



**Submission to the Universal periodic Review
September 2014
LIBYA**

BACKGROUND

1. The former Libyan government headed by Muammar Gaddafi controlled and repressed civil society and promised but failed to deliver much-needed human rights reforms. Under Gaddafi, Libya maintained harsh restrictions on rights to freedom of expression, association and assembly, including penal code provisions that criminalized "insulting public officials" and "opposing the ideology of the Revolution".
2. The armed conflict sparked by the Gaddafi government's violent response to a popular uprising in 2011 resulted in Gaddafi's overthrow and death, and Libya's interim leadership by an unelected National Transitional Council (NTC). The NTC struggled to rein in the many militias and armed groups across the country and the main human rights concerns included the weakness of the criminal justice system, torture and other mistreatment of detainees, and revenge attacks against former Gaddafi officials and supporters, as well as the apparent extrajudicial executions of Muammar Gaddafi, his son Muatassim, and dozens of his supporters.
3. Throughout 2012 and 2013, Libyans suffered from ongoing violence, with clan clashes, deadly attacks on foreign diplomatic missions and international organizations, destruction of Sufi religious sites, kidnappings for financial and political reasons, and targeted killings of former Gaddafi security officers. Authorities failed to conclude any investigations into politically motivated assassinations, attacks on protesters in Benghazi and Tripoli, and attacks on journalists and foreign diplomatic missions. Non-Libyans from sub-Saharan Africa faced arbitrary arrest, and beatings. In July 2012, Libya held its first parliamentary elections in over four decades, which saw 33 women elected to the 200-member General National Congress. This first elected legislature in over four decades was marked by political infighting and dysfunctional processes.
4. In 2014, fighting between rival militias triggered an armed conflict in Tripoli, the capital, and Benghazi, causing the United Nations, the International Committee of the Red Cross, the United States and other states to withdraw their staff and close their missions in Libya. In May, Khalifa Hifter, a former Libyan army general, launched a military campaign against Islamist militia forces in eastern areas of Libya to "eradicate terrorism." In July, armed clashes spread to Tripoli where militia forces aligned with those from Misrata took control of Tripoli from a rival alliance of Zintan militias. During fighting, the warring factions indiscriminately shelled civilian areas in Tripoli and Benghazi and targeted violence at civilians and civilian property. Thousands of Tripoli residents were internally displaced and thousands fled the country.
5. On June 25, 2014, Libyans elected a new legislature, the House of Representatives (HoR). The elections were marked by boycotts, violence and a very low voter turnout. An incomplete HoR then convened in the eastern city of Tobruk, deemed safer than Tripoli, and appointed Abdullah al-Thinni as prime minister on September 1.
6. During the previous UPR, Libya was initially represented by diplomats of the Gaddafi government, but representatives of the NTC government were responsible for the adoption of the UPR recommendations in 2012.

FREEDOM OF EXPRESSION

7. Several provisions of the Libyan Penal Code still criminalize the offenses of defamation and insult to religion. Penal code articles 195, 205 and 245 stipulate prison terms for "insulting" public officials, the Libyan nation or flag; article 207 of the penal code imposes the death penalty for "promoting theories or principles" that aim to overthrow the political, social or economic system.
8. The GNC, Libya's parliament, passed Decree 5/2014, "Concerning the Cessation and Ban on the Broadcasting of Certain Satellite Channels," on January 22, 2014, equipping the authorities to ban satellite television stations that criticize the government¹. On February 5, 2014, the GNC promulgated Law 5/2014 under which "harming" the February 17 revolution of 2011 became a criminal offense, despite a 2012 supreme court ruling striking down a similar law which criminalized a variety of types of political speech, including speech that "glorifies the tyrant

9. The District City Court of Tripoli on December 31, 2013, sentenced political commentator Jamal al-Hajjito eight months of imprisonment with labor and to pay civil damages of 400,000 Libyan dinars (US\$300,000) after convicting him on defamation charges for comments he made on al-Wataniya, Libya's state television channel, criticizing the draft political isolation law that would exclude former officials of the Gaddafi government from holding public office.ⁱ
10. The GNC voted to lift the immunity from prosecution of three of its members on September 17, 2013, after members of one political party accused the three of 'defaming and slandering' them on television.ⁱⁱ

FREEDOMS OF ASSOCIATION AND ASSEMBLY

11. Libya's Penal Code contains articles that undermine freedom of association, such as broad and ambiguous definitions of criminal acts. The code provides the death penalty as a punishment for establishing or participating in unlawful organizations. There is no law that specifically regulates civil society organizations.ⁱⁱⁱ
12. Libya's legislative framework currently fails to guarantee the right to peaceful assembly. Law 65/2012] on guidelines for peaceful demonstrations, issued in December 2012, failed to include relevant guarantees and imposes severe restrictions on exercise of the right to assembly.^{iv}

TORTURE

13. Libyan law does not include a definition of torture consistent with that contained in international law. In practice, torture is prevalent in prisons around Libya, especially in facilities controlled by armed militia and other non-state groups. There is little or no accountability for torture. Not one case of prosecution of torture has been recorded. The number of detainees currently exceeds 6,000.^v
14. Gaddafi-era laws that remain in force include some which stipulate lashings and amputation of limbs for certain prohibited acts, such as engaging in extra-marital sexual intercourse.^{vi}

IMPUNITY

15. The Special Procedures Law [38/2012] enacted in May 2012 gave anti-Gaddafi revolutionaries immunity against prosecution for acts that amounted to serious crimes, including war crimes and crimes against humanity, if they were "necessary" to the success of the 2011 uprising. The culture of impunity propagated by such laws can lead to such crimes being repeated.^{vii}
16. The killing of political activist Abdulasalam Elmessmary on July 26, 2013 heralded a wave of political assassinations which, by the end of 2013, had claimed the lives of at least 51 persons, including judges. At least 44 of the victims were serving members of the security forces, including at least six who had held senior ranks under Gaddafi.^{viii} Those killed in 2014 included journalist Miftah Bouzeid, editor in chief of Burniq newspaper, was shot dead in Benghazi on May 26, 2014. Armed assailants also continued to assault, kidnap and harass journalists in 2014, violently attacking some TV and radio stations, and committed attempted assassination attempts against dozens of journalists and other media professionals.^{ix} On June 25, 2014, unidentified gunmen killed Salwa Bughaighis, a prominent human rights and women's rights activist, at her home in Benghazi. In eastern Libya, unidentified armed men assassinated an average of some 35 people per month between January and June 2014. The authorities have yet to conclude investigations into any of these attacks and Human Rights Watch is unaware of any arrests, prosecutions or trials of alleged perpetrators of these crimes.
17. The authorities have also made no arrests, as far as Human Rights Watch is aware, and have yet to conduct a thorough, independent investigation into violent clashes between armed militias and protesters on June 8, 2013 – "Black Saturday" - in Benghazi, which left 32 people dead.^x
18. Militias from Misrata fired assault rifles, machine guns, and heavy weapons at overwhelmingly peaceful protesters in Tripoli on November 15, 2013, killing at least 48 people. State security forces present at the initial protest apparently failed to intervene to protect the protesters or to arrest and disarm the militias.^{xi}

RIGHTS OF THE DISPLACED

19. Armed groups, mostly from Misrata, have prevented 35,000-40,000 people from returning to the town of Tawergha. They remain dispersed across the country. The government has not made efforts to secure their return and expressed concern that this could result in confrontations with armed groups that oppose their return. Tawergha suffered extensive damage, with looting and burning of residential and commercial buildings, after the fighting stopped in mid-2011, apparently to deter Tawerghans from returning. Crimes that armed groups continue to commit against people from Tawergha amount to the crime against humanity of forced displacement under international law.

DEATH PENALTY

20. Over 30 articles of the Penal Code provide for the death penalty, including for exercise of rights to freedom of expression and association.^{xii} Libya has not imposed a moratorium on capital punishment. Under the Code of Criminal Procedures, the Supreme Court must confirm all death sentences, which are then referred to the High Judicial Council for approval before they are carried out.

VIOLENCE AND DISCRIMINATION AGAINST WOMEN

21. Libya's laws continue to discriminate against women, effectively sanctioning violence against women in cases of alleged adultery. They also deny women a remedy against abuse and may discourage women from reporting domestic violence.

RIGHTS OF MIGRANTS AND ASYLUM SEEKERS

22. Migrants, asylum-seekers and refugees face multiple risks and lack protection due to the absence of a legal framework governing their rights. Libya has not ratified the 1951 Refugee Convention and its 1967 Protocol, nor has it enacted a draft asylum law proposed years ago.^{xiii}
23. Guards in migrant detention centers under Libyan government control have tortured and otherwise abused migrants and asylum seekers, including with severe whippings, beatings, and electric shocks^{xiv}. The authorities do not allow UNHCR to register asylum seekers in detention. This includes Eritreans and Somalis, whom the authorities do not deport to their home countries, but who spend long periods in detention until they are able to pay their way out of detention or until their embassies secure their release. Other would-be asylum seekers are deported, along with undocumented migrants.
24. Eight out of nine detention centers for migrants that Human Rights Watch visited in April 2014 were overcrowded, with poor sanitation conditions, and provided inadequate access to medical care. Detainees described how male guards strip-searched women and girls, and brutally attacked men and boys.

POLITICAL RIGHTS

25. A law on political isolation that the GNC passed on May 5, 2013, which came into force on June 5, 2013, bars Gaddafi-era officials from holding public office for a period of 10 years. The law's provisions are vaguely-framed and over-broad. A recent amendment to the provisional constitution prohibits judicial review of the political isolation law. This is an attempt to prevent the courts from holding that laws violate the human rights guaranteed under the constitution.

FAIR TRIAL RIGHTS

26. Libya's criminal justice system remains weak and riddled with deficiencies that the government has yet to overcome, and is ineffective. The government has failed to achieve control over detainees held in many militia-run facilities, such as Saif al-Islam Gaddafi. Detainees are abuse in custody, officials often deny them access to lawyers, and there cases are not subject to judicial review.^{xv}
27. The trial of 37 mostly Gaddafi-era officials accused of serious crimes during the 2011 uprising, which began on March 24, 2014, raised serious due process concerns, as the defendants were permitted only limited access to lawyers and to key documentary evidence against them^{xvi}.
28. The Libyan government has failed to transfer Saif al-Islam Gaddafi to the custody of the International Criminal Court, as it is obligated to do.^{xvii}
29. The justice system remains dysfunctional and under threat. Attacks on judges, prosecutors and witnesses have led to the enforced closure of courts and prosecutors' offices in Benghazi, Derna, Sirte and Sebha, and the Justice Ministry in Tripoli was forced to close due to the fighting between rival militia alliances that broke out in July 2014.

RECOMMENDATIONS

Lift Restrictions on Freedom of Expression

30. Eliminate all criminal offenses of defamation, including libel and slander, in articles 195, 203, 205, 207, 220, 245, 438 and 439 of the Penal Code, and repeal Law 5/2014, which criminalizes "harming the February 17 revolution." Ensure

that any legal limitations that are retained are necessary and proportionate and comport with Libya's international treaty obligations.

31. Eliminate all criminal offenses of defamation and of insulting religion. Repeal articles 290 and 291 of the penal code.

Protect Freedom of Association

32. Revise and amend the penal code and other legislation to guarantee freedom of association; in particular:
 - In penal code article 206, repeal the death penalty levied as punishment for establishment or participation in unlawful organizations.
 - Amend penal code articles 206 and 208 to explicitly allow for the free establishment of associations without any restriction on what such organizations advocate or promote
 - In penal code articles 206 and 208, limit the criminalization of acts committed by local and international NGOs to the direct and immediate incitement to acts of violence or discrimination.
 - Repeal penal code article 210 and ensure that any dissolution of an NGO takes place only by judicial order and only as a result of the most egregious violations.

Guarantee the Right to Peaceful Assembly

33. Revise Law 65/2012 and require any restrictions placed on a public gathering to be strictly necessary for protecting state security, public order, public morals, or the rights and reputation of others.
34. 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.

Torture

35. Include in the penal code a definition of torture aligned with article 1 of the UN Convention against Torture.
36. Ratify the Optional Protocol of the UN Convention against Torture and create an independent inspectorate empowered to access and monitor all places of detention.
37. 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, and clearly states the type of punishments officials can receive if found guilty of not following up on violations taking place under their command.

Abolish Corporal Punishment

38. 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.

Amend the Special Procedures Law, Prevent Impunity

39. Amend Law 38/2012 on Some Special Procedures to exclude from amnesty those responsible for serious international crimes such as murder, torture, sexual violence, and forced displacement.
40. Provide legal guarantees to anyone subject to unlawful detention to have an enforceable right to compensation, as stipulated in the ICCPR.
41. Adopt laws to incorporate with the Libyan criminal code international crimes, including genocide, crimes against humanity, war crimes, torture, and enforced disappearance, clearly defined according to international standards. Ensure such crimes are applied retroactively according to international standards.

Abolish the Death Penalty

42. Abolish the death penalty and declare an immediate moratorium on executions.
43. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

Protect Women from Violence and Discrimination

44. Lift all reservations to the Convention to End All Discrimination Against Women (CEDAW).
45. Guarantee full equality and eliminate all forms of discrimination against women, including by guaranteeing equal rights for men and women in the new constitution.
46. Develop laws to prevent, criminalize, and respond to domestic violence that ensure adequate protection to women and services for survivors.
47. 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. Guarantee women equality with men for all personal status matters, including marriage, divorce, custody of children, and inheritance. Remove elements of nationality laws that discriminate against women.
48. Pass strong anti-discrimination laws.

Protect Rights of Migrants, Asylum Seekers and Refugees

49. 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 that prohibits refoulement.
50. Formally recognize the Office of the UN High Commissioner for Refugees (UNHCR) and support its efforts. Grant UNHCR unfettered access to all places where non-nationals are detained and the right to conduct interviews in private.

Ensure Respect for Political Rights

51. Repeal the law on Political and Administrative Isolation

International Criminal Court

52. Libya should cooperate with the ICC, including by surrendering Saif al-Islam Gaddafi to the jurisdiction of the court. United Nations Security Council Resolution 1970, which referred the situation in Libya to the ICC, requires the Libyan authorities to cooperate fully with the court, a binding requirement under the UN Charter, even though Libya is not a party to the treaty that established the court.
53. Libya should ratify the Rome Statute and align its national legislation with all obligations of the Rome Statute, including effectively investigating and prosecuting genocide, crimes against humanity, and war crimes before its national courts.

ANNEX: Endnotes

ⁱHuman Rights Watch, Statement, ‘*Libya: Drop Case For ‘Defaming’ Public Officials*’, January 2014, <http://www.hrw.org/news/2014/01/22/libya-drop-case-defaming-public-officials>

ⁱⁱHuman Rights Watch, Statement, ‘*Libya: Lawmakers at Risk of Defamation Charges*’, September 2013, <http://www.hrw.org/news/2013/09/24/libya-lawmakers-risk-defamation-charges>

ⁱⁱⁱHuman Rights Watch, Report, ‘*Priorities for Legislative Reform: A Human Rights Roadmap for a New Libya*’, January 2014, <http://www.hrw.org/reports/2014/01/21/priorities-legislative-reform>

^{iv}Ibid

^vIbid

^{vi}Ibid

^{vii}Human Rights Watch, Report, ‘*Priorities for Legislative Reform: A Human Rights Roadmap for a New Libya*’, January 2014, <http://www.hrw.org/reports/2014/01/21/priorities-legislative-reform>

^{viii}Human Rights Watch, Statement, *Libya: Wave of Political Assassinations*, August 2103, <http://www.hrw.org/news/2013/08/08/libya-wave-political-assassinations>

^{ix}Human Rights Watch, Statement, ‘*Libya: Investigate Killing of Benghazi Editor*’ May 2014, <http://www.hrw.org/news/2014/05/27/libya-investigate-killing-benghazi-editor>

^xHuman Rights Watch, Statement, ‘*Libya: 6 Months On, Scant Action on Protester Killings*’, December 2013, <http://www.hrw.org/news/2013/12/08/libya-6-months-scant-action-protester-killings>

^{xi}Human Rights Watch, Statement, ‘*Libya: Militias Kill Unarmed Protesters*’, November 2013, <http://www.hrw.org/news/2013/11/17/libya-militias-kill-unarmed-protesters>

^{xii}Human Rights Watch, Report, ‘*Priorities for Legislative Reform: A Human Rights Roadmap for a New Libya*’, January 2014, <http://www.hrw.org/reports/2014/01/21/priorities-legislative-reform>

^{xiii}Human Rights Watch, Report, ‘*Priorities for Legislative Reform: A Human Rights Roadmap for a New Libya*’, January 2014, <http://www.hrw.org/reports/2014/01/21/priorities-legislative-reform>

^{xiv}Human Rights Watch, Statement ‘*Libya: Whipped, Beaten, and Hung from Trees*’, June 2014, <http://www.hrw.org/news/2014/06/22/libya-whipped-beaten-and-hung-trees>

^{xv}Human Rights Watch, Statement, ‘*Libya: ICC Judges Reject Sanussi Appeal*’, July 2014, <http://www.hrw.org/news/2014/07/24/libya-icc-judges-reject-sanussi-appeal>

^{xvi}Human Rights Watch, Statement, ‘*Libya: Fair Trial Concerns for Ex-Officials*’ April 2014, <http://www.hrw.org/news/2014/04/14/libya-fair-trial-concerns-ex-officials>

^{xvii}Human Rights Watch, Statement, ‘*Libya: A Rebuff to the ICC*’, September 2013 <http://www.hrw.org/news/2013/09/19/libya-rebuff-icc>