**Freedom of association:** Legislators should reform Penal Code articles that undermine freedom of association. Legislators should focus and narrow the definitions of criminal acts and ensure they exclude peaceful and legitimate exercise of the right to freely express opinions, conduct peaceful demonstrations, and legally establish associations. They should also repeal the death penalty levied as punishment for establishing or participating in unlawful organizations, and adopt a law for civil society organizations (NGO law) that would regulate non-governmental organizations in accordance with international freedom of association standards.

**Freedom of assembly:** Legislators should guarantee the right of peaceful assembly. The 2011 protests against Gaddafi show the vital importance of freedom of assembly and the right to peaceful demonstrations. Legislators should revise a recently issued law [65/2012] on guidelines for peaceful demonstrations in order to make sure that any restrictions placed on a public gathering are limited to what is strictly necessary for protecting public order, public morals, and the rights of others.

**Torture:** Legislators should adopt a definition of torture consistent at a minimum with international standards. Torture is prevalent in prisons around Libya. With over 8,000 detainees currently in custody, around half of them still in the hands of armed groups outside of the control of the state, legislators should reform laws on torture. First and foremost, the Penal Code should include a definition of torture aligned with the definition in article 1 of the UN Convention against Torture. Libya should also ratify this convention's optional protocol.

**Corporal punishment:** Legislators should remove corporal punishment from Libyan legislation. Several Gaddafi-era laws prescribe lashings and amputation of limbs for prohibited acts such as extra-marital intercourse. The mere existence of these punishments in Libyan legislation is a clear violation of international law which prohibits cruel, inhuman or degrading punishments.

**The Special Procedures Law and impunity:** Legislators should ensure that Libyan laws address the most serious international crimes past and present. They should accordingly amend the Special Procedures Law [38/2012] enacted by the interim National Transitional Council, after the 2011 conflict that grants immunity from prosecution for serious crimes, including war crimes and crimes against humanity, conducted by anti-Gaddafi revolutionaries as long as these acts were “necessary” for the success of the revolution. Legislators should amend this law to exclude amnesty for those responsible for serious international crimes such as murder, torture, sexual violence, enforced disappearance and forced displacement. The culture of impunity encouraged by such laws can lead to such crimes being repeated.

**Death penalty:** Legislators should abolish the death penalty. The death penalty is stipulated in over 30 articles in the Penal Code, including the exercise of rights that should be protected under free expression and association standards. Since this form of punishment is final, and inherently inhumane in its nature, lawmakers should abolish the death penalty in all civil and military legislation.

**Violence and discrimination against women:** Legislators should ensure protection for women’s rights and provide for equal opportunities and non-discrimination. This requires the repeal or amendment of current laws that discriminate against women, effectively sanction violence against women in cases of alleged adultery, and deny women a remedy against abuse or discourage them from reporting domestic violence. Libya should also remove its reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The drafters of the new constitution should guarantee effective protection of women’s human rights as they are recognized internationally, including in CEDAW and the African Maputo Protocol.

**Rights of migrants and asylum seekers:** Legislators should protect the rights of migrants and asylum seekers in Libya. Migrants, asylum-seekers and refugees face multiple risks and lack protection due to the absence of a legal framework governing their rights. Libya

should ratify the 1951 Refugee Convention and its 1967 Protocol, and enact the asylum law that has been in draft for several years.

**Political rights:** Legislators should repeal a law on political isolation passed by the GNC on May 5, 2013, and which came into force on June 5, 2013. The law bars Gaddafi-era officials from holding public office for a period of 10 years. The proposed law's provisions and procedures for exclusion would likely violate human rights standards as they are too vague and too broad. Further, a recent amendment to the provisional constitution would prohibit judicial review of the law.

A number of important issues fall outside the scope of this report. For example, the code of criminal procedures and the military code for criminal procedures both need to be reformed to ensure conformity with international standards and to provide safeguards and fair trial standards for civilians and members of the military charged with criminal offenses. Military courts should be strictly limited to offenses of military discipline. Civilians should not be subject to military courts as defendants. Libya's appeals processes and the right to remedy in all phases of legal procedures also need to be reformed.

The report also does not address the critical issue of the new constitution, which will be drafted by a Constituent Assembly of 60 people chosen through elections.

Libya is presently experiencing a chaotic transition, in which the interim legislature, the General National Congress (GNC), is not fully functioning. This report presents the key areas and laws that the GNC and future legislatures should consider when enacting reform.

## Background

Libya's last constitution was promulgated by the National Constituent Assembly on October 7, 1951, during the reign of King Mohamed Idriss Al Senussi. Shortly after he seized power in the military coup d'état in 1969, Muammar Gaddafi abolished this constitution. On December 11, 1969, Libya adopted a Constitutional Proclamation, intended as a provisional measure until a permanent constitution could be adopted. However, during Gaddafi's 42-year rule, a permanent constitution was never introduced. Instead, the country was governed by the proclamation, a series of fundamental laws deemed to have constitutional weight (the 1997 Declaration of the People's Authority, the 1998 Green Charter for Human Rights of

the Jamahiriyan Era, and Law 20), and the Libyan Penal Code.<sup>1</sup> Taken together, these laws theoretically guaranteed many basic human rights. But there were significant exceptions, particularly regarding freedom of expression and association. Some rights were further undermined by legislation that criminalized free association and speech.<sup>2</sup> Gaddafi's "Green Book," first published in 1975, also served as a set of basic principles to govern citizens' rights and responsibilities and the basic functioning of the state.<sup>3</sup>

The Libyan Penal Code was originally issued in 1953, and influenced by Italian and French legal systems, as well as elements of Sharia, Islamic law. Over the decades of Gaddafi's rule, it was amended several times. In the 1970s it was supplemented by laws governing economic crimes, political crimes, and later crimes that constituted "terrorist acts." Other laws in the code, including "defamation" of public officials and prohibitions on establishing organizations, constitute serious infringements on freedom of speech, assembly, and association. Punishments are severe, and include corporal punishments, such as flogging, as well as the death penalty.

On August 3, 2011, in the final weeks of the armed conflict which precipitated Gaddafi's downfall, the National Transitional Council (NTC) issued a provisional "Constitutional Declaration" to serve during the transitional period until a permanent constitution could be drafted and ratified. The declaration consists of five sections that lay out general provisions for statehood, civil rights and public freedoms, the system of government during the transitional period, and judicial guarantees.<sup>4</sup>

Article 1 of the declaration stipulates that Islamic law, Sharia, should be the main source of future legislation. It also protects the right of non-Muslims to practice their religion and protects the linguistic and cultural rights of minorities. Article 6 guarantees all Libyans

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<sup>1</sup> Emory Law, Emory University, "Libya (Socialist People's Libyan Arab Jamahiriya)", undated, <http://www.law.emory.edu/ifl/legal/libya.htm> (accessed July 22, 2013).

<sup>2</sup> For details on Gaddafi-era laws and human rights abuses, see Human Rights Watch report *Words to Deeds: The Urgent Need for Human Rights Reform*, January 25, 2006, <http://www.hrw.org/reports/2006/01/24/libya-words-deeds-o>.

<sup>3</sup> The Green Book was published in three parts in 1975: Part I: The Solution to the Problem of Democracy; Part II: The Solution of the Economic Problem; and Part III: The Social Basis of the Third Economic Theory: Muammar Al-Qaddafi, *The Green Book part 1/2/3*, <http://www.mathaba.net/gci/theory/gb.htm> (accessed December 13, 2012).

<sup>4</sup> Max-Planck Institute, *Constitutional Reform in Arab Countries: Libya*, August 3, 2011, [http://www.mpil.de/en/pub/research/details/know\\_transfer/constitutional\\_reform\\_in\\_arab\\_/libyen.cfm](http://www.mpil.de/en/pub/research/details/know_transfer/constitutional_reform_in_arab_/libyen.cfm).

equality before the law without distinction based on religion, beliefs, language, wealth, gender, kinship, political opinions or social status, or tribal, regional or personal association.

Article 7 describes the state's role as protector of human rights and basic freedoms, and commits the state to join regional and international declarations and covenants to protect these rights and freedoms. In February 2013 Libya took first steps in that direction by signing, though not yet ratifying, the Convention on the Rights of Persons with Disabilities and the International Convention on Enforced Disappearances.<sup>5</sup>

Freedom of opinion, speech, and assembly, including peaceful demonstrations, are guaranteed in article 14. Article 15 guarantees the freedom of establishing political parties, associations and other civil society organizations.

There are also judicial assurances in the declaration. Article 31 guarantees the principle of legality, the presumption of innocence, fair trials, and the right to recourse. Article 32 guarantees the independence of the judicial power and article 35 states that all provisions in existing legislation continue to be effective unless they are inconsistent with the declaration.

The declaration, which was drawn up in haste and in secrecy, has notable gaps. For example, it does not address how rights will be implemented or what will happen to laws that do not comply with international standards. It says nothing about arbitrary detention and very little about economic, social, and cultural rights.

The declaration envisioned the drafting of the constitution by a committee of 60 experts elected from within a newly elected transitional parliament, the General National Congress (GNC). However, facing pressure from protesters in Libya's east who threatened to block the GNC elections, the National Transitional Council amended this provision on July 5, 2012, just days ahead of the general elections. According to amendment 3/2012 of the Constitutional Declaration, the drafting committee of the constitution must now be elected in a general election.<sup>6</sup> A panel of thirteen experts, including three GNC members, has been appointed to draft the electoral law.

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<sup>5</sup> Ibid.

<sup>6</sup> Libyan General National Congress, November 2, 2011, [http://www.gnc.gov.ly/index.php?option=com\\_content&view=article&id=55:-----11-11-2012-----&catid=1:2012-08-09-13-20-21&Itemid=12](http://www.gnc.gov.ly/index.php?option=com_content&view=article&id=55:-----11-11-2012-----&catid=1:2012-08-09-13-20-21&Itemid=12).

One urgent challenge for Libya's legislators is to ensure that the process for drafting the constitution is inclusive of various Libyan groups, including minorities and women. On July 20, 2013, the GNC approved law 17/2013 governing the election of the constituent assembly, which is expected in December 2013. At time of writing, the law had yet to be published.

The law stipulates election of a committee of 60 by a direct individual electoral system, and distribution of the seats along the lines of Libya's three historical regions, with 20 seats each for Tripolitania, Cyrenaica, and Fezzan. The law mandates six seats for women and another six for the three main minority groups: Amazigh, Tebu and Tuareg. In October 2013 the Amazigh community said it would boycott the elections for the constituent assembly to protest the low number of minority representatives. Libyan women's groups have also protested the low quota for women.

The National Transitional Council, in its capacity as the interim legislative authority prior to the election of the GNC in July 2012, issued a set of new laws and several amendments to the Constitutional Declaration and the Penal Code. In June 2012, the Supreme Court struck down the NTC's Law 37, which criminalized the glorification of "the tyrant" (Muammar Gaddafi), declaring it unconstitutional.<sup>7</sup>

On July 7, 2012, a popular vote elected the 200-member General National Congress to replace the National Transitional Council from August 8, 2012 onwards. Today, the GNC is the main legislative authority in Libya in charge of drafting and enacting laws. The GNC has an interim mandate scheduled to end on February 8, 2014 when it is to be succeeded by a permanent elected parliament.

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<sup>7</sup> Two other laws issued by the NTC are currently under appeal before the Supreme Court on the grounds that they violate the constitutional covenant: Law 36/2012 on the administration of assets and properties of some individuals, a law that governs freezing of assets of some individuals with ties to the former Gaddafi government, and Law 52/2012 on restrictions placed on some trades: Government of Libya, Law 36/2012 and Law 52/2012, <http://www.aladel.gov.ly/main/modules/news/article.php?storyid=483>.

# I. Freedom of Expression

In a positive move on June 14, 2012, the Libyan Supreme Court declared unconstitutional a law the NTC adopted on May 2, 2012, that criminalized various kinds of political speech, including speech that “glorifies the tyrant” (Muammar Gaddafi), causes “damage [to] the February 17 Revolution,” or insults Libya’s institutions.<sup>8</sup> The court ruled that Law 37/2012 was an unconstitutional restriction on free speech.

A group of Libyan lawyers, as well as the governmental National Council for Public Freedom and Human Rights, had challenged the law under the provisional Constitutional Declaration, as well as international law, in the first-ever Supreme Court review of a law approved by the NTC.<sup>9</sup> The presiding judge, Kamal Edhan, declared the law unconstitutional, but added that the court’s decision did not affect other laws restricting speech, including those prohibiting insults to Islam. The law is no longer in use by the authorities.<sup>10</sup>

There remain a number of provisions in the Penal Code as well as decrees enacted by the National Transitional Council (NTC) that are not in accord with international human rights law because they unduly restrict freedom of expression. Some of these articles and decrees provide prison terms and fines for peaceful expression.

Libya has international legal obligations to respect free speech, as a party to the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples’ Rights (ACHPR), and other treaties.<sup>11</sup> Restrictions on speech must be clearly defined, specific, necessary, and proportionate to the interest protected.<sup>12</sup>

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<sup>8</sup> “Libya: Revoke Draconian New Law”, Human Rights Watch news release, May 5, 2012, <http://www.hrw.org/news/2012/05/05/libya-revoke-draconian-new-law>.

<sup>9</sup> Libya’s provisional Constitutional Declaration enshrines freedom of expression. Article 14 says that the state “shall ensure freedom of opinion, freedom of speech for individuals and groups, freedom of scientific research, freedom of communication, freedom of press, media, printing, and distribution,” so long as it is not “contrary to public order.”

<sup>10</sup> “Libya: Law Restricting Speech Ruled Unconstitutional”, Human Rights Watch news release, June 14 2012, <http://www.hrw.org/news/2012/06/14/libya-law-restricting-speech-ruled-unconstitutional>.

<sup>11</sup> Article 19 (2) of the ICCPR states that:

Everyone shall have the right to hold opinions without interference.

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

## Defamation Laws: “Offensive Acts” against the State and Public Officials

Several provisions in the Libyan Penal Code criminalize “offending” public officials, “insulting” state authorities, or “promoting acts against the state order,” or criminalize defamation – all aimed at shielding public officials from criticism. Articles 205, 195, 207, and 245 of the penal code are particularly harsh, as they stipulate prison terms and up to the death penalty for such “crimes.”

### **Article 195, Libyan Penal Code, Insult to the Constitutional or Popular Authorities**

*Without prejudice to any harsher penalty prescribed by another law, any person who may launch what may be regarded as an attack against the Great Fateh Revolution or its leader shall be punishable by imprisonment.*

*The same penalty shall be levied against any person who insults the popular authority, a judicial, defense, or security body, or similar other disciplinary bodies, or publicly insults the Libyan Arab people, or the state motto or its flag.*

### **Article 205, Libyan Penal Code, Insult to the Nation and its Ceremonial Rites**

*Any person who publicly insults the Libyan nation, the national flag, or the state motto shall be punished with a prison term of no more than three years.*

*In criminal law, the term “national flag” includes the official state flag and every other flag bearing the national colors.*

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The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: For respect of the rights or reputations of others;

For the protection of national security or of public order (ordre public), or of public health or morals.

and Article 9 (2) of the ACHPR states that “Every individual shall have the right to receive information,” and “Every individual shall have the right to express and disseminate his opinions within the law.”

<sup>12</sup> While Article 19 of the ICCPR allows for limitations to the right to freedom of expression, paragraph 3 sets out the conditions under which such limitations are permissible, namely that they be provided by law and necessary “(a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.” This test is also mirrored in Article 27(2) of the African Charter on Human and Peoples’ Rights.

The UN Human Rights Committee has repeatedly highlighted the importance of proportionality in its General Comment No. 34 on Article 19 on Freedoms of opinion and expression: “Restrictions must not be overbroad. The Committee observed in general comment No. 27 that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected...The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law...”

*The provisions of this article shall also apply to any person who publicly insults the combined colors symbolizing the national flag.*

**Article 207, Libyan Penal Code, Promotion of Any Act against the State Orders**

*The death penalty shall be levied against any person who promotes within the country theories or principles that aim to change the fundamental principles of the constitution or the fundamental rules of the social structure; overthrow state political, social, or economic systems; or demolish any fundamental order of the social body by resorting to the use of force, terrorism, or any other unlawful means.*

*A term of life imprisonment shall be levied against any person who possesses books, publications, illustrations, slogans, or any other material with the intent to endorse the aforementioned acts or advocate them in any other way.*

*A term of life imprisonment shall be levied against any person who receives or obtains, directly or through any kind of intermediary, monies or benefits of any type and from any person or body, in or out of the country, when the purpose is to promote the acts named in this article.*

**Article 245, Libyan Penal Code, Insult to Public Servants and Judicial and Official Personnel**

*A prison term of no more than one year shall be levied against any person who insults a public servant or undermines his dignity in the course of or because of his duty, and this by gesture, word, threat, telegraph, telephone, written material, or illustrations directed at him.*

The restrictions on freedom of expression found in these articles overstep what international law permits. The right to criticize one's government and its officials has particularly high priority in international legal protections because it is precisely one of the rights most likely to meet with harassment, abuse, and denial by governments. The insulation of public officials from criticism violates international human rights law's fundamental principle that press freedoms should be wider, not narrower, with respect to speech about politicians and government officials. Politicians and other public figures relinquish some of their rights to reputation and privacy by accepting their positions, and must tolerate greater scrutiny of their conduct.

International law does not permit criminalizing defamation. In 2002, three internationally-recognized experts on free expression stated: “Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”<sup>13</sup> Public officials should have the possibility to seek redress for defamation, however, rather than imprisonment, the redress sought should focus on damages.

Principle 7 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1995), which are based on international human rights law and standards, provides that “No one may be punished for criticizing or insulting the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agency.”<sup>14</sup>

The Inter-American Commission on Human Rights expounded on this principle in its report on *desacato* (contempt) laws: “[I]n democratic societies political and public figures must be more, not less, open to public scrutiny and criticism.... Since these persons are at the center of public debate, they knowingly expose themselves to public scrutiny and thus must display a greater degree of tolerance for criticism.”

The UN Human Rights Committee observed:

In circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.

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<sup>13</sup> UN special rapporteur on freedom of opinion and expression, the Office for Security and Co-operation in Europe representative on freedom of the media, and the Organization of American States special rapporteur on freedom of expression, December 10, 2012, <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=87&IID=1> (accessed August 31, 2011).

<sup>14</sup> Principle 7(b): Protected Expression, Johannesburg Principles. These Principles were adopted on 1 October 1995 by a group of experts in international law, national security, and human rights in Johannesburg and have been endorsed by Mr. Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression: *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, 1 October 1995, <http://www.unhcr.org/refworld/category,LEGAL,ART19,,,4653fa1f2,o.html>.

Accordingly, the Committee expresses concern regarding laws on such matters as, lese majesty, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration.<sup>15</sup>

Public officials should be entitled to the protection of civil laws on defamation. However, international law requires public officials to tolerate a higher degree of criticism than ordinary citizens. This serves the public interest of encouraging debate by making it harder to bring a case against people for speaking critically of public officials and political figures.

## “Offending” Religion

Several provisions of the Libyan Penal Code prescribe harsh punishments for perceived “insult” to religion and thus restrict the right to free expression.

### **Article 290, Libyan Penal Code, Attacks on Religion**

*The penalties mandated in the foregoing article shall be levied against any person who publicly attacks a religion that performs its rites publicly. The following shall fall under the purview of this article:*

- 1) The printing or publication of a book deemed holy by the adherents of a religion that performs its rites, if the text of the book is intentionally distorted in a way that alters its meaning.*
- 2) The imitation of a religious festival or rite in a public assembly with the intent to mock or entertain the public.*

### **Article 291, Libyan Penal Code, Insult to the State Religion**

*Any person who publicly attacks the Islamic religion, which is the official state religion under the Libyan constitution, or utters words unsuitable to the divinity, the prophet or the apostles, shall be punished with a prison term not to exceed two years.*

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<sup>15</sup> United Nations Human Rights Committee, General Comment No. 34, para. 38, <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

Article 291 in particular imposes overly broad restrictions on freedom of expression. As the UN special rapporteurs on freedom of religion or belief and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance have noted, “The right to freedom of religion or belief protects primarily the individual and, to some extent, the collective rights of the community concerned but it does not protect religions or beliefs per se.”<sup>16</sup>

Article 290 of the Libyan Penal Code on “attacks” on religions is also overly broad and also imposes severe restrictions on freedom of speech. The Human Rights Committee stated in General Comment No. 34 that “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant.” The exception is speech that amounts to incitement to violence and discrimination, as set out in article 20(2) of the ICCPR. The committee further stated that the convention does not allow states to prohibit or punish “criticism of religious leaders or commentary on religious doctrine and tenets of faith.”

Under human rights law, religions cannot be considered as rights bearers. From a human rights perspective, states have the obligation to protect believers and nonbelievers, but not their specific religions or beliefs. Over the centuries in all regions and cultures of the world, religious and other scholars have interpreted religious doctrines and often criticized them. The rights to hold an opinion, to believe in and to practice and manifest a religion or belief—or to not do so—are all protected under international human rights law. The purpose of human rights law is to protect the dignity, integrity and rights of all persons, whatever their beliefs—not specific religions.

Human rights law already contains protections against the stereotyping and vilification of religions insofar as such actions constitute incitement to violence, hostility, or discrimination against members of those religions, or lead to other human rights violations of individuals. In fact, international human rights law frames the role that states must play to ensure that individuals or groups of different religious faiths are treated equally and are able to coexist peacefully, free from discrimination, violence, or hostility.

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<sup>16</sup> UN Human Rights Council, “Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance”, A/HRC/2/3, September 20, 2006, <http://law.queensu.ca/international/globalLawProgramsAtTheBISC/courseInfo/courseOutlines/internationalHumanRights2010/SPIncitementReport.pdf>, para. 38.

The UN Human Rights Committee's General Comment 34 says:

Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.

Under Article 20 of the ICCPR, states have the obligation to prohibit by law the advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. Article 4 of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) and Article 27 of ICCPR are also particularly important (the latter in recognizing the duty of states to protect members of religious minorities). However, all of these limited restrictions fall under the overall requirement, as set out in Article 19 of ICCPR, that all states protect freedom of expression at all times, and ensure that any restriction is not arbitrary (i.e., that it is clearly set out in law), pursues a legitimate aim, and is proportionate, and the least restrictive option possible.

Libya and over 140 other countries reaffirmed these principles at the Durban Review Conference in April 2009.<sup>17</sup>

## Media and Press Regulation Laws

In the absence of laws regulating the media and press, and after 42 years of state control over information, Libya faces the challenge of regulating the media in a way that encourages open debate and protects free expression in line with international standards. Libya should seek to foster an environment of media pluralism and public access to a diverse range of information and opinion.

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<sup>17</sup> UN Durban Review Conference, Outcome Document, Geneva, 20-24 April 2009, [http://www.un.org/durbanreview2009/pdf/Durban\\_Review\\_outcome\\_document\\_En.pdf](http://www.un.org/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf), (accessed December 13, 2012).

NTC Decree 44/2012 establishing the Supreme Media Council stipulates that a Temporary Supreme Media Council will be mandated with promoting “public policy that aims to advance media in the country,” drafting “regulations and bills regulating media operations,” issuing “a code of media ethics,” granting “necessary licenses to media institutions of all types,” preparing “a concept of how to elect a president and members of the Temporary Supreme Media Council in the future,” and “considering individuals’ complaints against media institutions,” among other tasks.

The decree characterizes the Supreme Media Council as an independent legal entity still subordinate to the NTC and future elected bodies, such as the General National Congress, which replaced the NTC on August 8, 2012.

To ensure genuine independence, the GNC and the council should in future legislation articulate exactly how members of the council are appointed, how long these members may serve, whether their terms are limited, and how they can be removed. This will help council members establish and maintain independence from the government. It is essential that council members be protected from dismissal for arbitrary reasons and from other pressures that might compromise their independence, and that the government guarantees a budget for the council.

Licensing should not apply to print or electronic media, or to individual journalists, but only to broadcast media when limited bandwidth needs to be allocated, and such allocation needs to be done according to clear regulations. Any media council must remain subject to the Libyan constitution and law and international human rights standards, including freedom of expression. In the words of the Human Rights Committee’s General Comment no. 34,

The criteria for the application of such conditions and license fees should be reasonable and objective, clear, transparent, nondiscriminatory and otherwise in compliance with the Covenant. Licensing regimes for broadcasting via media with limited capacity, such as audiovisual terrestrial and satellite services should provide for an equitable allocation of access and frequencies between public, commercial and community broadcasters. It is recommended that States parties that have not already done so should

establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses.<sup>18</sup>

It is also critical for the council to draft regulations for the media, especially on the distribution of broadcast licenses. Such regulations guide the media, especially radio and television, in countries around the world.

Under the ICCPR and ACHPR, governments have a duty to broadcasters and audiences to guarantee the freedom to seek, receive, and impart information and ideas of all kinds. These freedoms should be ensured, article 2 of the ICCPR says, “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The agency or institution that issues broadcast licenses may not do so in a way that discriminates against applicants because of their ethnicity, language, gender, religion, or political views, any more than a government can allow only its political supporters to hold a demonstration.

Media pluralism entails both access to broadcasting media by all parts of the community and the broadcasting of a diversity of views.

States parties should ensure that public broadcasting services operate in an independent manner. In this regard, States parties should guarantee their independence and editorial freedom. They should provide funding in a manner that does not undermine their independence.<sup>19</sup>

According to a UNESCO study, international standards for independence and funding include:

The State’s obligation to promote pluralism and the free flow of information and ideas to the public, including through the media, does not permit it to interfere with broadcasters’ freedom of expression. Although licensing of broadcasters is necessary to ensure the orderly use of the airwaves, licensing

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<sup>18</sup> ICCPR C/GC/34.

<sup>19</sup> Ibid.

procedures are governed by the guarantee of freedom of expression and they may not, as a result, be used as a vehicle for government control over broadcasters, including state-funded broadcasters.<sup>20</sup>

## Law on Prohibiting Media Discussion of Fatwas

Another highly problematic law passed by the NTC is a law on religious legal opinions (*fatwas*) that stipulates that all members of society must respect *fatwas* issued by Dar al-Ifta (the Office for Islamic Legal Opinion) and that *fatwas* may not be discussed in the media. The law does not specify punishments for non-compliance.

### **Article 13, NTC Law 15/2012**

*All individuals of the society must respect all fatwas issued by the office [of Islamic Legal Opinions], its board, or council. Any person who wishes to object to a fatwa may submit such a request to the office board for consideration and review.*

*Fatwas may not be debated in the media.*

*The Dar al-Ifta, with the Ministry of Awqaf and Islamic Affairs, may establish regulations and rules for fatwas.*

The Dar al-Ifta was dissolved in 1993, during Gaddafi's rule, and formally re-established by NTC decree on February 13, 2012.<sup>21</sup> The NTC constituted the Dar al-Ifta as an independent institution that reports directly to the head of state. Its powers include issuing *fatwas* and the supervision of academic affairs in relation to issuing of legal edicts.

There are minor and major *fatwas*.<sup>22</sup> Both minor and major *fatwas* are a result of a consultation between a petitioner and a qualified licensed Islamic scholar, a *mufti*, usually

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<sup>20</sup> Toby Mendel *Public Service Broadcasting. A comparative Legal Survey*. (Kuala Lumpur: UNESCO, Asia Pacific institute for broadcasting development, 2000), [http://www.unesco.org/webworld/publications/mendel/inter\\_standards.html](http://www.unesco.org/webworld/publications/mendel/inter_standards.html).

<sup>21</sup> Dar el-Ifta, Law 15, 2012, <http://ifta.ly/web/>.

<sup>22</sup> "A minor *fatwa* usually involves one or more of the following: an explanation of the law in complicated cases or to people who have no direct access to its technical formulations; instructions on correct social behavior or lawful religious beliefs and practices; or suggestions for settling disputes without further recourse to courts. Such *fatwas* contributed to social stability by both providing formal administrative organization and informal networks for running the affairs of society. A major *fatwa*, by contrast, either involves a significant statement on public policy or requires the mufti to perform *ijtihad*, independent reasoning, in order to derive a legal ruling on an unprecedented and difficult issue: <http://www.oxfordislamicstudies.com/article/opr/t236/EO243#EarlyInstitutionalization>, *Oxford Islamic Studies* (accessed June 1, 2013).

concerning deeds, mistakes, and intra-personal situations, but not cases involving disputes or punishment, which are brought before a court of law.<sup>23</sup>

*Fatwas* are generally not considered to be universally binding, and often the petitioner is not obligated to follow the fatwa and is free to consult another *mufti*.

The prohibition on discussing *fatwas* in the media is unique, singling out as it does a specific issue and imposing a blanket ban on the media for any discussion. This cannot be justified under international human rights law, which requires a balancing exercise, and even where there is a legitimate reason for limiting freedom of expression, requires the least restrictive measure be taken.<sup>24</sup>

Article 14 of the Libyan interim constitutional covenant clearly says the state shall ensure “freedom of opinion,” “freedom of speech for individuals and groups,” and “freedom of press, media, printing and distribution.” The right to hold an opinion is also protected by international human rights law. Article 19 (1) of the ICCPR states that “everyone shall have the right to hold opinions without interference.”

The UN Human Rights Committee’s General Comment 34 reaffirms this:

Paragraph 1 of article 19 requires protection of the right to hold opinions without interference. This is a right to which the Covenant permits no exception or restriction. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions. All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion. The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1.

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<sup>23</sup> Musa Furber, Tabah Analytic Brief, *Reducing the Role of Decision-Making biases in Muslim Responsa*, (Abu Dabhi: Tabah Foundation, 2012), <http://www.tabahfoundation.org/research/pdfs/Tabah-Research-Muslim-Responsa-Biases-En.pdf>.

<sup>24</sup> ICCPR, C/GC/34.

## II. Crimes against the State

Several provisions in the Libyan Penal Code of so-called “crimes against the state” prescribe harsh punishments, yet are vaguely defined and may unjustifiably limit the right to peaceful freedom of expression. For example:

**Article 166, Libyan Penal Code, Conspiracy with a Foreign State to Instigate War against Libya**

*Any person who initiates contact with a foreign state, its officials, or any other person at its service, or conspires with it or them with the intent of turning them against Libya or allowing them to launch an act of aggression against it, shall be punished by death whether the objective is realized or not.*

**Article 178, Libyan Penal Code, Activities of Libyans Abroad against the Country’s Interests**

*A term of life imprisonment shall be levied against any Libyan abroad who publishes or transmits false, exaggerated, or alarming news or rumors about the internal state of the Libyan Arab Republic in a way that harms its reputation or shakes confidence in it abroad, or who engages in any activity liable to harm the country’s interests.*

**Article 207: Libyan Penal Code, Promotion of any Act against the State Order**

*The death penalty shall be levied against any person who promotes within the country theories or principles that aim to change the fundamental principles of the constitution or the fundamental rules of the social structure; overthrow state political, social, or economic systems; or demolish any fundamental order of the social body by resorting to the use of force, terrorism, or any other unlawful means.*

*A term of life imprisonment shall be levied against any person who possesses books, publications, illustrations, slogans, or any other material with the intent to endorse the aforementioned acts or advocate them in any other way.*

*A term of life imprisonment shall be levied against any person who receives or obtains, directly or through any kind of intermediary, cash monies or benefits of any type and from any person or body, inside or outside the country, when the purpose is to promote the acts named in this article.*

The principle of legality demands that the definition of any criminal offense be clearly defined, to allow persons to predict what acts will constitute a criminal act, and be strictly construed with any doubt being in favor of the defendant.<sup>25</sup> Article 15 of the ICCPR states that “no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.”<sup>26</sup>

Article 7 (2) of the African Charter on Human and Peoples’ Rights (ACHPR), states that “no one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.”<sup>27</sup>

Vague terms in some articles, such as "publishes or transmits false or exaggerated rumors," "shakes confidence," and "harming the reputation of the country," could lead to the death penalty for the peaceful expression of political views. The lack of legal certainty about the definition of the crime will lead to arbitrary interpretation by prosecutors and judges. Human rights activists, writers, publishers, or journalists who express views that run counter to "official history" or the dominant ideology may find themselves prosecuted.

The European Convention on Human Rights (ECHR), states in article 7(1) that “no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”<sup>28</sup>

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<sup>25</sup> Fabián Raimondo, *General Principles of Law in the Decisions of International Criminal Courts and Tribunals* (Leiden, The Netherlands: Koninklijke Brill NV), [http://books.google.com.eg/books?id=7xOJxZWjP\\_wC&pg=PA2&lpg=PA2&dq=nowak,+commentary,+iccpr,+art+15,+principle+legality&source=bl&ots=MTu6dRMNyW&sig=onBjcEgxoCYhs1hiSCcb1tqEUHY&hl=en&sa=X&ei=mfiJUf2eO4GK7Ab-5lGQCw&ved=oCDUQ6AEwAg#v=onepage&q=nowak%2C%20commentary%2C%20iccpr%2C%20art%2015%2C%20principle%20legality&f=false](http://books.google.com.eg/books?id=7xOJxZWjP_wC&pg=PA2&lpg=PA2&dq=nowak,+commentary,+iccpr,+art+15,+principle+legality&source=bl&ots=MTu6dRMNyW&sig=onBjcEgxoCYhs1hiSCcb1tqEUHY&hl=en&sa=X&ei=mfiJUf2eO4GK7Ab-5lGQCw&ved=oCDUQ6AEwAg#v=onepage&q=nowak%2C%20commentary%2C%20iccpr%2C%20art%2015%2C%20principle%20legality&f=false).

<sup>26</sup> ICCPR, art. 15.

<sup>27</sup> African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986. Art. 7 (2).

<sup>28</sup> ECHR, art. 7 (1).

Article 166 of the penal code has a number of vague terms, such as “initiates contact with a foreign state” and “intent to draw hostility against Libya,” which could describe such encounters as a social meeting with a foreign embassy official in Libya at which the discussion criticized government policies. While the purpose behind Article 207 may be to protect national security and stability in the country, as it stands now, it would also criminalize legitimate expression.

Article 178 prescribes a life sentence for actions of any Libyan abroad that “harms its [Libya’s] reputation or shakes confidence in it [Libya] abroad.” As with Article 207, the definition is too vague and overly broad and can be used in an arbitrary manner, including against critics of the government of the day.

### III. Freedom of Association

Libya's Penal Code levies severe punishments, including the death penalty, for the establishment of "unlawful" associations. These Gaddafi-era laws seriously impede freedom of association, a right enshrined in international law. The lack of a comprehensive law governing civil society and registration requirements for national and international NGOs further aggravates exercise of this right and invites arbitrary implementation by the authorities.

**Article 206: Libyan Penal Code, Unlawful Organizations and Formations**

*A death sentence shall be levied against any person who advocates the establishment of any assemblage, organization, or formation banned by law; who founds, organizes, administers, or funds it or provides a location for its meetings; who joins it or incites to such by any means, or offers any aid; or who receives or obtains, by any means, direct or indirect, cash monies or benefits of any kind from any person or body with the intent to establish a banned assemblage, organization, or formation, or facilitate its establishment. The punishment shall be the same for superiors and subordinates of whatever level in the assemblage, organization, formation, or the like, whether the main seat of the assemblage is domestic or foreign.*

**Article 208: Libyan Penal Code, Establishment of Non-political International Associations or Affiliation with them without Permission**

*A term of imprisonment shall be levied against any person in the country who creates, establishes, organizes, or administers international, non-political associations, bodies, or organizations, or chapters of them, without a permit from the government, or pursuant to a permit issued based on false or incomplete information.*

*A term of imprisonment of no more than three months and a fine of no more than 200 dinars shall be levied against any person who joins the aforementioned associations, bodies, or organizations, or any Libyan residing in the country who joins or participates in any way in any of the aforementioned organizations whose main seat is outside of the country, without a permit from the government.*

**Article 210, Libyan Penal Code, Supplementary Penalties**

*When issuing a conviction in the cases elaborated in Articles 206 and 208, the court shall rule to dissolve the aforementioned formations and close their offices.*

*In all other cases elaborated in the foregoing five articles, when pronouncing a conviction, the court shall order the confiscation of cash monies, property, documents, and other items used by the offenders to commit the crime, or having accrued to them in any way as a result of it.*

Article 206 is overly broad and contravenes international standards by making it a crime to establish, provide funds to, manage, benefit from, or even advocate establishing any organization or formation that is “legally prohibited.” The law imposes the death penalty, without further specifying any criteria for the legal prohibition.

Similarly, Article 208 seeks to limit the freedom of Libyans to join or establish international organizations unless they receive permission from the government, without establishing the criteria for such permission. Under international law, while a government may require notification of the establishment of an association, the criteria must be clear and objective and appealable if government permission is required to establish or join an association.

Article 210 calls for dissolving and closing the offices of organizations deemed illegal and does not offer a reasonable approach to legalize the status of such organizations.

In 2007, the United Nations Human Rights Committee recommended in its Concluding Observations to the periodic report submitted by Libya that the government “provide statistical information on the number of and grounds for people sentenced to death or to prison based on having violated Law 71 of 1972 and Article 206 of the penal code. The State party should abolish these legal provisions in light of the Covenant.” The NTC has since annulled Law 71.

## Regulation of NGOs

Members of Libyan civil society in February 2012 presented a draft NGO law they had prepared to the Ministry of Culture and Civil Society and the ministry is to submit it for review by the GNC. While the adoption of the law remains pending, it could still undergo revisions.<sup>29</sup> Meanwhile, an order issued by the Ministry of Culture and Civil Society may impede the development of proper legal status for NGOs operating in Libya.

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<sup>29</sup> The International Center for Non-for-Profit Law (ICNL), Draft Libya NGO Law, <http://www.icnl.org/news/2012/draft-libyan-law-on-associations-ENG.pdf>.

The Ministry of Culture and Civil Society introduced this order in the absence of a legal framework for NGOs.<sup>30</sup> Its main stated objectives are to regulate the registration of foreign non-governmental organizations and limit foreign funding for domestic societies.

The order is vague, restrictive, and requires revision, particularly with regard to provisions that allow the government to cancel NGOs' authorizations to work, limit their activities, and prevent foreign organizations from funding activities of local organizations.

While the order promises a registration certificate for a period of one year to every foreign organization that fulfills certain conditions, the order also conditions this permission on the acquisition of a license that "must be renewed on an annual basis." Some international organizations have faced considerable delays in acquiring this work permit.

There are also provisions that allow the ministry to cancel an NGO's registration "after conducting an investigation." Some of the criteria for cancellation include "submission of incorrect information," "violation of Libyan law, the registration conditions, or the commitments of the organization," attempts to "carry out activities that jeopardize national sovereignty or security or provoking discord among Libyans," and finally the "failure of the concerned organization, without acceptable justifications, to implement its plan of activities for one full year." These criteria are vague and can lead to arbitrary implementation of the order.

The order further limits the funding of local organizations by foreign NGOs. Support is restricted to specific projects.

The International Covenant on Civil and Political Rights (ICCPR), which Libya ratified in 1989, guarantees the right to peaceful association. According to article 22, "No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order ("ordre public"), the protection of public health or morals or the protection of the rights and freedoms of others."<sup>31</sup> As with all rights in international law that may be limited, the restrictions specified in article 22 (2) of the ICCPR should be

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<sup>30</sup> Libya Ministry of Culture and Civil Society, NGO Order, <http://www.icnl.org/research/library/files/Libya/foreign-org-control-en.pdf>.

<sup>31</sup> ICCPR, art. 22.

interpreted and applied narrowly and without discrimination on the grounds such as nationality, religion or political opinion.

Article 10 of the ACHPR further states “every individual shall have the right to free association provided that he abides by the law” and “subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.”<sup>32</sup>

For example, terms such as “national security” refer to only to situations involving an immediate and violent threat to the nation. The government may impose restrictions only if they are genuinely designed to address one of the criteria in article 22, are clearly set out in legislation, and meet the standard of being proportionate. This implies that the restrictions respond to a pressing public need and are oriented along the basic democratic values of pluralism and tolerance.

“Necessary” restrictions must also be proportionate: that is, carefully balanced against the specific reasons the restrictions are put in place.<sup>33</sup> The UN Human Rights Committee has repeatedly highlighted the importance of proportionality.<sup>34</sup> In applying a limitation, a government should use no more restrictive means than is absolutely required, in the extent of the limitation on freedom of association, the detriment suffered, and the time the limitation lasts.

In addition, the African Commission has stated that governments should not “enact provisions which would limit the exercise of this freedom or override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international standards.”<sup>35</sup> The Commission has also found that “freedom of association is enunciated as an individual right and is first and foremost a duty for the State to abstain from interfering with the free formation of associations.”<sup>36</sup>

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<sup>32</sup> ACHPR, art. 10.

<sup>33</sup> Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (Kehl am Rein: N.P. Engel, 1993), pp. 386-387.

<sup>34</sup> See, for example, Vladimir Petrovich Laptesevich v. Belarus, Communication 780/1997 of the Human Rights Committee. See also Richard Fries, “The Legal Environment of Civil Society,” The Global Civil Society Yearbook 2003, Centre for the Study of Global Governance, London School of Economics, 2003, chapter 9.

<sup>35</sup> Communication 225/98, Huri-Laws v. Nigeria, Fourteenth Activity Report 2000-2001, Annex V.

<sup>36</sup> Communication 101/93, Civil Liberties Organization v. Nigeria.

## IV. Right to Peaceful Assembly

The GNC passed a law in December 2012 regulating the right to peaceful demonstrations. While Law 65/2012 recognizes that peaceful protest is a basic human right under the Libyan Constitutional Declaration as well as international law, it seems to unnecessarily limit the ability of citizens to freely express themselves through spontaneous and organized demonstrations and protests, and imposes unduly harsh penalties.<sup>37</sup>

### Select articles from Law 65/2012, on the regulation of the right to peaceful demonstration:

#### Article 4

*Every demonstration must have a regulatory committee composed of a chair and at least two members, named in the notice submitted to the security directorate in the administrative jurisdiction of the site of the demonstration. This committee must maintain order during the demonstration and prevent any speech that violates the public order or morals or contains any incitement to crime. If the assembled persons do not select a committee, it shall be considered comprised of the persons signing the notice.*

#### Article 5

*The committee regulating the demonstration must submit written notice to the security directorate in the district of the demonstration site, including the date of the demonstration, the time it will start, the site of assembly and the route, and the ending time, and this at least 48 hours prior to the demonstration.*

#### Article 7

- a) The authorities named in Article 5 may not prohibit the organization of a demonstration unless it is liable to upset public security.*
- b) The demonstration organizers or one of them shall be notified of the prohibition order at his chosen address as soon as possible and at least 12 hours prior to the planned time of the demonstration. A copy of the order shall be attached to the*

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<sup>37</sup> Cairo Institute for Human Rights Studies, “Libyan and Arab rights organizations warn that new Libyan law undermines freedom of assembly,” <http://www.cihrs.org/?p=5178&lang=en>.

*external door of the body issuing it and it shall be published in the local newspapers if possible.*

- c) The demonstration organizers may file grievance against the prohibition order with the Interior Minister.*

#### **Article 10**

- 1) A penalty of no more than six months imprisonment or a fine of no more than 5,000 dinars, or both, shall be levied on any person who organizes a demonstration or sit-in, or advocates their organization, without notifying the competent authorities or in violation of a prohibition order, and the same is true of any person who takes part in it with knowledge of this fact.*
- 2) The penalty shall be doubled if the action is committed by a person bearing arms, even if they are licensed.*

The aforementioned articles of this law contravene the very narrow limits on freedom of peaceful assembly permitted under international law.<sup>38</sup>

Article 4 requires a regulatory committee composed of a chairperson and at least two additional members at each demonstration in order to “maintain order” during the demonstration and also to “prevent” any speech that “violates the public order” or “public morals” or incites participants to commit a crime. This provision invites arbitrary restrictions as organizers of a demonstration should not be held responsible for what other people in a demonstration choose to say, speech which in any case, unless it incites violence, should be protected.

Article 5 requires the organizing committee to submit a written notice to the security directorate providing full details of the date, time, location and exact route of the planned demonstration at least 48 hours prior to the demonstration. Although authorities may in general require a notification for holding a peaceful demonstration, the law ignores the fact that genuine spontaneous demonstrations can legitimately erupt in response to a specific event and makes spontaneous demonstrations automatically unlawful.

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<sup>38</sup> UN Human Rights Council, “The Rights to Freedom of Peaceful Assembly and of Association”, G.A. Res. 21/16, October 11, 2012, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/174/63/PDF/G1217463.pdf?OpenElement>.

Article 7 limits the authorities' right to prohibit a demonstration, yet the provision set out in this article for banning a particular public protest is overbroad and vague. According to Article 7(a), authorities can prohibit a demonstration if "it is liable to upset public security." It does not lay out clearly in which situations the authorities can act and does not specify acts that could upset public security.<sup>39</sup> Such broad criteria can lead to abusive and arbitrary interpretation of the law and run counter to the ICCPR's guarantees of freedom of assembly, with restrictions only permissible where proportionate and clearly defined in law.<sup>40</sup>

Article 7(c) goes on to state that if a demonstration was prohibited by the authorities, then organizers can "contest" the decision with the minister of interior but without stating what that means. The law fails to provide transparent procedures and a timeframe for the minister to respond to the affected parties, particularly if the minister decides to ban a demonstration at short notice. It also fails to guarantee the right to appeal in a court of law the authorities' decision to prohibit a specific demonstration.

Penalties imposed in Article 10 of the law, which include imprisonment for up to six months for violating the terms of the law, and failing to notify authorities of a demonstration or for violating a prohibition order from the authorities, are overly harsh for the stated "crimes" of non-compliance, particularly if the protests did not turn violent. The provisions of Article 10 are also particularly troublesome because the law does not provide guarantees that no penalties will be imposed for spontaneous reactions of the public as long as they remain nonviolent.

These articles are problematic on several grounds. With respect to notifications and permissions international standards suggest that it is preferable for the authorities to ask organizers to notify them of planned demonstrations ahead of time, rather than imposing a formal mechanism to request permission to hold a demonstration. In other words it should be up to the authorities to go to court and get an order to prohibit a specific demonstration, after receiving notification of the event and proving the need to stop it.

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<sup>39</sup> The Arabic Network for Human Rights Information, *Libyan Freedom of Assembly Law Imposes Undue Restrictions*, December 4, 2012, <http://www.anhri.net/en/?p=10391>.

<sup>40</sup> UN Human Rights Committee, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, U.N. Doc. A/HR/C/23/39, April 24, 2013, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39\\_EN.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf) (accessed April 24, 2013).

The April 23, 2013 report to the UN Human Rights Council of Maina Kiai, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, stated:

[...] in a free and democratic society, no authorization should be required to assemble peacefully. In this regard, the Special Rapporteur stresses again that the exercise of the right to freedom of peaceful assembly, should be “governed at most by a regime of prior notification whose rationale is to allow State authorities to facilitate this exercise and to take measures to protect public safety and order and the rights and freedoms of others.” The notable exception to this principle is that of spontaneous peaceful assemblies where organizers are unable to comply with the requisite notification requirements or where there is no existing or identifiable organizer. Fundamentally, the Special Rapporteur reiterates that “should the organizers fail to notify the authorities, the assembly should not be dissolved automatically and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment.”<sup>41</sup>

With respect to the kinds of restrictions laid out in article 7, international law requires that such restrictions be limited to what is necessary and proportionate. The report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that “the manner and intensity of state interference must be necessary to attain a legitimate purpose, and the prohibition or forceful breaking up of an assembly may only be considered when milder means have failed.”<sup>42</sup>

Furthermore, organizers of protests and demonstrations should be able to contest any ban or prohibition. As the report of the Special Rapporteur put it, “organizers should be given the possibility of an expedited appeal procedure, with a view to obtaining a judicial decision by an independent and impartial court prior to the notified date of the assembly.”<sup>43</sup> The decision of the regulatory authority and of the appeals court should be published for the purposes of transparency and fairness, possibly on a specific website.”<sup>44</sup>

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid, sec. 59.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid, sec. 64.

Article 21 of the ICCPR sets out the only restrictions that may be placed on freedom of peaceful assembly as "those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security, or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."<sup>45</sup>

Terms such as “national security” and “public safety” refer to situations involving an immediate and violent threat to the nation or to its territorial integrity or political independence. Nationwide limitations imposed on the basis of isolated or localized threats cannot be justified and are, therefore, impermissible.<sup>46</sup>

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<sup>45</sup> ICCPR, art. 21.

<sup>46</sup> Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (Kehl am Rein: N.P. Engel, 1993), pp.394-396.

## V. Torture

In January 2013 the GNC passed Law 10/2013 on the criminalization of torture, enforced disappearance, and discrimination.

Article (2) of the law states:

*Imprisonment for a minimum period of five years shall apply to anyone who personally inflicted or ordered another person to inflict severe pain or suffering whether physical or mental, on a detainee under his control for such purposes as obtaining from him a confession for an act he has or has not committed, or for any reason based on discrimination of any kind or revenge for any cause.*

*Anyone who conceals the crime of torture despite his ability to stop the act shall face the same punishment.*

*The perpetrator of torture shall be punished by imprisonment for a minimum period of eight years if severe harm has been inflicted to the detainee, of ten years in case the detainee has been subjected to extreme injury and life imprisonment in case of the detainee's death as a result of the torture.*

The law is an improvement over article 435 of the Libyan Penal Code on the torture of detainees, which states that “any public servant who orders the torture of an accused, or himself tortures, shall be punished by imprisonment from three to ten years.”

However, the law does not address some key elements necessary to provide for maximum protection of victims:

- The law lacks definitions for “torture,” “discrimination,” and “enforced disappearance,” and runs the risk of not being applicable to acts that amount to the crimes stipulated in the law.
- There is no reference to the law replacing any other provisions in previous legislation or superseding existing legislation that call for weaker punishments.

Article 1 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Libya in 1989, states:

[...] Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.<sup>47</sup>

This is the definition that Libya should, at a minimum, adopt. Doing so would provide a clear step towards protection and accountability for individuals who have been subjected to torture and other cruel, inhuman, or degrading treatment and towards fulfilling Libya's obligations as a state party to the Convention.

Article 2 of the Convention against Torture stipulates, "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." Furthermore, "No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture."<sup>48</sup>

The Committee against Torture, which is the body of international experts that monitors the compliance of state parties with the convention, found in its General Comment 2:

States parties are obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment; and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented. States parties also have the obligation continually to keep under review and improve their national laws and performance under

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<sup>47</sup> CAT, art. 1. Article 1, <http://www.hrweb.org/legal/cat.html>.

<sup>48</sup> Ibid.

the Convention in accordance with the Committee's concluding observations and views adopted on individual communications.<sup>49</sup>

and

[...] The Committee emphasizes that the State's obligation to prevent torture also applies to all persons who act, de jure or de facto, in the name of, in conjunction with, or at the behest of the State party. It is a matter of urgency that each State party should closely monitor its officials and those acting on its behalf and should identify and report to the Committee any incidents of torture or ill-treatment as a consequence of anti-terrorism measures, among others, and the measures taken to investigate, punish, and prevent further torture or ill-treatment in the future, with particular attention to the legal responsibility of both the direct perpetrators and officials in the chain of command, whether by acts of instigation, consent or acquiescence.<sup>50</sup>

In its general comment 3, the Committee against Torture explains to States parties the scope of obligations under article 14 of the United Nations Convention against Torture and stresses the requirement for state parties to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”<sup>51</sup>

Libya should also ratify the Optional Protocol of the UN Convention against Torture and create an independent inspectorate empowered to monitor all places of detention.

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<sup>49</sup> CAT/C/GC/2 (2008), para. 4.

<sup>50</sup> Ibid, para. 7.

<sup>51</sup> CAT/C/GC/3 para. 1.

## VI. Corporal Punishment

Several provisions of Gaddafi-era laws prescribe corporal punishment, including lashing for extramarital intercourse and slander, and amputation of limbs for *hudud* crimes, or crimes with mandatory and fixed punishments derived from the Quran or Sunnah.<sup>52</sup>

Even though the use of corporal punishment in Libya seems limited and is rarely reported, its existence in Libyan legislation constitutes a clear violation of international law which prohibits cruel, inhuman or degrading punishments, and defines the deliberate infliction of severe pain as a punishment as torture.

### ***Law 70/1973 on Adultery***

Law 70 on the establishment of corporal punishment for *zina* [extramarital intercourse] and amendments to some provisions of the Penal Code were introduced in 1973 as the government revised laws, including the Libyan Penal Code of 1953, to bring them into conformity with the basic principles of *sharia*.<sup>53</sup>

Article 2 of Law 70 says any person who “engages in intercourse outside of a legal marriage shall be sentenced to a hundred lashes.” The accused may also be sentenced to incarceration with lashing.

Article 3 of the law stipulates punishments for extramarital intercourse for minors under the age of 18, including “beatings.”

### ***Law 52/1974 on Slander***

Article 1 of the law defines slander as wrongly accusing someone of extramarital sexual intercourse.

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<sup>52</sup>Hudud (singular hadd: limit, restriction, prohibition) are crimes with mandatory and fixed punishments derived from textual sources (Quran or Sunnah). Hudud crimes comprise five offenses. Two are offenses against sexual morality: illicit sex (*zina*) and unfounded allegation of *zina* (*qadh*). The others are offenses against private property and public order: theft (*sariqa*), highway robbery (*qat' al-tariqhiraba*), and drinking wine (*shurb al-khamr*), some schools also include rebellion (*baghi*); and some include apostasy (*ridda*).” Ziba Mir-Hosseini, “Criminalising Sexuality: Zina Laws as Violence Against Women in Muslim Contexts,” *Sur-International Journal on Human Rights*, vol. 29, no. 15, (2012), Biannual English Edition.

<sup>53</sup> Government of Libya, Law 70/1973 on Zina- Extra Marital Sex, 2012, <http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=55>.

Article 4 states that any person who wrongfully accuses another of committing adultery is to be punished with 80 lashes and his wrongful testimony will not be accepted.<sup>54</sup>

Article 8 of the law stipulates that the specialized court shall apply special rules governing testimonies if a husband accuses his wife or divorced wife of adultery. If the man refuses to testify or retracts his accusation, he shall be sentenced for slander. If the woman refuses to testify, she shall be given a deadline to contradict her husband; if she refuses to do so or confirms his accusation she shall be sentenced for adultery.

Article 14 stipulates that if a woman is pregnant at the time of sentencing, then the punishment of flogging will be carried out two months after she delivers.

If the accused is over 14 and under 18 years old, he shall be punished according to the penalties for slander and libel, depending on the circumstances. Article 7 says that if the offender is a minor then he can be “beaten as suitable for his age.”

### ***Law 13/ 1425 Punishment for Crimes of Haraba and Theft***

The law defines punishment for the crimes of *haraba* and theft. The legal definition of *haraba* is when any person robs another for money by force, at gunpoint or with any other weapon, in a place where help is not available, and stipulates that he or she shall be sentenced to the amputation of his right hand and left leg. Theft is a broader category, including goods as well as money, and its punishment is amputation of the right hand.

The death penalty can be handed down if the wrongdoer has murdered the victim in the attempted robbery, even if he did not take the money.<sup>55</sup>

Corporal punishment, including beatings, flogging and amputation of limbs as described in the aforementioned legislation, amounts to inhumane and degrading treatment and is not a proportionate sentence. Article 7 of the ICCPR states:

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<sup>54</sup> Government of Libya, Law 52/1974 on Slander, 2012, <http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=45>.

<sup>55</sup> Government of Libya, Law 13/ 1425 on Haraba, 2012, <http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=40>.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

In 1997, the United Nations Commission on Human Rights concluded that “corporal punishment can amount to cruel, inhuman or degrading punishment, or even to torture.” Flogging violates the Convention against Torture, because it clearly falls within the definition of inhumane and degrading treatment.

Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), defines torture with respect to punishment as follows:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as [...], punishing him for an act he or a third person has committed or is suspected of having committed<sup>56</sup>

In 2005, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, concluded in his report:

On the basis of the review of jurisprudence of international and regional human rights mechanisms, the Special Rapporteur concludes that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Moreover, States cannot invoke provisions of domestic law to justify the violation of their human rights obligations under international law, including the prohibition of corporal punishment. He therefore calls upon States to abolish all forms of judicial and administrative corporal punishment without delay.<sup>57</sup>

In its concluding observations on Libya’s periodic report, the UN Human Rights Committee stated that it “remains deeply concerned that corporal punishment such as amputation

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<sup>56</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987. art. 1(1).

<sup>57</sup> UN General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment, Note by the Secretary-General, U.N. Doc. A/60/316 (2005), <http://www.unhcr.org/refworld/pdfid/43f30fb40.pdf>.

and flogging are prescribed by law even if rarely applied in practice. They constitute a clear violation of article 7 of the Covenant.”<sup>58</sup>

The committee recommended that Libya “immediately stop the imposition of all corporal punishment and repeal the legislations for its imposition without delay.” This recommendation echoes an earlier one by the UN Committee against Torture in 1999, which said that “although corporal punishment has not been practiced in recent years, it should be abolished by law.”

In a Sudan case brought before the African Commission in 2000 regarding the whipping of students, the commission found that “there is no right for individuals, and particularly the government of a country, to apply physical violence to individuals for offences.”<sup>59</sup>

The commission determined that the government of Sudan had violated Article 5 of the African Charter, which states that:

[E]very individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

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<sup>58</sup> ICCPR, art. 7.

<sup>59</sup> African Commission on Human and Peoples' Rights, *Curtis Francis Doebbler v. Sudan*, no. 236/2000 (2003), <http://www1.umn.edu/humanrts/africa/comcases/236-2000.html>.

## VII. The Special Procedures Law and Impunity

Law 38/2012 on Some Procedures for the Transitional Period, enacted on May 12, 2012 by the National Transitional Council, protects from prosecution perpetrators of serious crimes if their actions were aimed at “promoting or protecting the [2011] revolution” against Muammar Gaddafi. The law is problematic because it propagates a culture of selective justice and impunity.

### ***Select articles from Law 38/2012, on Some Procedures for the Transitional Period***

#### **Article 4**

*There shall be no penalty for military, security, or civil actions dictated by the February 17 revolution performed by revolutionaries with the goal of promoting or protecting the revolution.*

#### **Article 5**

*Without prejudice to Articles 261 and 262 of the Penal Code, if a person mentioned in Article 1 of this law is acquitted, by order of a court, for any reason, substantive or legal, he shall have no right to take criminal or civil action against the state or those who detained or took him into custody if the prosecution’s order or the court ruling does not state that the incident attributed to him was fabricated or mendacious.*

#### **Article 6**

*The Ministers of Interior and Defense, or their authorized deputies, may take one or more of the following measures against those suspected of constituting a threat to public security or stability in the transitional period, based on their previous actions or affiliation with an official or unofficial apparatus or tool of the former regime or those who cooperated with them:*

- 1) Require the person to report to a specific security office.*
- 2) Forbid the person from frequenting specific places.*
- 3) Limit the person’s residence to a specific place or area.*
- 4) Place the person under surveillance.*
- 5) Forbid the person from leaving a specific area.*

- 6) *Forbid the person from traveling.*
- 7) *Expel the person, if foreign.*

Article 4 appears to provide militias responsible for serious abuses with immunity from prosecution. Libyan militias are currently detaining roughly 4,000 people, most of them accused of having supported or fought for the Gaddafi government. Most of the detainees have not been brought before any judicial authority for more than one year and are therefore being detained arbitrarily.<sup>60</sup> During the course of 2011 and 2012 Human Rights Watch and others continued to document ongoing killings, torture, and forced displacement by militias in Libya.<sup>61</sup> In March 2012, the UN International Commission of Inquiry (COI) on Libya noted that anti-Gaddafi forces have committed grave violations during and since the armed conflict.<sup>62</sup> The report highlighted the plight of the people from Tawergha, perceived as Gaddafi supporters, whom anti-Gaddafi fighters from Misrata have killed, arbitrarily arrested, and tortured.<sup>63</sup> The report said the “widespread and systematic nature” of these abuses indicates that crimes against humanity may have been committed.

Article 6 of Law 38/2012 gives the government powers to restrict a person’s movement, impose a fine, or detain a person up to two months if the person is considered a “threat to public security or stability” based on the person’s “previous actions or affiliation with an official or unofficial apparatus or instrument of the former regime.” While affected individuals may challenge the measures before a judge, restrictions on people considered a threat to security should be based on evidence of current threatening activities, rather than on past affiliations. Wrongdoing should be prosecuted under criminal law rather than vague and open-ended powers to detain people as “threats to security.”

Article 5 of Law 38/2012 states that even if a court acquits a person who was detained by a militia, that person has no right to initiate a criminal or civil complaint against the state or the militia, unless the detention was based on “fabricated or mendacious” allegations.

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<sup>60</sup>“Libya: New Government should End Illegal Detention”, Human Rights Watch news release, November 16, 2012, <http://www.hrw.org/news/2012/11/16/libya-new-government-should-end-illegal-detention>.

<sup>61</sup>“Libya: Candidates should address Torture, Illegal Detention,” Human Rights Watch news release, June 18, 2012, <http://www.hrw.org/news/2012/06/18/libya-candidates-should-address-torture-illegal-detention>.

<sup>62</sup> UN Office of the High Commissioner for Human Rights, Human Rights Violations and War Crimes Committed by Both Sides – the latest report on Libya, March 8, 2012, <http://www.ohchr.org/EN/NewsEvents/Pages/LibyaReport.aspx>.

<sup>63</sup> Libya: Stop Revenge Crimes Against Displaced Persons”, Human Rights Watch news release, March 20, 2013, <http://www.hrw.org/news/2013/03/20/libya-stop-revenge-crimes-against-displaced-persons>.

This removes the right of recourse for people who have been acquitted after a wrongful accusation and wrongful detention.

Law 38/2013 violates Libya's Constituent Covenant for the transitional period, which states that all Libyans are "equal before the law" and that they enjoy equal "civil and political rights." It says that all citizens shall have freedom of movement, the same opportunities, and are subject to the same public duties and obligations, without any distinction based on political beliefs.

The law is also in violation of various aspects of international law. For example international law guarantees the right to freedom of movement. Article 12 of the ICCPR reaffirms the right to freedom of movement:

- 1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
- 2) Everyone shall be free to leave any country, including his own.
- 3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
- 4) No one shall be arbitrarily deprived of the right to enter his own country<sup>64</sup>

Article 12 of the African Charter on Peoples' and Human Rights further states:

- 1) Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
- 2) Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality [...].<sup>65</sup>

The blanket immunity in Law 38 for wrongdoing by people thought to have promoted or protected the February 17 revolution also infringes Libya's obligations under international

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<sup>64</sup> ICCPR, art. 14.

<sup>65</sup> ACPHR, art. 12.

law to investigate and prosecute serious violations of international human rights and humanitarian law.

International law opposes amnesty for serious international crimes such as war crimes, crimes against humanity, and torture. Libya is a state party to the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which requires signatories to remove all such limitations to the prosecution of war crimes and crimes against humanity.<sup>66</sup>

Libya does not have distinct offenses of the key international crimes, such as war crimes, crimes against humanity and torture.

Libya is also party to the Convention against Torture, which requires signatories to ensure that all acts of torture are criminal offenses, and to investigate and prosecute all those on its territory responsible for such torture.

Immunity granted by the Libyan legislative authorities has no legally binding status in other national or international courts, such as the International Criminal Court (ICC) that have jurisdiction over serious violations of international law, including those committed in Libya.

On November 7, 2012, Fatou Bensouda, Prosecutor of the International Criminal Court, in a statement to the United Nations Security Council on the situation in Libya, called on the Libyan authorities to ensure that there is no immunity from prosecution for serious crimes:

My Office takes note of Law 38, granting amnesty at the national level for “acts made necessary by the 17 February revolution,” as well as Law 35, which purportedly ensures that any act found to be in contravention of international laws and human rights covenants will not be exempt. I encourage the new Libyan government, scheduled to be sworn in tomorrow, on 8 November, to ensure that there is no amnesty for international crimes and no impunity for crimes, regardless of who the perpetrator is and who is the victim.<sup>67</sup>

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<sup>66</sup> Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, adopted November 26, 1968, G.A. res. 2391 (XXIII), annex, 23 U.N. GAOR Supp. (No. 18) at 40, U.N. Doc. A/7218 (1968), *entered into force* Nov. 11, 1970.

<sup>67</sup> ICC Prosecutor Statement to the United Nations Security Council on the situation in Libya, pursuant to UNSCR 1970 (2011), International Criminal Court statement, November 7, 2012, <http://www.icc->

The ICC has ongoing jurisdiction over war crimes and crimes against humanity committed in Libya since February 15, 2011, depending on whether the Libyan authorities are willing and able to prosecute the perpetrators of these crimes. Maintaining a law granting widespread judicial immunity for crimes committed would be a strong sign of the Libyan government's unwillingness to investigate crimes committed by all sides.

Authorities in other states can prosecute offenses that have taken place in Libya under universal jurisdiction laws without regard to domestic amnesties. Other states may be required to ensure such universal jurisdiction by treaties they are party to, such as the torture convention.

## Law on Transitional Justice

On September 22, 2013, the GNC passed the law on transitional justice. At time of writing, the final version of the law had yet to be published.

Minister of Justice Salah al-Marghani had submitted a draft of the law to the GNC for review in December 2012.<sup>68</sup> The law replaces NTC law 17/2012 on transitional justice of February 26, 2012.

According to article 1, “transitional justice is meant to address the serious and systematic abuses of fundamental rights, committed by state agencies and suffered by Libyans under the former regime. This would take place through social, administrative and judicial procedures that aim at revealing the truth, holding offenders accountable, preserving national memories and redressing any wrongdoing for which the state is responsible .According to article 3, the law covers events from September 1, 1969, when Muammar Gaddafi took power, until the end of the transitional period following elections to the legislative council according to the permanent constitution.

The law's broader objectives, according to the draft, are to “[p]reserve and strengthen civil peace, deter human rights violations, re-assure and convince people that justice exists,

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[cpj.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/4reportToUNSCRlibya.aspx](http://cpj.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/4reportToUNSCRlibya.aspx).

<sup>68</sup> Draft Law on Transitional Justice, *Libyan Ministry of Justice*, 2012, <http://www.aladel.gov.ly/images/2012/Law-proo1.pdf> (accessed July 22, 2013).

and that it is effective, identify the responsibility of state bodies or any other parties for human rights violations, document and preserve events covered by transitional justice then deliver them to the competent national authorities, compensate victims and affected persons, achieve community reconciliations and reform institutions.”<sup>69</sup>

The law stipulates that a fact finding commission, affiliated with the GNC, would be tasked with “investigating cases of serious human rights violations and identifying those responsible for these abuses” and issuing binding decisions on “all forms of appropriate compensation for victims, including financial compensations, commemoration, medical treatment or rehabilitation and social services.”

Article 16 further states “the commission shall have the authority to subpoena persons, search premises, confiscate documents and pieces of evidence and visit places relevant to its investigations. Persons identified by decision of the commission's president shall have judicial powers of arrest in this regard.”

Although the law also covers the period of transition, according to article 1, it is “meant to address the serious and systematic abuses of fundamental rights, committed by state agencies and suffered by Libyans under the former regime.” The law seems to cover only abuses “committed under cover of the state, one of its agencies or individuals acting on its behalf.” While article 1 of the law states the law “includes some effects of the February 17 Revolution”, it specifies only “acts and attitudes that caused a rift in the social fabric, acts that were necessary to protect the Revolution but showed conduct inconsistent with its principles, reconciliation, establishing social peace and laying the foundations for a state of rights and law.”

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<sup>69</sup> Draft Law on Transitional Justice, art. 4.

## VIII. Death Penalty

From the 1970s until Gaddafi's fall, Libya witnessed public executions of military officers, students, and dissidents. Gaddafi's Revolutionary Guards intensified persecution of university students suspected of opposing his rule after students demonstrated against repression by the security services on April 7, 1976. On April 7, 1977, the government "commemorated" the events of the previous year at universities in Tripoli and Benghazi by arresting and publicly executing students and dissidents. The government carried out public hangings to stifle dissent every year on April 7 until the late 1980s.<sup>70</sup>

The government held an infamous show trial on June 5, 1984 and forced thousands of students to attend the public hanging of Sadiq Hamed Shwehdi in Benghazi's basketball stadium.<sup>71</sup>

Provisions for the death penalty can be found in at least 30 articles of the Libyan Penal Code. Human Rights Watch urges the Libyan government to replace the death penalty with imprisonment, a more humane punishment.

Human Rights Watch opposes capital punishment in all countries and in all circumstances as a matter of principle, because respect for the inherent dignity of the person is inconsistent with the death penalty; this form of punishment is unique in its cruelty and finality, and is universally plagued with arbitrariness, prejudice, and error. There is also a concern that it is most often carried out in a discriminatory manner.<sup>72</sup> In some cases, such discrimination may be on ethnic, religious, or political grounds.

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<sup>70</sup> Immigration and Refugee Board of Canada "Libya: The significance of 7 April; whether it is a day on which dissidents are hanged and if this practice has been in existence since 1970," January 7, 2003, <http://www.unhcr.org/refworld/publisher,IRBC,,LBY,3f7d4dc238,o.html>.

<sup>71</sup> Ian Black, "Gaddafi's Libyan rule exposed in lost picture archive," *The Guardian*, July 18, 2011, <http://www.guardian.co.uk/world/2011/jul/18/gaddafi-brutal-regime-exposed-lost-archive> (accessed December 12, 2012).

<sup>72</sup> Human Rights Watch, Truth and Justice Can't Wait: Human Rights Developments in Libya Amid Institutional Obstacles, December 12, 2009, <http://www.hrw.org/node/87096/section/11>.

## **Select Provisions of the 1953 Libyan Penal Code**

### **Article 19: The Death Penalty**

*Any person sentenced to death shall be killed by firing squad pursuant to the procedures defined by law.*

### **Article 176: Inciting Military Defeatism**

*A term of life imprisonment shall be levied against any person who incites military personnel to disobey laws, break the oath, deviate from the military code or military duties, or incites them to actions violating the law, the oath, the military code, or military duties. The offender shall be sentenced to death if the crime is committed in wartime.*

### **Article 177: Disseminating Economic Defeatism**

*A prison term of no less than five years and a fine ranging from 500 to 1,000 dinars shall be levied against any person who in wartime uses a means to attempt to harm the currency market or influence stock and financial markets, whether public or private, in a way that endangers the capacity of the country to resist the enemy.*

*The penalty shall be life imprisonment if the act is committed as a result of spying together with a foreigner.*

*The penalty shall be death if the act does in fact endanger the capacity of the country to resist the enemy.*

### **Article 196: Attacks on the Constitution**

*A penalty of death shall be levied against any person who attempts by force or another method whose use is prohibited in the constitutional order to change the constitution or the form of government.*

### **Article 204: Attacks on Constitutional Authorities**

*A penalty of death shall be levied against any person who commits an act aimed at preventing the president, a popular authority, or the government, wholly or partially, from performing their work or exercising the authorities invested in them by law, even temporarily.*

**Article 207: Promotion of Any Act against the State Order**

*The death penalty shall be levied against any person who promotes within the country theories or principles that aim to change the fundamental principles of the constitution or the fundamental rules of the social structure; overthrow state political, social, or economic systems; or demolish any fundamental order of the social body by resorting to the use of force, terrorism, or any other unlawful means [...].*

**Article 305: Epidemics**

*Any person who causes an epidemic by disseminating harmful microbes shall be punished with a term of imprisonment of no less than ten years.*

*If the act results in the death of one person, the penalty shall be life imprisonment. If more than one person dies, the penalty shall be death.*

**Article 306: Poisoning Water or Foodstuffs**

*A term of imprisonment of no less than five years shall be levied against any person who poisons waters or foodstuffs prior to distribution or their arrival to the consumer.*

*If the act results in the death of one person, the penalty shall be life imprisonment. If more than one person dies, the penalty shall be death.*

The aforementioned articles illustrate the wide range of acts that are punishable by death according to the Libyan Penal Code and are by no means exhaustive of all articles of the penal code and in Libyan legislation that prescribe the death penalty as a maximum sentence.

These include acts of a political nature as laid out in articles 204 and 207, acts of sabotage as in articles 305 and 306, but also formation of associations as stated in article 206.<sup>73</sup>

The disproportionate punishments and vague nature of these articles invite arbitrary implementation of the law.

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<sup>73</sup> See Chapter III, Freedom of Association.

Although the death penalty is not yet prohibited by international law, there are strict conditions governing its application in order for it to be consistent with international human rights law. The current global trend towards the abolition of the death penalty is best reflected in the December 18, 2007 General Assembly resolution (62/149) calling for a worldwide moratorium on executions. The resolution was adopted by a majority of 104 member states in favor, with 54 countries against and 29 abstentions.

On December 21, 2010, the General Assembly adopted another resolution (65/206) calling for a moratorium on the use of the death penalty, which was approved by a broader margin of support, with 109 votes in favor, 41 against, and 35 abstentions.

The 2010 resolution calls on all states “to respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty,” “make available relevant information with regard to their use of the death penalty,” “progressively restrict the use of the death penalty and to reduce the number of offences for which it may be imposed,” and “establish a moratorium on executions with a view to abolishing the death penalty.”<sup>74</sup> The resolution calls on states that have already abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard.

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<sup>74</sup> Moratorium on the use of the death penalty, adopted March 28, 2011, G.A. Res. 65/206.

## IX. Violence and Discrimination against Women

Libya has long been a party to the principal international and regional treaties pertaining to equality between women and men. Libya acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1989.<sup>75</sup> However, it entered reservations to articles 2 (regarding inheritance) and 16 (c) and (d) (regarding marriage, divorce and child custody), stating that these articles must be implemented in accordance with Islamic law (Sharia).<sup>76</sup> Libya was among the first countries to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).<sup>77</sup>

Violence against women and girls, particularly domestic violence, remains a significant problem in Libya. The country's 1951 constitution and laws scarcely address this issue, or do so in discriminatory ways. Survivors of sexual and domestic violence have limited recourse in Libya, as the Committee on the Elimination of Discrimination against Women (CEDAW Committee), the treaty's monitoring body, noted in its 2009 concluding observations on Libya's application of CEDAW.<sup>78</sup> Inadequate laws and services leave female victims of violence without an effective remedy and deter them from reporting rape and domestic violence.

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<sup>75</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981. Libya has also ratified the Optional Protocol to CEDAW, which allows the CEDAW Committee to receive and consider complaints from individuals or groups. Optional Protocol to the Convention on the Elimination of Discrimination against Women, adopted October 6, 1999, G.A. res. 54/4, annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/49 (Vol. I) (2000), entered into force December 22, 2000., ratified by Libya on June 18, 2004.

<sup>76</sup> The Reservation states that: "1. 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. 2. The implementation of paragraph 16 (c) and (d) of the Convention shall be without prejudice to any of the rights guaranteed to women by the Islamic Shariah." "Declarations, Reservations and Objections to CEDAW," Division of the Advancement of Women, Department of Economic and Social Affairs, United Nations, [www.un.org/womenwatch/daw/cedaw/reservations-country.htm](http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm).

<sup>77</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the second Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/LEG/66.6, entered into force November 25, 2005.

<sup>78</sup> Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Libyan Arab Jamahiriya* (43rd Sess, 2009), U.N. Doc. CEDAW/C/LBY/CO/5 (2009), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/227/84/PDF/N0922784.pdf?OpenElement>.

Libya's only current law specifically relating to domestic violence is the Personal Status Law, No. 10 of 1984, which states that a woman "has the right to expect her husband to ... refrain from causing her physical or psychological harm." The law provides no enforcement mechanisms, however, and therefore is not effective in combating the problem of domestic violence.<sup>79</sup>

So-called crimes of honor are a persistent form of violence against women in Libya.

At time of writing, the GNC was considering a draft law to address the Situation of Raped and Abused Women. The law aims to provide services and compensate women and men who suffered rape and/or other forms of sexual and physical abuse during the conflict in 2011 in Libya. The law can prove effective if it is part of a larger strategy to address the general problem of sexual violence.

Examples of laws that violate international standards with regard to violence and discrimination against women:

**Article 375, Libyan Penal Code**

*Whosoever surprises his wife, daughter, sister or mother in the act of adultery (in flagrante delicto) or in illegitimate sexual intercourse and immediately kills her or her partner or both in response to the assault that has affected his honour (sharaf) or the honour of his family, shall be punished by a prison sentence. If the act leads to grave or serious injury of the said persons in these circumstances, the penalty shall be prison for no more than two years. Mere beating or light injury in such circumstances shall not be penalized.*

The current penal code classifies sexual violence as a crime against a woman's "honor," rather than against the woman as individual victim or as a violation of her bodily integrity.<sup>80</sup> Sexual assault should be considered as a crime against the individual rather than against norms or values. The law's current focus perpetuates the notion that a rape survivor has lost her "honor," and undermines justice by leading courts to focus on examining a woman's sexual history and "honor" rather than the alleged violence committed against her.

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<sup>79</sup> Personal Status Law, No. 10 of 1984, article 17.

<sup>80</sup> See Libyan penal code, chapter 3.

The penal code has less severe criminal sentencing provisions for perpetrators of “honor crimes” than perpetrators of the same crimes where “honor” cannot be cited as a basis for mitigation. According to article 375 of Libya’s penal code, the maximum penalty for a man who immediately kills his wife, mother, daughter, or sister after witnessing them engaging in extramarital sexual relations is imprisonment.<sup>81</sup> By contrast, the usual punishment for a non-premeditated but deliberate homicide of a family member or spouse under the penal code is life imprisonment, unless the crime was connected to another serious crime, in which case the punishment is death.<sup>82</sup> Premeditated homicides incur the death penalty under the penal code.<sup>83</sup>

Also under article 375, a man whose “honor-motivated” violence results in grave or serious injuries to his wife or female relative may be imprisoned for no more than two years, whereas the same violence could result in a 7.5-year maximum prison sentence if the attack was not deemed to have been motivated by honor.<sup>84</sup>

This penal code provision clearly violates the basic requirement of international human rights law that individuals are entitled to equality before the law and should not suffer discrimination on the grounds of their sex. The penalty for murder or for battery should be consistent throughout the penal code and the relationship between the victim and the perpetrator should not affect this. As the CEDAW Committee has specifically elaborated, states have an obligation to enact “legislation to remove the defense of honor in regard to the assault or murder of a female family member.”<sup>85</sup> Article 375 of the penal code also effectively authorizes, even invites, violence against women by declaring explicitly that a man who “merely” beats his wife, daughter, sister, or mother caught in the act of unlawful intercourse shall not be punished.

In addition to legal measures (such as penal sanctions, civil remedies, and compensatory provisions) to combat violence against women, the CEDAW Committee has identified other key steps necessary to address such violence. These include both preventive measures,

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<sup>81</sup> Ibid., art. 375.

<sup>82</sup> Ibid., art. 372.

<sup>83</sup> Ibid., art. 368.

<sup>84</sup> Ibid. arts. 381-382.

<sup>85</sup> UN Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against Women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 (1994), p. 84, para. 24 (t).

such as public information and education programs to change attitudes about the roles and status of men and women, and protective measures, including shelters, counseling, rehabilitation, and support services.<sup>86</sup>

A strong anti-discrimination law would help ensure gender equality by prohibiting discrimination on the basis of gender, sex, pregnancy, and marital status, among other categories. Libya's current Constitutional Declaration lists "sex" as one of the prohibited grounds for discrimination.<sup>87</sup> Anti-discrimination legislation should further prevent and prohibit discrimination by state and private parties, allow courts to strike down discriminatory policies, and give those affected by it an effective remedy.<sup>88</sup>

An anti-discrimination law should address all forms of discrimination against women, including in the political sphere. CEDAW specifically requires that states take all appropriate measures to ensure that women (on equal terms with men) have the right to vote in all elections, to be eligible for election to all publicly elected bodies and to participate in the formulation of government policy.<sup>89</sup> Other international and regional human rights conventions contain similar provisions.<sup>90</sup>

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<sup>86</sup> Ibid.

<sup>87</sup> Constitutional Declaration *Libyan Transitional National Council*, 2011, art. 6.

<sup>88</sup> On April 9, 2013, the GNC passed legislation to criminalize torture, enforced disappearances and discrimination. The law includes sex as one of the prohibited grounds for discrimination and allows imprisonment when a person has deprived another "of any of his rights" because he or she belongs to a "specific group, community or region, or on the basis of sex or color." "GNC agrees uncompromising law on torture, kidnapping and discrimination," *Libya Herald*, April 2, 2013, <http://www.libyaherald.com/2013/04/09/gnc-agrees-uncompromising-law-on-torture-kidnapping-and-discrimination/> (accessed May 1, 2013).

<sup>89</sup> CEDAW, art. 7

<sup>90</sup> The conventions and their interpretations call for a variety of measures to realize the right of nondiscrimination in political participation. See Maputo Protocol art. 9; CEDAW Committee, General Recommendation No. 23, Political and public life, (Sixteenth session, 1997), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.9 (Vol. II) (2008), p. 347, para. 5; CEDAW Committee, General Recommendation No. 25, art. 4, paragraph 1, of the Convention (temporary special measures), (Thirtieth session, 2004), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.9 (Vol. II) (2008), p. 365, para. 18; CEDAW Committee, General Recommendations No. 5, Temporary special measures, (Seventh-session, 1988), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.9 (Vol. II) (2008), p. 320; UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights, art.3), (Thirty-fourth session, 2005), U.N. Doc. E/C.12/2005/4 (2005), paras. 18 and 19; UN Human Rights Committee (HRC), General Comment No. 25, art. 25 (Participation in public affairs and the right to vote), (Fifty-seventh session, 1996), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.9 (Vol. I) (2008), p. 217, para. 11.; HRC, General Comment No. 28, art. 3 (The equality of rights between men and women), (Sixty-eighth session, 2000), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.9 (Vol. I) (2008), p. 228, para. 29; HRC, General Comment No. 18, Non-discrimination, (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.9 (Vol. I) (2008), p. 195, para. 10.; CESCR, General Comment No. 20, Non-

CEDAW provides that governments must “condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle...”<sup>91</sup> The Maputo Protocol includes a similar provision, calling for the principle of equality between men and women to be included in national constitutions and other laws.<sup>92</sup>

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discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/20 (2009), para. 9; and UN Security Council, Report of the Secretary-General on Women, peace and security, S/2010/173, April 6, 2010, paras. 21 and 25.

<sup>91</sup> CEDAW, art. 2(a).

<sup>92</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/LEG/66.6, entered into force November 25, 2005 ratified by Libya on May 23, 2004, art. 2(1)(a).

## X. Rights of Migrants, Asylum Seekers and Refugees

Libya is both a destination and a transit country for migrants from sub-Saharan Africa and elsewhere. Many are refugees and asylum seekers. According to UNHCR, as of October 28, 2013, 28,782 people had registered with the agency in Libya, roughly half of them Syrians.<sup>93</sup>

Migrants, asylum seekers, and refugees in Libya face the risk of arbitrary arrest, detention, torture and ill-treatment, and inadequate detention conditions, as well as financial extortion, exploitation, and forced labor. Women are particularly vulnerable to gender-based violence, especially while in detention.<sup>94</sup>

Without basic safeguards migrants held indefinitely in migrant detention facilities face the risk of refoulement, i.e., forcible return to countries where their lives or freedoms are threatened.<sup>95</sup>

The non-refoulement obligation applies not only in refugee law but in human rights law as well, which bars sending people to places where they would be at real risk of being subjected to torture or cruel, inhuman, or degrading treatment (including a risk of being sent on to a third country). This is set out explicitly in article 3 of the Convention against Torture. Jurisprudence has made clear that states are required by article 7.1 of the International Covenant on Civil and Political Rights (ICCPR) to respect the principle of non-refoulement.

### **Article (10) of Libya's August 2011 Constitutional Declaration states:**

*The state shall ensure the right of asylum in accordance with the law, and the extradition of political refugees shall not be permitted.*

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<sup>93</sup> Information from UNHCR in Libya, November 1, 2013.

<sup>94</sup> "Libya: Stop Arbitrary Arrests of Black Africans," Human Rights Watch news release, September 4, 2011, <http://www.hrw.org/news/2011/09/04/libya-stop-arbitrary-arrests-black-africans>.

<sup>95</sup> Principle of non-refoulement, Article 33(1) of the 1951 refugees convention: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion." Convention Relating to the Status of Refugees, adopted July 28, 1951, United Nations, Treaty Series, vol. 189, p. 137, entered into force 22 April 1954.

Libya has yet to issue national legislation and establish viable administrative structures to deal with people wanting to lodge asylum claims.

Libya is party to the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa.<sup>96</sup> However, Libya is not party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.<sup>97</sup>

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<sup>96</sup> Organization of African U, “Convention Governing the Specific Aspects of Refugee Problems in Africa,” Addis Ababa, September 10, 1969, <http://www.unhcr.org/45dc1a682.html>.

<sup>97</sup> Ibid.

## XI. Political Exclusion

On May 5, 2013 the General National Congress passed with a clear majority law 13/ 2013 on Political and Administrative Isolation.<sup>98</sup> The law came into force on June 5, 2013. Libya's parliament debated the controversial bill for months. In April and early May 2013, armed militias laid siege to the Ministries of Foreign Affairs and Justice to demand its passage.<sup>99</sup>

The law bars all those who held official posts from September 1, 1969, when Gaddafi took power, until his fall in October 2011, from elected and official positions for a period of 10 years. The law's provisions and procedures for exclusion violate human rights standards as they are too vague and broad and constitute guilt by association rather than punishment for individual wrongdoing.<sup>100</sup>

Less than a week prior to passing the political isolation law, on May 5, 2013, the GNC approved an amendment to the Constitutional Declaration, Libya's provisional constitution, to exclude any possibility of judicial review of the political isolation law, eliminating the possibility that the Supreme Court could strike down the law.<sup>101</sup> This set a dangerous precedent with serious consequences for the protection of rights and rule of law in Libya. Despite these restrictions, the National Council for Civil Liberties and Human Rights, Libya's local human rights commission, appealed the constitutionality of the law, and as of early November 2013 the decision of the Supreme Court was pending.

Article 1 of the law lists 23 categories of public positions, as well as acts committed under the Gaddafi government, such as showing a "hostile attitude toward the February 17 revolution," that would be subject to scrutiny. Even those who served as heads of student unions under Gaddafi would be excluded under the law.

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<sup>98</sup> "Libya: Reject 'Political Isolation Law,'" Human Rights Watch news release, May 4, 2013, <http://www.hrw.org/news/2013/05/04/libya-reject-political-isolation-law>.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

Article 2 specifies that anyone who held any of the positions listed under the first article or is judged to have failed the law's other criteria would be barred from 20 categories of official public positions.

The law tasks a commission to carry out its provisions for lustration of senior officials. This commission succeeds the High Commission for the Implementation of the Integrity and Patriotism Standard created by the National Transition Council in April 2012. The new body, the High Committee to Implement the Criteria for Occupying Public Positions, retained the members of the old one. The committee's mandate extends to vetting candidates for elections as well as transitional government members, GNC members, senior security officials, ambassadors, heads of government institutions and companies, heads of universities, and heads of unions.

The regulations and prohibitions on who may serve as a government official or become a candidate for election are vague and sweeping and invite arbitrary implementation. The standards and procedures to determine whether an individual meets the set criteria are unclear.

The law also criminalizes any effort to circumvent the law by giving false or incomplete information. Violations are punishable by up to one year in prison.

Although article 12 of the law ensures the right to appeal a decision by the commission, the law lacks guarantees of minimum due process rights for those subject to exclusion including the right to give testimony during the appeal hearing and the right to legal counsel.<sup>102</sup>

The law mandates the commission to obtain "evidence," despite it not being a judicial or investigative body. The role of the commission should be limited to obtaining and verifying information about a person. Further, the questionnaire handed out to candidates in senior positions is a tool for self-incrimination, as candidates are required to fill out detailed accounts of their past and positions held since 1969. The commission has an open-ended mandate to review a case should "new evidence" arise against a person.

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<sup>102</sup> Ibid.

In his briefing to the UN Security Council on June 18, 2013, Tarek Mitri, Special Representative of the Secretary General and head of the United Nations Support Mission to Libya (UNSMIL), stated:

Written advice was provided to the General National Congress on international standards, best practices and potential risks of exclusionary measures. The current law falls short of these standards in a number of areas. We believe many of the criteria for exclusion are arbitrary, far-reaching, at times vague, and are likely to violate the civil and political rights of large numbers of individuals.<sup>103</sup>

International law requires Libya to allow all citizens the right to hold political office without discrimination based on political associations. As a state party to the International Covenant on Civil and Political Rights (ICCPR), Libya is required to allow its citizens equal opportunity to participate in political life, without discrimination or “unreasonable restrictions.”<sup>104</sup>

The African Charter on Human and Peoples’ Rights, also ratified by Libya, requires states to ensure that every citizen has the right to participate freely in the government of their country.<sup>105</sup>

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<sup>103</sup> United Nations Support Mission in Libya (UNSMIL), “Briefing to the Security Council SRSG and Head of UNSMIL, Tarek Mitri - 18 June 2013,” video, June 18, 2013, <http://unsmil.unmissions.org/Default.aspx?ctl=Details&tabid=3543&mid=6187&ItemID=1572835>.

<sup>104</sup> ICCPR, art. 25.

<sup>105</sup> ACHPR, art. 30.

## Recommendations

### To the General National Congress and Succeeding Legislatures:

#### 1. Lift Restrictions on Freedom of Expression

- Repeal articles 195, 205, 207, 245 and all other provisions of the Libyan Penal Code that violate freedom of expression, and ensure that any legal limitations that are retained are necessary and proportionate and comport with Libya's international treaty obligations.
- Eliminate all criminal offenses of defamation.
- Eliminate all criminal offenses of insulting religion and repeal articles 290 and 291 of the penal code.
- Allow discussion of fatwas in the media and repeal article 13 of NTC Law 15/2012.
- Design licensing procedures and regulatory mechanisms applicable to media that must share a limited space, such as the spectrum of broadcast frequencies or air waves, that guarantee non-discrimination, including on the grounds of language, political or religious views, or ethnicity or gender, in terms of granting, renewing or removing licenses.
- Publish transparent standards and procedures for the issuance, suspension, and revocation of broadcast licenses, including clarity on who makes these decisions and the criteria for doing so. The standards and procedures should incorporate Libya's duties regarding freedom of expression, including the right to seek, receive, and impart information.
- Publicly invite applications for broadcast licenses, and review these in a timely manner.
- Make public the reasons for denial of license applications.
- Create an appeal process by which rejected applicants can challenge the decision before a neutral body.
- Make public the reasons for the revocation of any broadcast licenses and allow the broadcaster to challenge the decision before a neutral body.

- Grant access to the airwaves for a diversity of information and views, including news and political opinions.

## **2. Clearly and Narrowly Define “Crimes Against the State”**

- Focus and narrow the definitions of “crimes against the state” and ensure the definitions exclude peaceful and legitimate exercise of basic rights, including freedoms of expression, assembly, and association.

## **3. Protect Freedom of Association**

- Revise and amend the penal code and other legislation to guarantee freedom of association.
- In article 206 of the penal code, repeal the death penalty levied as punishment for establishment or participation in unlawful organizations.
- Amend articles 206 and 208 of the penal code to explicitly allow for the free establishment of associations without any restriction on what such organizations advocate or promote, with the exception of violence or other serious crimes according to Libyan law.
- In articles 206 and 208 of the penal code, limit the criminalization of acts committed by local and international non-governmental organizations to the direct and immediate incitement to acts of violence or discrimination pursuant to the narrowly prescribed terms consistent with international law.
- Repeal article 210 of the penal code and ensure that any dissolution of an NGO takes place only by judicial order and only as a result of the most egregious violations.
- Adopt the draft law for civil society organizations (NGO law) and ensure consistency with international law and best practices.
- Revise the NGO order from the Ministry of Culture and Civil Society to eliminate discrepancies with the draft NGO law, including vague criteria for registration of foreign NGOs, funding of local partners, and restrictions on activities.
- Provide constitutional guarantees that meet international standards and best practices for freedom of association.

#### **4. Guarantee Right to Peaceful Assembly**

- Revise Law 65/2012 and require any restrictions placed on a public gathering to be strictly necessary for protecting public order, public morals, and the rights of others—in keeping with the jurisprudence of the UN Human Rights Committee on the interpretation of those terms.
- Ensure that the law allows spontaneous peaceful demonstrations.
- Remove criminal penalties for non-notification of peaceful assemblies and if necessary use existing legislation to hold accountable persons responsible for crimes such as incitement to violence or complicity in violence.
- Require that authorities give reasons for any refusal to allow a public gathering.
- Allow an expedited appeal of such a decision in court.

#### **5. Define Torture**

- Include in the penal code a definition of torture aligned with article 1 of the UN Convention against Torture, to which Libya is a party.
- Ratify the Optional Protocol of the UN Convention against Torture and create an independent inspectorate empowered to monitor all places of detention.
- Ensure that the draft law on Criminalization of Torture, Enforced Disappearance and Discrimination, includes definitions of torture, enforced disappearance, and discrimination that, at a minimum, meet the standards of international law. Ensure that the draft law clearly states the type of punishments officials can receive if found guilty of not following up on violations taking place under their command.
- Ensure that the legal system provides means of redress for victims of torture.
- Make the punishment for torture commensurate with the seriousness of the crime.

#### **6. Abolish Corporal Punishment**

- Abolish all corporal punishment provisions in Libyan legislation including Law No. 70 of 1973, Law No. 52 of 1974, and Law No. 13 of 1425, and replace them with proportionate sanctions.

## **7. Amend the Special Procedures Law, Prevent Impunity**

- Amend Law 38/2012 on Some Special Procedures to exclude from any amnesty those responsible for serious international crimes such as murder, torture, sexual violence, and forced displacement.
- Provide legal guarantees to anyone subject to unlawful detention to have an enforceable right to compensation, as stipulated in the ICCPR.
- Adopt a law on transitional justice that clearly defines international crimes and ensure they are retroactive. Serious crimes include genocide, crimes against humanity, war crimes, torture, and enforced disappearance.
- Amend the penal code to include definitions of international crimes including genocide, crimes against humanity and war crimes, and torture.

## **8. Abolish the Death Penalty**

- Abolish the death penalty.
- Declare an immediate moratorium on all executions pursuant to death sentences handed down by military and civil prosecutors in the post-Gaddafi era.
- Ratify the Second Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR), which aims at the abolition of the death penalty.<sup>106</sup>

## **9. Protect Women from Violence and Discrimination**

- Lift all reservations to the Convention to End All Discrimination Against Women (CEDAW).
- Guarantee full equality for women in the new constitution, consistent with Libya's international obligations under CEDAW and the Maputo Protocol. The constitution should ensure that women are protected from all forms of public or domestic violence and that this protection is enforceable by law through the courts.
- Develop laws criminalizing domestic violence that give adequate protection to women.

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<sup>106</sup> Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted December 15, 1989, G.A. Res. 44/128.

- Repeal or amend current laws that discriminate against women, including article 375 of the Libyan Penal Code. In particular, amend provisions that classify sexual violence as a crime against “honor” and repeal provisions that allow for reduced sentences for perpetrators of “honor” crimes.
- Pass strong anti-discrimination laws.

#### **10. Protect Rights of Migrants, Asylum Seekers and Refugees**

- Ratify the 1951 Refugee Convention and its 1967 Protocol and enact an asylum law that is consistent with international refugee law; establish a fair and lawful asylum procedure in conformity with international obligations, in particular an absolute prohibition on refoulement.
- Codify Libya’s obligations as a party to the OAU (now AU) Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1981 African Charter on Human and Peoples’ Rights, and in accordance with the AU Convention’s guarantee that “no refugee shall be repatriated against his will” and the African Charter’s assurance that all individuals have the right to seek asylum.
- Formally recognize the UN Office of the High Commissioner for Refugees and support its efforts to provide international protection for refugees, asylum seekers, and other persons of concern on Libyan territory. Grant the UNHCR unfettered access to all places where non-nationals are detained in Libya, including the right to conduct interviews in private.
- Ensure access to full and fair asylum procedures, including for asylum seekers in detention. In the absence of national refugee law and asylum procedures, ensure that the UNHCR has access to all asylum seekers to conduct refugee status determination interviews.

#### **11. Ensure Respect for Political Rights**

- Repeal the law on Political and Administrative Isolation

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Production and coordination was provided by Jillian Slutzker and Sandy Elkhoury, associates in the Middle East and North Africa division. Amr Khairy, Arabic translation and website coordinator, supervised the translation of the report into Arabic. Grace Choi, publications director; Kathy Mills, publications specialist; and Fitzroy Hepkins, administrative manager, prepared the report for publication.

# LEGISLATIVE PRIORITIES FOR REFORM

## A Human Rights Roadmap for a New Libya

This report highlights the key Gaddafi-era laws that Libya must abolish or amend to meet its international human rights obligations, as well as some problematic new laws that interim authorities have enacted since Gaddafi's ouster in 2011. The penal code, for instance, imposes the death penalty for over 30 "crimes," including for acts that should be protected under free expression and association. The report urges changes to laws that deal with torture, defamation, the media, civic organizations, political rights, women, and refugees. It presents a roadmap of legislative reform to dismantle the legal architecture of Gaddafi's abusive rule.



*In Benghazi, Libya, on February 15, 2013  
Libyans wave their national flags during a  
celebration to commemorate the second  
anniversary of the revolution that ousted  
Muammar Gaddafi.*

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