

LIBYA

by Public International Law & Policy Group (updated April 2018)

Summary of Reparations Efforts and Programs

Libya has a reparations framework to address the dictatorship of Muammar Qadhafi (1969–2011) and the internal armed conflict among many armed groups to gain control of territories since 2011. The ongoing violence and parallel government structures have stymied the implementation of the strong reparations framework and the rest of the transitional justice policy. If the International Criminal Court (ICC) issues guilty verdicts, victims may be entitled to restitution, compensation, and rehabilitation.

Context

Libya under Qadhafi was characterized by rampant human rights violations, including mass and extrajudicial killings, torture, politically motivated arrests, and displacement as well as by systemic corruption and a complete breakdown in the rule of law. On February 15, 2011, against the backdrop of rising discontent in Libya and the Arab Spring protests, Libyans began demonstrating in Benghazi against Qadhafi's 42-year-long rule. The protests quickly spread throughout the country. When the Qadhafi regime responded with lethal force, arrests, and enforced disappearances, the situation escalated into an internal armed conflict between the regime and armed opposition groups. Following United Nations (UN) Security Council Resolutions 1970 (2011) and 1973 (2011), the North Atlantic Treaty Organization (NATO) launched Operation Unified Protector from February through October 2011 in order to protect civilians.¹ On October 23, 2011, Libya's National Transitional Council (NTC), the interim body established during the revolution, declared victory for the opposition and liberation from the Qadhafi regime.² In July 2012, Libya held its first free election in 60 years, during which voters elected members of the General National Congress (GNC), which replaced the NTC.³

Unfortunately, violence has caused the country descended into virtual lawlessness since 2014.⁴ The armed "revolutionary" groups, many of which were instrumental in overthrowing Qadhafi, have remained influential and have grown.⁵ Such militias have filled security vacuums and thus enjoyed increasing popularity among certain segments of the population.⁶ This instability has also enabled Da'esh⁷ to operate in Libya since 2014.⁸ Political instability has further exacerbated the tenuous security situation. Because of confusion about the GNC's expiration date, national elections were held on June 25, 2014 to vote for a new parliament. This resulted in the election of members of the House of Representatives. The Libya Dawn coalition, which can be understood as the armed wing of the GNC,⁹ challenged the legitimacy of the House of Representatives and successfully called on the GNC to reconvene.¹⁰ This led to the existence of parallel governments. The next year, the UN mediated the signing of the Libyan Political

Agreement in Skhirat, Morocco on December 17, 2015. The agreement provided for a single Government of National Accord (GNA) to replace the two other governments.¹¹ The Libyan Political Agreement reaffirmed the state's commitment to transitional justice, but the parties have yet to execute it,¹² so Libya continues to have two parallel governments: the House of Representatives government in Tobruk and the GNA government based in Tripoli.¹³

Sources of Reparations

Several state-sponsored and local-level reparations measures have emerged or have been proposed in Libya. The lawlessness and the militias' considerable influence over government affairs have crippled the state, rendering proposed reparations programs and other transitional measures unimplemented.

Law No. 38 on Some Procedures for the Transitional Period (2012): Law No. 38 awarded a blanket amnesty for actions performed by revolutionaries to promote or protect the revolution.¹⁴ This law shields from prosecution all crimes aimed at deposing Qadhafi, except torture and rape, which Law No. 35 on Granting Amnesty for Some Crimes excludes from amnesty.¹⁵

Law No. 29 on Transitional Justice (2013): This GNC-passed law supplanted other transitional justice measures. The law includes robust reparations provisions on fact-finding, pretrial detainees, and criminal accountability. It also contains a chapter on reparations owed by the state to victims, such as compensation through a Victims' Compensation Fund.¹⁶

Decree No. 119 (2014): This decree recognizes victims of conflict-related sexual violence as victims of war and gives them and their families access to compensation, employment benefits, and psychosocial and rehabilitation services.¹⁷ As such, it supplements the Law on Transitional Justice, which failed to recognize sexual violence as a qualifying violation. However, the decree remains unexecuted.

Resolution 904 (2014): In June 2014, the Ministry of Justice adopted Resolution 904, which established a compensation fund for victims of conflict-related sexual violence. As of 2017, the government has not allocated funds toward this.

Political Isolation Law (2013): This law forms the basis for a vetting and lustrating scheme to keep former Qadhafi associates out of high-level government positions in order to demonstrate a clear break from the Qadhafi regime. The sweeping removals under this law punished individuals for their political affiliation rather than their actions, and they were akin to victor's justice. This process has not rebuilt trust or promoted the rule of law in Libya. Due to differences in opinion of the parallel governments, the current status of the Political Isolation Law is unclear.

Libyan Political Agreement (2015): This agreement created the GNA and reaffirmed Libya's commitment to the Law on Transitional Justice and other reparations measures.¹⁸ This agreement remains largely unimplemented.

Local-level Community Agreements: In the absence of effective national-level ceasefires or reconciliation strategies, neighboring communities and tribes, particularly in western Libya, have negotiated local-level ceasefires and reconciliation plans. Aside from small flare-ups, these agreements have stayed largely intact.

UN Security Council Resolution 1970 (2011): On February 26, 2011, the UN Security Council unanimously passed Resolution 1970 (2011), referring the situation in Libya to the ICC. This has given the ICC jurisdiction over war crimes, crimes against humanity, and genocide in Libya, committed by members of the Qadhafi regime since the start of the revolution on February 15, 2011.¹⁹ The ICC is mandated to issue individual and collective material reparations in the forms of restitution, compensation, and rehabilitation following a conviction.²⁰ As of writing, the ICC's efforts in Libya have suffered from procedural challenges and limited cooperation from Libyan authorities.

Reparations Efforts and Programs

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UN General Assembly in 2005, directs states to provide victims with five forms of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.²¹

1. Restitution

Restitution aims to restore the victim to their situation before they had been violated. For example, enabling a victim's return to their place of residence, returning property, and restoring citizenship are acts of restitution.

Restoration of liberty

The Law on Transitional Justice sought to restore the liberty of pretrial detainees associated with the Qadhafi regime. The law gave the authorities 90 days to refer their cases for prosecution or release.²² However, little progress was made to ensure that the authorities followed orders to release detainees or that the detainees who should be prosecuted were handled accordingly.²³

Enjoyment of human rights, identity, family life, and citizenship

The Interim Constitution of 2011 guarantees the respect and protection of human rights and basic freedoms. It states that all Libyans are equal before the law and recognizes family as the basis of society.²⁴

Return to one's place of residence

Both national-level and local-level agreements cover the right of victims to return to their place of residence.

At the national level, the largely unimplemented Libyan Political Agreement recommitted the government to facilitating the voluntary return of displaced persons to their homes.²⁵

In addition to national-level measures, local-level agreements attempted to enable safe return. For example, the UN Support Mission in Libya (UNSMIL)-supported Misrata–Tawergha Agreement of August 2016 includes a security arrangement to ensure the safe return of internally displaced persons (IDPs) and calls for the creation of a mechanism to coordinate logistics around return processes.²⁶ The GNA ratified the agreement in June 2017,²⁷ and the Presidential Council set February 1, 2018 as the date on which Tawergha IDPs may start returning. However, armed groups blocked the homecoming of at least 1,000 families, who decided to put up tents until they were able to return home.²⁸ As of early April 2018, IDPs were still living in these tent camps.²⁹ Later that month, the Misrata–Tawergha Reconciliation Committee was expected to overcome hurdles preventing the return of Tawergha IDPs, and the parties seemed close to signing a new agreement.³⁰ In June 2015, local reconciliation agreements between Zintan and Gharyan as well as Zintan and Al-Zawiya covered the return of displaced persons.³¹ More recently, in September 2017, delegations from Zintan and Tripoli held talks in order to expedite the return of IDPs in Zintan to their homes in Tripoli.³²

Restoration of employment

The Interim Constitution enshrines the right to work,³³ but as of 2017, the World Bank estimated that 17.7% of the total population and 43.8% of youth were unemployed.³⁴ Regarding steps to retribute victims, the unimplemented Decree No. 119 states that the government must prioritize victims of sexual violence in appointments to government jobs for which they are qualified.³⁵

Return of property

The Law on Transitional Justice provides for the establishment of an independent Commission for Redressing Land Property Grievances.³⁶ However, it is unclear if this body exists.

2. Compensation

When damage is economically assessable, states should provide compensation.

Physical or mental harm

The Law on Transitional Justice qualifies victims of grave and systematic human rights violations, which include physical harms and violations causing severe physical or moral consequences, to receive reparations.³⁷ Victims are entitled to different types of reparations from the state, such as rehabilitation, treatment, social services, and memorialization. Notably, the state only is required to provide compensation in the case of politically motivated violations.³⁸

Decree No. 119 explicitly allows victims of sexual violence to obtain reparations for both physical harms and permanent psychological harms,³⁹ entailing monthly grants and opportunities for training and education.⁴⁰ However, these measures have not been executed.

At the local level, the Misrata–Tawergha Agreement delineates the state’s responsibility to compensate the families of the deceased and the families of the missing (at equal rates) as well as individuals in detention before August 11, 2011.⁴¹

Material damages and loss of earnings, including loss of earning potential

The Law on Transitional Justice entitles victims to monetary compensation for material damages resulting from a politically motivated violation. The amount is based on the victim’s loss, except for loss of earnings.⁴²

At the local level, the Misrata–Tawergha Agreement obligates the state to compensate individuals for damage of their personal property but not their real estate property. The cost of the damage will be determined based on documentation and witness testimonies.⁴³

Moral damage

Under the Law on Transitional Justice, victims are eligible for compensation for violations of fundamental rights that result in severe physical or moral consequences.⁴⁴

3. Rehabilitation

Rehabilitation involves redressing victims through, for instance, the provision of medical, psychosocial, and legal services.

Medical and psychological care

The Law on Transitional Justice entitles eligible victims to receive treatment and rehabilitation.⁴⁵ Decree No. 119 extended this coverage to victims of sexual violence, providing victims and their families with physical and psychological health services to be funded through a parallel medical insurance system.⁴⁶ As of writing, no such system exists.

At the local level, under the Misrata–Tawergha Agreement, the state must issue a health insurance card to those needing treatment.⁴⁷

Legal and social services

The Law on Transitional Justice requires the state to deliver social services to eligible victims.⁴⁸ Decree No. 119 outlines the legal and social services owed to victims of sexual violence, such as employment, education, and other social services. The government must prioritize victims of sexual violence in appointments to government jobs for which they are qualified, in getting housing loans, domestic and study abroad academic opportunities, and discount transportation costs, among other benefits. It also directs the government to establish shelters for eligible victims who lack housing or whose families rejected them.

Regarding legal services, the decree vows to assist victims in pursuing prosecutions of their rapists and sexual violators.⁴⁹

4. Satisfaction

Satisfaction includes a wide range of measures, such as ceasefires, truth-seeking and documentation,⁵⁰ the search for missing or disappeared persons, and memorialization.

Effective measures aimed at the cessation of continuing violations

There have been several ceasefire agreements that aim to stem the violence in Libya. Most recently, in 2017, France brokered a ceasefire between the Prime Minister of the GNA, Fayeza al-Sarraj, and the commander of the Libyan National Army and leader of the Tobruk government, Khalifa Haftar. The parties signed a 10-point joint communique reaffirming the Libyan Political Agreement, stressing the need for a political solution and reconciliation, and committing to a ceasefire.⁵¹ The agreement further calls for presidential and parliamentary elections, which are expected to occur in 2018.⁵² Unfortunately, the ceasefire did not end violence in the country.

At the local level, inter-community ceasefires, reconciliation dialogues, and reparations schemes have emerged in some areas to address urgent needs and fill the gaps left by the absence of

national-level progress. Ceasefire agreements were signed and reconciliation talks occurred between communities in western Libya, including Misrata and Warshefana;⁵³ Misrata and Zintan, as recently as April 26, 2018;⁵⁴ Zintan and Janzour;⁵⁵ Zintan and Gharyan; and Zintan and Al Qala'a.⁵⁶ As of December 2016, these agreements have stayed largely intact, though smaller clashes between communities have resulted in several casualties.⁵⁷

A November 23, 2015 ceasefire agreement between the Tabu (aligned with the Tobruk government) and Tuareg (aligned with the Tripoli government) ethnic tribes sought to end fighting between the tribes and enable the return of IDPs.⁵⁸ Despite these efforts, heavy fighting erupted between the tribes only hours after their leaders signed the agreement in Doha.⁵⁹

Verification of the facts and full and public disclosure of the truth

The Law on Transitional Justice mandates the constitution of an independent Fact-Finding Commission to create a complete account of the nature, root causes, and scope of human rights violations under the Qadhafi regime as well as determine the identity of perpetrators. It would be able to issue binding decisions on reparations for victims, such as compensation, rehabilitation, treatment, social services, and memorialization.⁶⁰ However, the government has not established this institution. Meanwhile, UN fact-finding missions, including the International Commission of Inquiry on Libya (active from February 25, 2011 to March 2012) and the Office of the UN High Commissioner for Human Rights (OHCHR) Investigation on Libya (active from March 27, 2015 to March 2016), have investigated and uncovered human rights violations.⁶¹

In addition to national and UN inquiries, a number of local-level and civil society-led documentation efforts are underway.⁶²

Search for the missing, disappeared, and killed

According to the International Commission on Missing Persons, there are up to 10,000 missing or disappeared persons as a result of Qadhafi's rule and the 2011 revolution.⁶³ Domestic legislation calls for the establishment of two bodies to oversee the search for missing or disappeared persons: the Law on Transitional Justice's Fact-Finding Commission and the Libyan Political Agreement's independent body on missing persons.⁶⁴ As of January 2017, neither body has been developed.

Official declaration or a judicial decision restoring victims' dignity, reputation, and rights

Decree No. 119 explicitly recognizes victims of sexual violence as victims of war, vesting them with the right to reparations from the state.⁶⁵

Judicial and administrative sanctions against persons liable for the violations

Investigations and prosecutions for violations leading up to and during the 2011 revolution unfolded in both international and domestic forums.

The ICC has outstanding arrest warrants for Saif al-Islam Qadhafi (the dictator's son), Al-Tuhamy Mohamed Khaled, and Mahmoud Mustafa Busyf al-Werfalli for the crimes against humanity of murder and persecution.⁶⁶ It had also issued an arrest warrant for Abdullah al-Sanussi, Libya's former intelligence chief, but the ICC determined it lacked jurisdiction since Libya was willing and able to try him.⁶⁷ Libyan authorities have yet to cooperate with making arrests and transferring the three individuals to The Hague.

Domestic prosecutions proceeded and concluded against senior Qadhafi regime officials. On July 28, 2015, the Tripoli Court of Assize convicted 32 senior Qadhafi regime officials, including Saif al-Islam Qadhafi, for crimes during the 2011 revolution. The court sentenced 9 to death and 23 to terms ranging from 5 years to life imprisonment. The trials lacked transparency and violated the defendants' due process and fair trial rights.⁶⁸ Furthermore, the court convicted and sentenced Saif al-Islam Qadhafi in absentia.⁶⁹ As of writing, he is not in the custody of domestic justice system or the ICC.

Despite evidence of militia-perpetrated crimes, domestic prosecutions have not target militias, which have intimidated and threatened judges and prosecutors, undermining the independence of the judiciary and the legitimacy of trials.⁷⁰ Furthermore, Law No. 38 on Some Procedures for the Transitional Period has continued to grant amnesty to revolutionaries for actions aimed at promoting and protecting the revolution, including murder and forcible displacement but excluding torture and rape.⁷¹

Commemorations and tributes to the victims

The Law on Transitional Justice entitles victims to commemorations from the state,⁷² but the state has not pursued any official commemorations or tributes to victims.

5. Guarantees of non-repetition

Guarantees of non-repetition center on institutional reform, such as vetting and lustration processes. While domestic laws and institutions have strived to prevent recurrence, the state's limited authority over armed groups operating throughout the country has hindered the achievement of this goal.

Effective civilian control of military and security forces

The deteriorating security situation, continued splintering and proliferation of armed groups, and existence of parallel governments have complicated state efforts to establish civilian control over military and security forces. The Libyan Political Agreement reaffirms the need to integrate armed groups into a modern, professional, and reformed military under direct government control or to reintegrate members into civilian life.⁷³ Under the agreement, the GNA also committed to vest members of armed groups with the right to join the military, assuming they fulfilled the state's conditions and standards for enlisting.⁷⁴

However, due to armed groups' decentralized structure and popularity for filling the security vacuum, the government has faced difficulties dislodging or integrating armed groups into the state security forces. In addition, the high salaries paid by the government to armed group members has incentivized unemployed men to join armed groups, contributing to the increasing number and size of armed groups.⁷⁵ That said, Libya has had some limited success in integrating armed groups. For example, the Judicial Police, which handles the security of courts, houses approximately 10,000 former members of armed groups, but the police accepted them without any vetting process.⁷⁶

Due process, fairness, and impartiality in civilian and military proceedings

Shortly after the revolution, the NTC declared as immediate priorities instituting respect for the rule of law and an independent judiciary.⁷⁷ In 2011, the NTC banned all special tribunals, which Qadhafi had instituted to try political crimes as part of controlling the country.⁷⁸

Independence of the judiciary

According to the Interim Constitution, "judges shall be independent, subject to no other authority but the law and conscience,"⁷⁹ a statement affirmed by the Libyan Political Agreement.⁸⁰ The NTC restructured the Supreme Judicial Council, which is the managing body of the judicial apparatus, to enhance its political independence.

However, since the fall of the Qadhafi regime, militias have controlled the judiciary. They have threatened and attacked prosecutors and judges to prevent the release of Qadhafi regime officials and to hinder the arrest and prosecution of armed group members. These attacks, coupled with the ongoing conflict, have caused a number of courts to stop functioning.⁸¹ The integration of members of armed groups into the Judicial Police without vetting has further undermined the independence of the judiciary, since many remain loyal to their former militias, compromising their ability to protect judicial actors from threats by their previous employers.⁸²

Vetting and lustration

Libya pursued two separate judicial vetting and lustration schemes. First, in April 2012, the NTC passed Law No. 26 of 2012, tasking the Integrity Commission for the Application of Integrity and Patriotism (Integrity Commission)⁸³ with vetting individuals running in the first post-Qadhafi elections of June 2012 or assuming high-level government positions.⁸⁴ Second, the Political Isolation Law repealed former laws on exclusion and vetting, dissolving the Integrity Commission and adopting an even more sweeping approach to barring individuals from high-ranking government positions for 10 years.⁸⁵ Supporters of the Political Isolation Law maintained that the government had to purge everyone with connections to the former regime.

The first scheme disqualified individuals who had even an attenuated association with the Qadhafi regime.⁸⁶ The Integrity Commission's rulings were subject to judicial appeal and were sometimes overturned.⁸⁷ The Integrity Commission also had the authority to examine the files of individuals already in government, such as those of the elected 200 members of the GNC, the Prime Minister, GNC-appointed ministers, and the 60 members of the Constitutional Commission.⁸⁸

The Integrity Commission had an extremely limited timeframe in which to perform its work. Using information from Qadhafi intelligence and secret service files that fell into revolutionaries' hands, the Integrity Commission built a database with information about the Qadhafi's members and collaborators. The Integrity Commission received 4,032 files to review within only 12 days, ultimately reviewing all files within 6 days. The Integrity Commission prevented 306 individuals from holding positions, 79 of which were successfully appealed.⁸⁹

Some criticized this vetting and lustration scheme because of its vague, overbroad exclusionary criteria and absence of transparency, but proponents pointed to the relatively small percentage of disqualified files as an indication that Integrity Commission was not executing political revenge.⁹⁰ Human Rights Watch contended that the law violated Libya's obligations under international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights, by precluding candidates from running for office based on "unreasonable restrictions."⁹¹

In 2013, the Political Isolation Law dissolved the Integrity Commission and began applying broader exclusionary criteria. This law kept individuals who held any positions under Qadhafi or who exhibited pro-Qadhafi behaviors out of government positions for ten years.⁹² Disqualified individuals cannot hold state, administrative, or security positions; positions in judicial or legislative bodies; or leadership positions in the media, universities, or political parties.⁹³

The Political Isolation Law does not differentiate between Qadhafi defectors who later assisted or even led the 2011 revolution and Qadhafi supporters who continued to fight for Qadhafi until

his ouster. Instead, the law barred anyone who cooperated with Qadhafi from government positions, regardless of the extent or length, which is problematic since Qadhafi defectors led the revolution. For example, the first official to resign due to the Political Isolation Law was GNC President Mohammed Magarief, who had spent years in exile working to overthrow the regime after his defection from it in 1980.⁹⁴ In this manner, the Political Isolation Law deprived the state of experienced, competent officials who were committed to the revolution and a democratic Libya because of their previous political affiliation.

In February 2015, the House of Representatives in Tobruk revoked the Political Isolation Law. However, the GNC still regards the legislation as operative.⁹⁵ Meanwhile, the Supreme Court is reviewing the Political Isolation Law's constitutionality but has not yet issued a ruling. Given these factors, as of September 2017, the status of the Political Isolation Law has remained unclear.⁹⁶

Libya also carried out a vetting and lustration process specific to the judiciary. Supreme Judicial Council Decree No. 103 of 2012 transferred up to 180 judges into the prosecution or public defense. Approximately 80% of judicial members affected by the mass transfer challenged Decree No. 103 in the Tripoli Court of Appeal because of its lack of fair or transparent procedures. The court annulled the decree in 2014, but its judgment only applied to those who had challenged their transfer in court. The remaining transferred judges were eventually returned to their original posts through Supreme Judicial Council Decree No. 3 of 2016.⁹⁷

Mechanisms for preventing and monitoring social conflicts and their resolution

In the absence of state-level reconciliation efforts, several local-level initiatives attempted to facilitate reconciliation among warring communities and tribes.⁹⁸ Ceasefire agreements were signed and reconciliation talks occurred between communities in western Libya, including Misrata and Warshafana;⁹⁹ Misrata and Zintan, as recently as April 26, 2018;¹⁰⁰ Zintan and Janzour;¹⁰¹ Zintan and Gharyan; and Zintan and Al Qala'a.¹⁰² As of December 2016, these agreements have stayed largely intact, though smaller clashes between communities resulted in several casualties.¹⁰³

National reconciliation talks began in 2016, when 100 leaders and representatives from across the country came together to discuss ways to address the root causes of the conflict at the local level and to reach consensus on amnesty laws and reparations measures.¹⁰⁴ More recently, a conference on national reconciliation and its role in promoting stability was held in Tripoli on February 26, 2018. Over 100 tribal leaders and elders participated. Preliminary meetings in various cities across the country occurred prior to the conference.¹⁰⁵

Review and reform of laws contributing to human rights violations

The Interim Constitution, the Law on Transitional Justice, and the Libyan Political Agreement all uphold the rule of law and criminalize human rights violations. The Interim Constitution obligates the state to respect human rights and basic freedoms, including many civil and political rights that Qadhafi suppressed.¹⁰⁶ The Law on Transitional Justice aims to achieve both the repeal of unjust laws that enabled tyranny and the reform of state institutions.¹⁰⁷ The Libyan Political Agreement reiterated many of these commitments, seeking to lay the groundwork for a political process that restores respect for human rights, democracy, and the rule of law as well as integrates militias into a professional and reformed military under direct government control.¹⁰⁸ If adequately implemented, these measures would lead to the review and replacement of many laws and restrictions that drove the revolution.

¹ Human Rights Watch (HRW), “Libya” in *World Report 2012* (New York: HRW, 2012), <https://www.hrw.org/world-report/2012/country-chapters/libya>; “NATO and Libya Operation Unified Protector,” NATO, March 27, 2012, <https://www.nato.int/cps/en/natohq/71679.htm>.

² “Libya’s New Rulers Declare Country Liberated,” *BBC News*, October 23, 2011, <http://www.bbc.com/news/world-africa-15422262>.

³ “Libya Election: High Turnout in Historic Vote,” *BBC News*, July 7, 2012, <http://www.bbc.com/news/world-africa-18749808>.

⁴ “Why Is Libya So Lawless?,” *BBC News*, May 25, 2017, <http://www.bbc.com/news/world-africa-24472322>.

⁵ Office of the UN High Commissioner for Human Rights (OHCHR), *Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: Detailed Findings*, ¶ 54, U.N. Doc. A/HRC/31/CRP.3 (February 15, 2016), available at http://www.ohchr.org/Documents/Countries/LY/A_HRC_31_CRP_3.pdf.

⁶ OHCHR, ¶ 33.

⁷ Also known as the Islamic State, Islamic State of Iraq and the Levant (ISIL), and Islamic State of Iraq and Syria (ISIS).

⁸ Bennett Seftel, “ISIS Festers and Grows in Lawless Libya,” *Cipher Brief*, January 26, 2018, <https://www.thecipherbrief.com/isis-festers-grows-lawless-libya>.

⁹ “Guide to Key Libyan Militias,” *BBC News*, January 11, 2016, <http://www.bbc.com/news/world-middle-east-19744533>.

¹⁰ OHCHR, ¶¶ 43–45.

¹¹ UN News, “UN Welcomes ‘Historic’ Signing of Libyan Political Agreement,” December 17, 2015, <https://news.un.org/en/story/2015/12/518412-un-welcomes-historic-signing-libyan-political-agreement>.

¹² UN Secretary-General, *Report of the Secretary-General on the United Nations Support Mission in Libya*, ¶ 2, U.N. Doc. S/2016/1011 (December 1, 2016) [hereinafter *UN Secretary-General Report 2016*], available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_1011.pdf.

¹³ “Rival Factions Clash in Libya’s Tripoli,” *Al Jazeera*, May 27, 2017, <https://www.aljazeera.com/news/2017/05/rival-factions-clash-libya-tripoli-170526154255187.html>; “Tripoli’s National Salvation Government Quits,” *Libyan Express*, April 5, 2016, <http://www.libyanexpress.com/tripolis-national-salvation-government-quits/>.

¹⁴ HRW, “UN Security Council: Press Libya on Impunity,” May 16, 2012, <https://www.hrw.org/news/2012/05/16/un-security-council-press-libya-impunity>.

¹⁵ HRW, “Libya: Letter to the ICC Prosecutor on Libyan Amnesty Laws,” May 25, 2012, <https://www.hrw.org/news/2012/05/25/libya-letter-icc-prosecutor-libyan-amnesty-laws>.

¹⁶ Law No. 29 of 2013 (Transitional Justice) (Libya), available at <https://security-legislation.ly/node/32096>.

¹⁷ International Federation for Human Rights (FIDH), “Libya Adopts an Unprecedented Decree Protecting Victims of Sexual Violence,” February 19, 2014, <https://www.fidh.org/en/region/north-africa-middle-east/libya/14720-libya-adopts-an-unprecedented-decree-protecting-victims-of-sexual-violence>.

- ¹⁸ Libyan Political Agreement, December 17, 2015, available at <https://unsmil.unmissions.org/sites/default/files/Libyan%20Political%20Agreement%20-%20ENG%20.pdf>.
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- ²⁰ ICC, *Understanding the International Criminal Court* (Hague: ICC, 2011), 31, 38, <https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf>; *Prosecutor v. Ruto & Sang*, Case No. ICC-01/09-01/11, Decision on the Requests Regarding Reparations, ¶ 7 (July 1, 2016), https://www.icc-cpi.int/CourtRecords/CR2016_04798.PDF.
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- ²² Law No. 29 of 2013, art. 26.
- ²³ *UN Secretary-General Report 2016*, ¶ 39.
- ²⁴ CONSTITUTIONAL DECLARATION, arts. 5–7.
- ²⁵ Libyan Political Agreement, art. 27; *UN Secretary-General Report 2016*, ¶ 2.
- ²⁶ Misrata–Tawergha Agreement on the Return of the Displaced and Compensation of those Affected, art. 7, August 31, 2016, available at https://unsmil.unmissions.org/sites/default/files/MT_Agreement_31-8-2016_EN.pdf.
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- ³⁷ Law No. 29 of 2013, art. 2.
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- ⁴⁰ Decree No. 119 of 2014, art. 3.
- ⁴¹ Misrata–Tawergha Agreement, art. 4(2).
- ⁴² Law No. 29 of 2013, art. 23.
- ⁴³ Misrata–Tawergha Agreement, art. 4(2).
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⁵⁷ *UN Secretary-General Report 2016*, ¶ 14.

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⁷⁷ International Crisis Group, 16.

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⁸³ Carter Center, *General National Congress Elections in Libya* (Atlanta: Carter Center, 2012), 31, https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/libya-070712-final-rpt.pdf.

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⁸⁵ ICJ, 53, 57.

⁸⁶ The following individuals were disqualified: individuals who had served in the security forces or as ministers, had been presidents of purification committees or post-1976 student unions, had cooperated with the Internal and External Security Agency, had engaged with the national or local-level governments, had praised the Qadhafi regime, or had opposed the 2011 revolution. The law also restricted eligibility for senior government positions to individuals who could prove that they had joined the revolution before March 20, 2011. Law No. 26 of 2012, art. 8; HRW, “Libya: Amend Vetting Regulations for Candidates, Officials.”

⁸⁷ Law No. 26 of 2012, art. 12; International Legal Assistance Consortium (ILAC), *ILAC Rule of Law Assessment Report: Libya 2013* (Stockholm: ILAC, 2014), <http://www.ilacnet.org/blog/2013/05/09/ilac-assessment-report-libya-2013/>.

⁸⁸ Carter Center, 32.

⁸⁹ Carter Center, 32.

⁹⁰ HRW, “Libya: Amend Vetting Regulations for Candidates, Officials”; Carter Center, 31–32.

⁹¹ HRW, “Libya: Amend Vetting Regulations for Candidates, Officials.”

⁹² Individuals who held the following positions from September 1, 1969 until October 23, 2011 are ineligible to hold government positions: political, administrative, and security leadership positions, ambassadors, chancellors of universities, heads of student unions, researchers at propaganda institutes, and any position in an international organization deemed to have threatened Libya. The law also bars individuals based on past behaviors or actions, such as the commission of crimes, Qadhafi regime collaboration resulting in human rights violations, glorification of the Qadhafi regime, the adoption of a hostile position toward the 2011 revolution, and the invocation of religion to support the Qadhafi regime. Roman David and Houda Mzioudet, *Personnel Change or Personal Change?: Rethinking Libya’s Political Isolation Law* (Doha: Brookings, 2014), 5, <https://www.brookings.edu/wp-content/uploads/2016/06/Lustration-in-Libya-English.pdf>.

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⁹⁷ ICJ, 57.

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