



HUMAN
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WATCH

Injustice By Design

Need for Comprehensive Justice Reform in Libya



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Summary

Libya's justice sector faces significant challenges. It is fragmented and deeply polarized. The judiciary is unwilling and unable to conduct meaningful investigations into serious human rights violations and international crimes, while the justice system is marked by serious due process violations. Unaccountable militias control prisons and detention centers, which are only nominally under the auspices of multiple state ministries and authorities.

Libya's Penal Code and other related legislation are outdated, do not address international crimes, and require comprehensive reform to bring them in line with its international human rights obligations. Libya's domestic legislation includes repressive and abusive provisions and laws left over from the era of former leader Muammar Gaddafi that contravene international law. Some provisions of new laws and regulations issued since the demise of the former government also limit freedoms and are not in line with international law.

Meanwhile, military courts in the east and west continue to prosecute civilians under the guise of "terrorism"-related crimes. Judicial procedures at both civil and military courts are marred by serious due process violations, with both Libyans and non-Libyans held in long-term arbitrary detention.

Detention facilities in Libya are fragmented, violent, and marked by inhumane conditions for migrants, asylum seekers, and Libyan nationals alike. Torture, ill-treatment, inhumane conditions, arbitrary detention, and overcrowding are rampant, and such conditions are well documented. Armed groups and quasi-state forces who control detention facilities do not always carry out release orders or comply with court summons of detainees.

Fair trial rights are not respected in Libya. Lawyers said they face challenges that impair defendants' right to a fair trial. These include barriers to meeting with clients during interrogations and initial periods of detention, lack of notice around hearing schedules, and a lack of access to court documents, all of which prevented them from adequately defending their clients. Hearings by video are increasingly common, a practice that, where used exclusively, is abusive and undermines detainees' rights.

The state does not provide adequate physical protection to legal professionals, defendants, and witnesses in Libya. Attacks, intimidation, and harassment against them are common in a context of political division and security gaps.

Two rival entities compete for control over resources and territory in Libya and operate with near impunity. The Tripoli-based Government of National Unity (GNU) was appointed in March 2021 as an interim authority through a UN-brokered consensus process. Together with affiliated armed groups and abusive security agencies, it controls western Libya. Their rivals, the Libyan Arab Armed Forces (LAAF) and affiliated security apparatuses and militias, control eastern and southern Libya. The “Libyan Government” is a civilian authority linked to the LAAF, which administers territory under the LAAF’s control.

Amid these entrenched political divisions, key judicial institutions including the Justice Ministry, the Supreme Judicial Council, the Supreme Court and the general prosecutor are in deep conflict. The House of Representatives, after multiple attempts, established the Supreme Constitutional Court in the eastern city of Benghazi in September 2024, as a rival to the constitutional chamber of the Libyan Supreme Court in Tripoli. This created the risk of a constitutional crisis and conflicting rulings.

The UN Security Council referred the situation in Libya to the prosecutor of the International Criminal Court (ICC) in 2011 and the Office of the Prosecutor opened an investigation into serious international crimes committed in Libya since February 15, 2011. To date, no one has faced trial before the ICC in cases arising out of the investigation. Unaccountable armed groups and militias have continued to enjoy rampant impunity for over a decade. At time of writing, eight individuals subject to public ICC arrest warrants in the Libya situation remain at large.

The ICC prosecutor announced in November 2023 that his office plans “to complete investigative activities in relation to the key lines of inquiry” in the Libya situation by the end of 2025. These key lines of inquiry relate to violence during the 2011 revolution, crimes in detention facilities, crimes related to the 2014-2020 hostilities, and crimes against migrants, some of which are ongoing. On May 12, 2025, the Libyan government submitted a declaration to the ICC accepting the court’s jurisdiction over alleged crimes committed in Libya from 2011 to the end of 2027. The ICC Office of the Prosecutor should reassess the timeframe for completion of its investigative activities in Libya to ensure the adequate

delivery of its mandate. The ability and willingness of domestic judicial authorities to genuinely investigate and prosecute serious crimes should be taken into account.

With the end of the UN Independent Fact-Finding Mission on Libya's mandate in March 2023, there is currently no other independent international mechanism to monitor and report on serious human rights violations and international crimes in the country.

Libyan authorities should immediately repeal all laws that violate international law and Libya's Constitutional Declaration, lay the groundwork for comprehensive legislative reform with the participation of legal scholars and domestic and international civic groups, amend the Penal Code to specifically criminalize grave international crimes, ensure fair trial standards and due process rights in conformity with international law, assume genuine effective control over all detention facilities, ensure officers and prison guards treat detainees humanely in accordance with international legal obligations, release all those held in arbitrary detention without a legal basis, and end military trials of civilians. Authorities should comply with their obligation to cooperate with the ICC, including by promptly arresting and surrendering to the court all individuals on Libyan territory subject to ICC arrest warrants.

Recommendations

To the House of Representatives

On Legislative Reform Priorities

- Lay the groundwork for comprehensive legislative reform with the participation of legal scholars and domestic and international civic groups.
- Immediately repeal all laws that violate international law and Libya's Constitutional Declaration, including laws that criminalize peaceful speech and assembly, laws proscribing corporal punishment, and abusive state-security and cybercrime laws.
- Repeal all legal provisions that permit trial of civilians in military court, including the 2017 amendments to the Code of Military Procedure and the Military Penal Code. Limit the jurisdiction of military courts to specifically military crimes only affecting the military.
- Amend the Penal Code to specifically criminalize grave international crimes including genocide, crimes against humanity and war crimes, enforced disappearance, and torture.
- Ensure any law on transitional justice clearly defines grave international crimes including genocide, crimes against humanity, war crimes, torture, and enforced disappearance, and establishes appropriate jurisdiction to ensure crimes committed before and since 2011 can be prosecuted given that these are and were crimes under international law.
- Abolish all corporal punishment provisions in Libyan law.
- Abolish the death penalty and uphold the moratorium on all executions.
- Hold accountable individuals who continue to detain people in informal detention facilities without legal authority.

On Core Human Rights Treaties

- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Make a declaration under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights, entitling individuals and certain non-governmental organizations with observer status before the African Commission to bring cases directly before the Court, as stipulated in Article 5(3) of the Protocol.

- Ratify the Rome Statute.

To the General Prosecutor

On Fair Trials

- Order the immediate release of all those held in arbitrary detention without legal basis, those arrested by armed groups without legal authority, and those whose detention has not been reviewed by an independent and impartial court within a reasonable time.
- Issue public guidance on the maximum detention periods before which a person must be brought before a judge, tried, or released.
- Ensure international humanitarian organizations with a detention mandate have regular and unfettered access to all places of detention where Libyans and non-Libyans are held.
- Issue an immediate moratorium on any court-issued death sentences or corporal punishments, including floggings.

On Military Courts

- Restrict military courts' jurisdiction to military crimes affecting military personnel and cease trial of civilians in military court.
- Promptly review all cases involving the wrongful detention and prosecution of civilians before military courts and ensure effective remedies for all defendants, including release, transfer to civilian courts, or retrial respecting international fair trial standards and time served.

On International Justice

- Cooperate on investigations with the International Criminal Court, as requested.

To the Ministry of Justice

On Detention

- Prioritize assuming genuine effective control over all places of detention.
- Ensure officers and prison guards treat detainees humanely in accordance with international legal obligations.

- Communicate that inhumane treatment and torture will not be tolerated and seek accountability for abuses. Promptly remove officers and guards found to have committed abuses from active duty.
- Establish a mechanism for detainees to file reports of abuses in detention.

On Courts

- Ensure a safe work environment for legal professionals including judges, defense lawyers, and prosecutors.
- End all military trials of civilians.

On Fair Trials

- Ensure fair trial standards and due process rights in conformity with international law, including defendants' right to an adequate defense, to private and unfettered access to legal counsel, to know the charges levied against them, to defend themselves in court, and to access their case file.
- Ensure physical security of all those involved in court cases and establish adequate witness protection programs.

On the International Criminal Court

- Comply with Libya's obligations to arrest all individuals on its territory sought by the ICC.
- Ensure effective cooperation with the ICC on all issues concerning the Libya investigation.
- Publicly affirm that Libya will abide by the ICC's decisions, including enforcing its arrest warrants.
- Consider establishment of an internationalized justice mechanism to address international crimes to bring about comprehensive accountability beyond those cases tried before the ICC.

To the Ministry of Interior

- Migrants should only be detained in the least restrictive manner as a last resort for the limited time necessary to accomplish legitimate government objectives of identification and removal.

To the Office of the Prosecutor of the International Criminal Court

- Reassess the timeframe for the completion of investigative activities in Libya to adequately deliver on the court's mandate and consolidate its legacy for justice in Libya.
- Engage with national authorities to strengthen the domestic system for the investigation and prosecution of serious international crimes by addressing structural deficiencies in the current legal framework and practice.
- Conduct meaningful consultations with survivors, families of victims, affected communities, and civil society organizations to integrate their views and concerns into the office's decisions about the completion of its investigative activities in Libya.

To Members of the UN Security Council and ICC Member Countries

- Commit to backing the ICC's mandate in Libya, including by ensuring effective cooperation with the court and enforcing findings of non-cooperation by the court's judges.

Methodology

This report is based on interviews conducted with officials and judicial personnel in Tripoli, Zawiya, and Misrata between April and September 2024. Human Rights Watch met with the general prosecutor, the justice minister of the Tripoli-based Government of National Unity, the Libyan Bar Association, presidents of courts in Zawiya, lawyers at the Supreme Court and the Tripoli Appeals Court, and several defense lawyers. Researchers also met with civil society members and UN officials. This report is also based on a review and analysis of relevant laws and practices and open-source information.

All interviews were conducted in Arabic. Human Rights Watch explained the purpose of the interviews to interviewees and obtained their consent to use the information they provided for this report. Human Rights Watch did not pay interviewees.

Lawyers and judges requested anonymity for fear of reprisals and all names withheld are indicated in footnotes. Information in this report is current at time of writing.

Human Rights Watch sent letters, annexed to this report, to the Libyan general prosecutor, the minister of justice at the Government of National Unity, and the Office of the Prosecutor of the International Criminal Court to request additional information. The Office of the Prosecutor of the International Criminal Court responded to Human Rights Watch on May 19, and the response is annexed to this report. Human Rights Watch had not received responses from the Libyan general prosecutor and the minister of justice at the Government of National Unity by the time of publication.

Fractured Judiciary

The biggest challenge to Libya’s judiciary is the deep political divide between the entities in the east and west vying to control and govern the country.¹ Two rival entities compete for control over resources, institutions, and territory in Libya and operate with near impunity. The Tripoli-based Government of National Unity (GNU) was appointed in March 2021 as an interim authority through a UN-brokered consensus process. Together with affiliated armed groups and abusive security agencies, it controls western Libya. The Libyan Presidential Council is also Tripoli-based. The GNU’s rivals, the Libyan Arab Armed Forces (LAAF) and affiliated security apparatuses and militias, control eastern and southern Libya. The “Libyan Government” is a civilian authority linked to the LAAF, which administers territory under the LAAF’s control.²

Formally, Libya has one legal system comprised of the High Judicial Council, the Libyan Supreme Court and its constitutional chamber, the general prosecutor, and the appeals courts. However, in practice, the actual jurisdiction of these judicial authorities is often more limited, and their ability to execute summons, sentences, and release orders depends on the cooperation of the political factions and various armed groups who control different parts of the country. The general prosecutor has nominal jurisdiction over the entire country, but given the division of power between the GNU and the LAAF, there are real limitations on his ability to summon or order the release of defendants in both the east and the west of the country. Libya also has a separate military criminal justice system.

Supreme Court

Political divisions are at the root of a deeply divided judicial system unable to deliver justice fairly.³ The key judicial institutions are in entrenched conflict, undermining the Supreme Court and its ability to function and exercise jurisdiction over the entire country.

¹ Human Rights Watch interview with a Libyan Supreme Court lawyer (name withheld), Tripoli, September 15, 2024.

² Human Rights Watch, *World Report 2024* (New York: Human Rights Watch, 2024), Libya chapter, <https://www.hrw.org/world-report/2024/country-chapters/libya>.

³ Human Rights Watch interview with a Libyan Supreme Court lawyer (name withheld), Tripoli, September 15, 2024.

There are dual legislative authorities in Libya, with the eastern-based House of Representatives, elected in 2014, and the western-based High Council of State, a consultative body formed through the 2015 Libya Political Agreement largely to appease remnants of the previous parliamentary body, the General National Congress.⁴

These two legislative bodies are at odds, which has led to political stalemate and undermined the Supreme Court's authority, including over elections laws, preventing national elections from taking place since 2018.⁵ The Libyan Supreme Court's constitution chamber ruled in 2014 that the House of Representatives' election was based on unconstitutional legislation, resulting in the House rejecting the Court's ruling and by extension its authority.⁶ The House of Representatives in 2022 passed a decree establishing a Supreme Constitutional Court in Benghazi in a bid to undercut the Supreme Court, although it has not yet issued any rulings.⁷ This presented a challenge to the Supreme Court's constitutional chamber and introduced the risk of two rival courts issuing contradictory rulings.⁸

These political rifts have deeply undermined the Supreme Court, which has become unable or unwilling to review appeals in the sequence they are lodged, instead selectively reviewing cases not considered to be politically sensitive to the groups and parties in control.⁹ According to a Supreme Court lawyer, the two legislative bodies operate “outside the realm of legitimacy” as their mandates have expired, and the Supreme Court did not want to be dragged into “this game” between competing authorities. Sensitive cases on hold include multiple appeals lodged at the Supreme Court contesting the legality of the appointment of some judges, as well as challenging the constitutionality of appointing the

⁴ United Nations Support Mission in Libya, “Libyan Political Agreement,” December 17, 2015, <https://unsmil.unmissions.org/sites/default/files/Libyan%20Political%20Agreement%20-%20ENG%20.pdf> (accessed May 7, 2025).

⁵ “Libya: No Free Elections in Current Climate,” Human Rights Watch news release, March 21, 2018, <https://www.hrw.org/news/2018/03/21/libya-no-free-elections-current-climate>.

⁶ Human Rights Watch, *World Report 2015* (New York: Human Rights Watch, 2015), Libya chapter, <https://www.hrw.org/world-report/2015/country-chapters/libya>.

⁷ “Constitutional Judiciary and Review of Law No. 5 of 2023 Establishing the Constitutional Court in Libya,” The Law Society of Libya, <https://lawsociety.ly/القضاء-الدستوري-ومراجعة-القانون-رقم-5-ل> (accessed May 7, 2025).

⁸ “Libya Opens Constitutional Court in Benghazi,” *Libya Review*, September 20, 2024, <https://libyareview.com/48513/libya-opens-constitutional-court-in-benghazi/> (accessed May 7, 2025).

⁹ Human Rights Watch interview with a Libyan Supreme Court lawyer (name withheld), Tripoli, September 15, 2024.

head of the Supreme Court, the general prosecutor, and the president of the Supreme Judicial Council, the Supreme Court lawyer said.¹⁰

Military Trials of Civilians

Military courts in the east and west continue to prosecute civilians under the guise of “terrorism”-related crimes. The House of Representatives in 2017 amended the Code of Military Procedure and the Military Penal Code to widen “the scope of the military prosecution’s powers,”¹¹ allowing for more civilians to be tried in military courts, according to the general prosecutor.¹² The amended laws bring “perpetrators of terrorist crimes” and crimes in any location, vehicle, or company operated by the military under the jurisdiction of the military courts, regardless of the accused’s status.¹³ The general prosecutor said he had discussed with the House of Representatives concerns around the military procedures law and the need for a new law that limits the military courts’ jurisdiction.¹⁴

Military prosecutors are often not qualified to investigate civilians and they lack independence, being under the authority of competing defense ministers in the east and the west.¹⁵ For example, lawyers were not allowed to enter and attend investigations at Mitiga prison, under the control of al-Radaa armed group, and the military prosecutor refused to meet with them, according to the Libyan Bar Association.¹⁶

The Bar Association told Human Rights Watch that the military prosecution treats lawyers poorly and does not always respect release orders.¹⁷ In eastern Libya, Mohamed Hussein al-Jerroushi, a lawyer, has been detained in Benghazi on orders of the military prosecution since 2016, despite a judgment ruling that both the civil and military prosecution lacked

¹⁰ Ibid.

¹¹ Law No. 4 of 2017 Amending Some Provisions of the Military Penal Code and Military Procedures Law, The Law Society of Libya, November 28, 2017, <https://lawsociety.ly/legislation/أحكام-م-بشأن-تعديل-بعض-أحكام> (accessed May 7, 2025).

¹² Human Rights Watch interview with al-Siddiq al-Sur, general prosecutor, Misrata, September 21, 2024.

¹³ Law No. 4 of 2017 Amending Some Provisions of the Military Penal Code and Military Procedures Law, Law Society, November 28, 2017, <https://lawsociety.ly/legislation/أحكام-م-بشأن-تعديل-بعض-أحكام> (accessed May 7, 2025).

¹⁴ Human Rights Watch interview with al-Siddiq al-Sur, general prosecutor, Misrata, September 21, 2024.

¹⁵ Human Rights Watch interview with the Libyan Bar Association, Tripoli, September 17, 2024.

¹⁶ Ibid.

¹⁷ Ibid.

jurisdiction in his case.¹⁸ Libyan MP Hassan Al-Farjani Jablallah¹⁹ has been detained at a military facility in Tripoli since February 2023,²⁰ even though he is a civilian, according to the general prosecutor.²¹

Trying civilians in military courts is incompatible with the right to a fair trial under human rights law.²² In particular, such trials violate the right to be tried before an independent and impartial tribunal. The African Commission on Human and Peoples' Rights, the continent's principal human rights body, has also emphasized that military courts should not have jurisdiction over civilians in any circumstances whatsoever.²³

Human Rights Watch strongly opposes trials of civilians before military courts in all circumstances, as these proceedings severely undermine due process rights and because of how authoritarian governments have also used them to muzzle peaceful dissent.²⁴

Safety and Security

The state does not provide adequate protection to legal professionals, defendants, and witnesses in Libya. Attacks, intimidation, and harassment are common and remain ongoing.²⁵

The UN Independent Fact-Finding Mission on Libya documented “alleged arbitrary detention, enforced disappearance and (attempted) killing of several judges and prosecutors,” in Benghazi, Tripoli, Sirte, and Sabha.²⁶

¹⁸ Ibid.

¹⁹ MP Jablallah's brother, Mohammed Al-Farjani Jablallah, is also detained with him.

²⁰ “140 Libyan Lawmakers Demand Immediate Release of MP Hassan Jablallah,” *Libya Review*, March 1, 2025, <https://libyareview.com/53530/140-libyan-lawmakers-demand-immediate-release-of-mp-hassan-jablallah/> (accessed May 7, 2025).

²¹ Human Rights Watch interview with al-Siddiq al-Sur, general prosecutor, Misrata, September 21, 2024.

²² See “Uganda: Supreme Court Bans Military Trials of Civilians,” Human Rights Watch news release, January 31, 2025, <https://www.hrw.org/news/2025/01/31/uganda-supreme-court-bans-military-trials-civilians>.

²³ African Commission on Human and People's Rights, “Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa,” adopted May 29, 2003, entered into force May 29, 2003, <https://achpr.au.int/en/node/879/> (accessed May 7, 2025).

²⁴ See “Egypt: New Laws Entrench Military Power Over Civilians,” Human Rights Watch news release, March 5, 2024, <https://www.hrw.org/news/2024/03/05/egypt-new-laws-entrench-military-power-over-civilians>.

²⁵ Hanan Salah (Human Rights Watch), “Libya's Justice Pandemonium,” *Jurist*, April 12, 2014, <https://www.jurist.org/commentary/2014/04/hanan-salah-libyan-government/> (accessed May 7, 2025).

²⁶ UN Human Rights Council, Report of the Independent Fact-Finding Mission on Libya, A/HRC/52/83, March 20, 2023, <https://undocs.org/A/HRC/52/83> (accessed May 7, 2025).

A lawyer at the Tripoli Court of Appeal said security challenges for judicial personnel persisted.²⁷ The Libyan Bar Association in Tripoli said there were cases in which judges did not order the release of a defendant due to fear of the prosecution. In one minor offense case, a female judge in Tripoli ordered the release of a defendant, but the head of prosecution went to see her and “made her change her judgment, so the defendant was detained for two weeks,” the Bar Association said. They also said that in 2023, a female prosecutor in western Libya was attacked by unidentified men who allegedly pulled her out of her car and beat her.²⁸

In 2020, unidentified armed attackers assassinated lawyer Hanan al-Barassi, an outspoken critic of violations by armed groups, in broad daylight in eastern Libya’s Benghazi, without consequence.²⁹ The 2014 killing of prominent human rights lawyer Salwa Bughaighis in Benghazi, and the abduction of her husband by unidentified assailants, remains unsolved, with no accountability for these crimes.³⁰

In 2023, members of the armed group al-Radaa physically hit a lawyer, so defense lawyers stopped work for three days until the alleged perpetrators were arrested.³¹ The perpetrators were detained for two days at Jdeidah prison in Tripoli until the affected lawyer waived his right to press charges, according to the Libyan Bar Association.³²

In March 2025, individuals from the Internal Security Agency in Benghazi detained lawyer Muneer Abaid, without an arrest warrant, over a dispute concerning his law firm in Benghazi, according to a Libyan human rights group.³³

In a statement from March 22, 2025, the United Nations Support Mission to Libya (UNSMIL) said that legal professionals and members of the judiciary were being “targeted by violence and arbitrary arrests,” highlighting increased threats against legal professionals

²⁷ Human Rights Watch interview with a lawyer at the Tripoli Court of Appeal (name withheld), Tripoli, September 17, 2024.

²⁸ Human Rights Watch interview with the Libyan Bar Association, Tripoli, September 17, 2024.

²⁹ “Libya: Outspoken Benghazi Lawyer Murdered,” Human Rights Watch news release, November 11, 2020, <https://www.hrw.org/news/2020/11/11/libya-outspoken-benghazi-lawyer-murdered>.

³⁰ Human Rights Watch, *World Report 2015* (New York: Human Rights Watch, 2015), Libya chapter, <https://www.hrw.org/world-report/2015/country-chapters/libya>.

³¹ Human Rights Watch interview with the Libyan Bar Association, Tripoli, September 17, 2024.

³² Ibid.

³³ Libya Crimes Watch statement, March 14, 2025, <https://x.com/LCWNGO/status/1900589056754425921> (accessed on May 7, 2025).

that undermined their independence. The “violent arrest” of Judge Ali al-Shareef in Tripoli, in March 2025, and the arbitrary detention in Tripoli of two military prosecutors, Mansour Da’aoub and Mohammed al-Mabrouk al-Kar, in 2022, were among those mentioned.³⁴ Da’aoub was reportedly released in March 2025.³⁵

The UN Independent Fact-Finding Mission on Libya found that there was no domestic legislation establishing protection measures for witnesses and victims and no security force in Libya “that could provide security protection to the courts, prosecutors’ offices and the judiciary in accordance with international practice.”³⁶

The Judicial Police in Tripoli is tasked with managing and securing prisons, providing safety in court rooms and other locations where the justice system operates, securing judicial personnel, and transferring detainees. In western Libya, the Judicial Police—whose members operate with impunity—has at times expanded its mandate beyond its limited tasks to conduct patrols and set up checkpoints in the capital Tripoli.

According to Libya’s GNU Justice Minister Halima Ibrahim Abdelrahman, the Judicial Police are responsible for ensuring that civil, commercial, and criminal justice decisions are implemented. She acknowledged that the Judicial Police conducted patrols in Tripoli, which was not strictly in its mandate and said she had given orders to end these.³⁷ Abdelrahman also acknowledged that there was overreach or abusive behavior by some members of the Judicial Police. Complaints go through disciplinary boards and anyone under the rank of officer is investigated like any other citizen, she said, but officers accused under criminal law can only be investigated with the Judicial Police commander’s authorization.³⁸

³⁴ “UNSMIL Alarmed by Wave of Arbitrary Arrests Across Libya,” UNSMIL news release, March 22, 2025, <https://unsmil.unmissions.org/unsmil-alarmed-wave-arbitrary-arrests-across-libya> (accessed May 6, 2025).

³⁵ Al-Shabaka Facebook post, March 23, 2025, <https://www.facebook.com/fhghgij/posts/pfbidopZk87nyXLTa82EEA6joKXF3R69hVgU7m4Tz5VeqzCCZzqGgaGabXvuKZoBdSbLyWI> (accessed May 7, 2025).

³⁶ UN Human Rights Council, Report of the Independent Fact-Finding Mission on Libya, A/HRC/52/83, March 20, 2023, <https://undocs.org/A/HRC/52/83> (accessed May 7, 2025).

³⁷ Human Rights Watch interview with Halima Ibrahim Abdelrahman, GNU justice minister, Tripoli, September 19, 2024.

³⁸ Ibid.

The UN Independent Fact-Finding Mission on Libya found that the Judicial Police operations section was implicated in attacks on judicial personnel.³⁹ The Judicial Police deputy director and commander of operations is Osama Almasry Njeem. In January 2025, the ICC issued an arrest warrant for Njeem, accusing him of crimes against humanity and war crimes, including “murder, torture, rape and sexual violence, allegedly committed in Libya from February 2015 onwards.”⁴⁰ At time of writing, Njeem remains at large.

³⁹ UN Human Rights Council, Report of the Independent Fact-Finding Mission on Libya, A/HRC/52/83, March 20, 2023, <https://undocs.org/A/HRC/52/83> (accessed May 7, 2025).

⁴⁰ “Situation in Libya: ICC arrest warrant against Osama Elmasry Njeem for alleged crimes against humanity and war crimes,” International Criminal Court press release, January 22, 2025, <https://www.icc-cpi.int/news/situation-libya-icc-arrest-warrant-against-osama-elmasry-njeem-alleged-crimes-against-humanity> (accessed May 7, 2025).

Libya's Legal Framework

Libya's Penal Code and other related legislation are outdated and in need of comprehensive review to bring them in line with Libya's international human rights obligations. They contain harsh penalties and provisions that violate human rights, and fail to define torture, rape, and murder when they are committed in the context of armed conflict, as grave international crimes. There is no domestic legal provision directly applying international human rights law, including UN treaties and African Court rulings. Human Rights Watch previously raised the need for legislative reform over a decade ago in 2014.⁴¹

Libya's Penal Code was originally issued in 1953, influenced by Italian and French legal systems with elements of Islamic Sharia law. A lawyer at the Libyan Supreme Court described the legislative framework as a “cocktail that includes laws from the former monarchy, the Islamic Sharia, the socialist system, the former Gaddafi regime, and the post-Gaddafi revolutionary phase.”⁴²

The Penal Code was amended several times over the decades of Gaddafi's rule. New laws were also added during the Gaddafi period governing economic and political crimes, and later, crimes that constitute “terrorist acts.” The Penal Code includes laws criminalizing “defamation” of public officials and prohibitions on establishing organizations. Since 2011, Libyan authorities have passed additional abusive laws and decrees, including on cybercrime,⁴³ terrorism,⁴⁴ and provisions curtailing peaceful speech, assembly, and civic work, which constitute serious infringements on the rights to freedom of speech, assembly, and association.⁴⁵

⁴¹ Human Rights Watch, *Priorities for Legislative Reform* (New York: Human Rights Watch, 2014), <https://www.hrw.org/report/2014/01/21/priorities-legislative-reform/human-rights-roadmap-new-libya>.

⁴² Human Rights Watch interview with a Libyan Supreme Court lawyer (name withheld), Tripoli, September 15, 2024.

⁴³ “Libya: Revoke Repressive Anti-Cybercrime Law,” Human Rights Watch news release, April 3, 2023, <https://www.hrw.org/news/2023/04/03/libya-revoke-repressive-anti-cybercrime-law>.

⁴⁴ Letter from Human Rights Watch to the Libyan Justice Ministry, “Libya: Submission to Amend Counterterrorism Law,” March 24, 2015, <https://www.hrw.org/news/2015/03/24/libya-submission-amend-counterterrorism-law>.

⁴⁵ “Libya: Civic Space Crushed,” Human Rights Watch news release, January 27, 2025, <https://www.hrw.org/news/2025/01/27/libya-civic-space-crushed>.

Libyan authorities continue to use myriad overbroad and draconian legacy laws that violate international law to threaten, harass, arbitrarily detain, and attack civil society members and activists who call for reforms.⁴⁶ Regulations and decrees on organizing nongovernmental organizations unjustifiably restrict and muzzle civic groups, preventing them from working on judicial reforms, fair trial standards, detention conditions, and abuses committed by armed groups including the Judicial Police.⁴⁷

Penalties under the Penal Code are severe and include corporal punishments such as flogging. Over 30 articles of the Code provide for the death penalty, including for peaceful speech.⁴⁸ Libya's justice minister told Human Rights Watch that a new penal code would be drafted, but gave no timeline for the review or outline of the expected amendments, except that she expected it to increase fines.⁴⁹

Deficiencies in Libyan Domestic Law

Libyan legislation fails to define grave international crimes as such, lacks laws specifically defining and criminalizing war crimes and crimes against humanity, and does not establish witness or victim protection programs. Several provisions on serious crimes are inadequate and not in line with international law.⁵⁰ And there is no provision in Libyan domestic law to nullify or allow courts to strike down legislation not in line with international law, including international human rights law.

According to the International Commission of Jurists, Libya's domestic judicial framework is not in line with international law on torture, as it "fails to criminalize all forms of ill-treatment." Libya is also not in compliance with international law on the criminalization of enforced disappearance because national legislation does not reflect the gravity of the crime and fails to include all its components, particularly the involvement of an official and

⁴⁶ Human Rights Watch, *Priorities for Legislative Reform* (New York: Human Rights Watch, 2014), <https://www.hrw.org/report/2014/01/21/priorities-legislative-reform/human-rights-roadmap-new-libya>.

⁴⁷ "Libya: Draconian Decree Would Restrict Civic Groups," Human Rights Watch news release, June 4, 2021, <https://www.hrw.org/news/2021/06/04/libya-draconian-decree-would-restrict-civic-groups>.

⁴⁸ Human Rights Watch, *Priorities for Legislative Reform* (New York: Human Rights Watch, 2014), <https://www.hrw.org/report/2014/01/21/priorities-legislative-reform/human-rights-roadmap-new-libya>.

⁴⁹ Human Rights Watch interview with Halima Ibrahim Abdelrahman, GNU justice minister, Tripoli, September 19, 2025.

⁵⁰ UN Human Rights Council, Report of the Independent Fact-Finding Mission on Libya, A/HRC/52/83, section 98, March 20, 2023, <https://undocs.org/A/HRC/52/83> (accessed May 7, 2025).

a refusal to “disclose the fate or whereabouts of the person concerned or acknowledge the deprivation of liberty.”⁵¹

Libyan law fails to protect “the right to life from all forms of arbitrary deprivation of life,” as it does not criminalize what may amount to arbitrary executions but provides a basis to excuse excessive force by public officials that results in death. It further fails to prohibit summary executions, as the death penalty can be applied after unfair trials.⁵²

Libyan laws are inconsistent with Libya’s obligations under international law on the criminalization of rape and other forms of sexual and gender-based violence. While rape is criminalized, some forms of rape are not recognized or captured in law, such as in cases where a victim is unable to provide true consent because of a coercive environment. Libyan laws also allow for the offence of rape and its penal effects to be cancelled if the perpetrator marries the (female) victim. While the Penal Code criminalizes slavery, “it does not provide a definition of the crime,” rendering Libyan legislation out of compliance with international law.⁵³

Libyan officials have recognized the shortcomings of the current legal framework. Al-Siddiq al-Sur, Libya’s general prosecutor, agreed on the need for legislative overhaul and a reform of the prison system, saying that, “there is no deterrent for murder in Libya.” According to the justice minister, a national reconciliation project was underway, which included legislation on transitional justice. The House of Representatives passed a law on national reconciliation and transitional justice on January 7, 2025.⁵⁴ The text had yet to be published at time of writing.

⁵¹ International Commission of Jurists, “Accountability for Serious Crimes under International Law in Libya: An Assessment of the Criminal Justice System,” July 2019, <https://www.icj.org/wp-content/uploads/2019/07/Libya-Accountability-serious-crimes-Publications-Reports-Thematic-reports-2019-ENG.pdf> (accessed May 7, 2025).

⁵² Ibid.

⁵³ Ibid.

⁵⁴ “The House of Representatives resumes its official session in Benghazi and approves the National Reconciliation Law by a majority,” Media Center of the President of the Libyan House of Representatives Facebook post, January 7, 2025, <https://www.facebook.com/MCPPmediaLY/posts/pfbidorbmy8UPA3iZUsL745nZWz2nL7UKNkjfNXXoo16k3kxCzRwXdqESsgykc6d2JHhzl> (accessed May 7, 2025).

Detention

Detention facilities in Libya are fragmented, violent, and marked by inhumane conditions for Libyans and for migrants and asylum seekers. Torture, ill-treatment, inhumane conditions, arbitrary detention, and overcrowding are rampant and well documented. Human Rights Watch has documented how consecutive interim governments and authorities in Libya have failed to end the arbitrary detention of thousands of people after the 2011 uprising against Muammar Gaddafi or to investigate and hold accountable those responsible.⁵⁵

Many detention facilities are run by non-state actors including militias in the east, south, and west affiliated with the interior, justice, and defense ministries, and with abusive internal security agencies. Libyan authorities have struggled since the 2011 revolution to exercise control over detainees held in militia-run facilities.⁵⁶ Al-Siddiq al-Sur, Libya's general prosecutor, said that prisons are often under the control of "undisciplined" armed groups not directly affiliated with the state, and that "parallel" security forces caused "problems." He said "real control" of prisons such as Mitiga in Tripoli and Garnada in the east was not under the Justice Ministry and that Saddam Hiftar, a commander in the Libyan Arab Armed Forces (LAAF), controlled access to detention facilities in east Libya.⁵⁷

Members of the Libyan Bar Association in Tripoli told Human Rights Watch that detention conditions in prisons nominally under the Justice Ministry were "catastrophic," including due to overcrowding. They cited cases of alleged rape in detention of young men between 18 and 20 years old.⁵⁸

The UN Security Council's Panel of Experts found in its December 2024 report that five Libyan armed groups were responsible for "systematic violations of international humanitarian and human rights law, including arbitrary detention, murder and torture," targeting human rights defenders and journalists in particular. It found that the Judicial Police, in coordination with al-Radaa for Countering Terrorism and Organized Crime—a

⁵⁵ Human Rights Watch, *The Endless Wait: Long-Term Arbitrary Detentions and Torture in Western Libya* (New York: Human Rights Watch, 2015), <https://www.hrw.org/report/2015/12/03/endless-wait/long-term-arbitrary-detentions-and-torture-western-libya>.

⁵⁶ Ibid.

⁵⁷ Human Rights Watch interview with al-Siddiq al-Sur, general prosecutor, Misrata, September 21, 2024.

⁵⁸ Human Rights Watch interview with the Libyan Bar Association, Tripoli, September 17, 2024.

Tripoli-based Presidential Council) affiliated militia—subjected civilians to “unlawful detention, enforced disappearance, torture and other ill-treatment.” The Panel also documented “cases of unlawful arrest and detention, enforced disappearance, cruel, inhuman and degrading treatment committed in temporary detention facilities” controlled by the Tripoli Internal Security Agency.⁵⁹

The GNU justice minister told Human Rights Watch she was not aware of violations in detention facilities under the control or nominal control of the ministry.⁶⁰ She said no such complaints had reached the ministry, but also that there were no mechanisms for complaints in prisons as they were “not needed.” She recognized that the lack of a budget to operate prisons and provide for detainees was a key constraint and that overcrowding remained an issue especially in Tripoli, Benghazi, and Misrata prisons, but said some progress had been made on prison infrastructure. To ease overcrowding, the ministry was considering an electronic bracelet system as an alternative to detention for some detainees, including those who are sick.⁶¹

Libya’s GNU justice minister told Human Rights Watch that every detainee in Libya was detained based on a legal document. However, Libya’s general prosecutor disagreed, saying there was arbitrary detention—for example at Tripoli’s Mitiga prison, controlled by al-Radaa—but not at every prison in Tripoli. The GNU justice minister also said that a dedicated department at the ministry conducted judicial reviews of people sentenced for minor offences and who had completed more than half of their sentences, but did not provide statistics.

Civic groups and independent international organizations do not have regular and unfettered access to formal and informal detention facilities—including those for migrants and asylum seekers—to monitor and evaluate conditions of detention and human rights obligations. Authorities in the east and west prevented members of the UN Independent Fact-Finding Mission on Libya from visiting detention facilities throughout its mandate,

⁵⁹ UN Security Council, Final report of the Panel of Experts established pursuant to resolution 1973 (2011) concerning Libya, S/2024/914, December 13, 2024, <https://docs.un.org/en/S/2024/914> (accessed May 7, 2025).

⁶⁰ The GNU justice minister listed prisons under the control of the Ministry of Justice as including Jdeidah A and B, Ain Zara, Dhaman, al-Khoms, Tarhouna, Bani Walid, Jeddayem, Mellita, Jandouba, Tamina and Sikt in western Libya, and in the south in al-Jufra, Sebha and a prison in Ubari that was under construction, and in the east, Kuweifiya, Garnada, al-Marj, Tobruk, al-Jazira.

⁶¹ Human Rights Watch interview with Halima Ibrahim Abdelrahman, GNU justice minister, Tripoli, September 19, 2024.

which ended in March 2023.⁶² The UN Special Rapporteur on violence against women and girls said she was denied access to detention facilities in east and west Libya during her December 2022 visit.⁶³

Human Rights Watch has extensively covered the systematic problems with detention and mistreatment of migrants in Libya, including unaccompanied children and children with their mothers or other relatives, who face widespread abuse by armed groups and prison guards including severe overcrowding, unsanitary conditions, malnutrition, lack of adequate health care, and violent abuse by guards, including beatings and whippings.⁶⁴

In its final report, the UN Independent Fact-Finding Mission on Libya determined that crimes against humanity were committed against Libyans and migrants, asylum seekers, and refugees in detention in all parts of Libya.⁶⁵ The mission concluded that the Interior Ministry-linked Directorate for Combating Illegal Migration, the armed group known as Stability Support Apparatus, and the GNU Defence Ministry-linked Libyan Coast Guard, were responsible for crimes against humanity for abuses of migrants detained in facilities under the effective or nominal control of the GNU. The mission found “arbitrary detention, murder, torture, rape, enslavement, sexual slavery, extrajudicial killing and enforced disappearance” to be widespread in Libya.⁶⁶

⁶² UN Human Rights Council, Report of the Independent Fact-Finding Mission on Libya, A/HRC/52/83, para. 23, March 20, 2023, <https://undocs.org/A/HRC/52/83> (accessed May 7, 2025).

⁶³ UN Human Rights Council, Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, Visit to Libya, A/HRC/53/36/Add.2, May 4, 2023, (accessed March 12, 2025).

⁶⁴ “Libya: Nightmarish Detention for Migrants and Asylum Seekers,” Human Rights Watch news release, January 21, 2019, <https://www.hrw.org/news/2019/01/21/libya-nightmarish-detention-migrants-asylum-seekers>.

⁶⁵ Hanan Salah, “UN Experts Find War Crimes, Crimes Against Humanity in Libya,” Human Rights Watch commentary, March 28, 2023, <https://www.hrw.org/news/2023/03/28/un-experts-find-war-crimes-crimes-against-humanity-libya>.

⁶⁶ UN Human Rights Council, Report of the Independent Fact-Finding Mission on Libya, A/HRC/52/83, March 20, 2023, <https://undocs.org/A/HRC/52/83> (accessed March 12, 2025).

Fair Trial Standards

Barriers to an Adequate Defense

Defense lawyers in Libya face challenges that impede defendants' right to a fair trial. Three defense lawyers told Human Rights Watch that they were not permitted to meet with clients during interrogations and initial periods of detention, did not receive notice of hearing schedules, and faced a lack of access to court documents, all of which prevented them from adequately defending their clients. Lawyers also said that members of the prosecution sometimes "treated them badly" at court.⁶⁷

Defense lawyers in Libya face barriers in attending hearings and visiting clients in detention. The Judicial Police is responsible for transferring detainees to court hearings, providing security for all those involved, and is mandated to manage prisons nominally under the Justice Ministry. According to the Libyan Bar Association, officers have prevented defense lawyers from communicating with their clients in court and sometimes even prevented them from attending hearings. The Association and individual lawyers said that Judicial Police officers yell at and insult defense lawyers waiting for their hearings.⁶⁸

"They [Judicial Police] bring in people [detainees] a day before their detention is meant to be extended, so lawyers do not know that their clients will appear in court and do not go to meet them. The same happens when defendants are brought for interrogation. The lawyers are not informed." The lack of notice to defense lawyers ahead of hearings or interrogations prevents them from adequately defending their clients and results in delays, as judges order the extension of detention without the knowledge of the defendant's legal counsel, the lawyers said.

Lawyers' visits to their clients in detention require individual written approvals from the General Prosecutor's Office, ahead of each visit, and are not conducted privately. There is no designated room where lawyers can meet with their clients in private to prepare for hearings or sessions. Defense lawyers have to use the same visitation areas as families,

⁶⁷ Human Rights Watch interviews with three defense lawyers, and members of the Libya Bar Association, Tripoli, September 2024.

⁶⁸ Ibid.

which in many cases means “yelling at the client” from behind two separation barriers across a gap of several meters, according to a defense lawyer in Tripoli.⁶⁹ The Libyan Bar Association also said that some prosecutors do not allow defense lawyers to attend interrogations of their clients, although the general prosecutor said he had asked prosecutors to allow their attendance.⁷⁰

Many well-known lawyers do not agree to take on criminal cases anymore because they have to wait all day to be allowed into hearings and interrogation sessions, the Bar Association said. A defense lawyer in Tripoli who raised the same concerns about access to clients, said that lawyers now tried to work around the prosecution and independently find out when cases were being reviewed.⁷¹

According to the Bar Association, defense lawyers also face barriers accessing case files held by the prosecution. “When the case is still with the prosecution, before it goes to a criminal court, we are not allowed to photocopy case files, as there is no [copy] machine. We have to write down the details by hand, and often there is no space in the room.”⁷²

The Government of National Unity (GNU) justice minister said she had not received any complaints about defense lawyers’ lack of access to prisons under her ministry’s control.⁷³ Al-Siddiq al-Sur, Libya’s general prosecutor, told Human Rights Watch that such reports of defense lawyers facing obstacles to their work are an “exaggeration,” particularly regarding their ability to attend hearings. He noted that when a lawyer’s name is included in a case file, they should be informed ahead of hearings. He also said he wanted to facilitate defense lawyers’ interactions with prosecutors, and that he had asked police and prosecutors to allow them to attend hearings without impediment and to allow them to make copies of reports and judicial documents. A room with copiers was set aside for defense lawyers at the general prosecutor’s office, he said.⁷⁴

⁶⁹ Human Rights Watch interview with a criminal defense lawyer (name withheld), Tripoli, September 17, 2024.

⁷⁰ Human Rights Watch interviews with the Libyan Bar Association and with al-Siddiq al-Sur, general prosecutor, Tripoli and Misrata, September 2024.

⁷¹ Human Rights Watch interview with a criminal defense lawyer (name withheld), Tripoli, September 17, 2024.

⁷² Human Rights Watch interview with the Libyan Bar Association, Tripoli, September 17, 2024.

⁷³ Human Rights Watch interview with Halima Ibrahim Abdelrahman, GNU justice minister, Tripoli, September 19, 2024.

⁷⁴ Human Rights Watch interview with al-Siddiq al-Sur, general prosecutor, Misrata, September 21, 2024.

Al-Sur said that the General Prosecutor’s Office had a new inspection unit which investigated errors and abuse of power by prosecutors. A disciplinary council can apply a range of measures to sanction staff, including oral and written warnings and summons, he said. In cases of bribery, a Supreme Court special committee can strip prosecutors of their immunity or dismiss them. Al-Sur said all sanctions are taken into account in the assignments of roles at the beginning of each judicial year.⁷⁵ The roles of judicial staff are decided at the beginning of each judicial year in Libya, usually in September, which means that a public prosecutor could end up being assigned the role of judge in the next judicial year.⁷⁶

Complaints against lawyers were abundant, overwhelming the Bar Association, which said it received more than 300 complaints against lawyers for alleged misconduct in the east and west of the country. In one example, they cited the case of a group of lawyers in Derna, eastern Libya, who were suspended from work and referred to interrogation by the eastern attorney general, for having more than one government income source, which is not permitted under Libyan law. Yet, prosecutors can only interrogate lawyers if the secretary general of the Bar Association lifts their immunity, a rule in place since a lawyer was arrested in 2018 and died in detention. The secretary general usually will not waive immunity unless a lawyer is accused of serious misconduct.⁷⁷

The general prosecutor said that defense lawyers bring issues upon themselves because of a “lack of professionalism” and that most prosecutors do not trust them. He claimed some were not registered with the Bar Association and did not have identification cards, while some tried to extort money from their clients, leading to an increase in complaints against lawyers. He criticized the fact that defense lawyers’ immunity could only be lifted by the Bar Association, and not the Supreme Court as with others working in the justice sector.⁷⁸

For a defendant to receive a fair trial under international law, Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which Libya ratified in 1970, requires that defendants be granted full access to a lawyer, have adequate time to prepare their defense—including presenting arguments and evidence—and have the ability to challenge

⁷⁵ Ibid.

⁷⁶ Human Rights Watch interview with a criminal defense lawyer (name withheld), Tripoli, September 17, 2024.

⁷⁷ Human Rights Watch interview with the Libyan Bar Association, Tripoli, September 17, 2024.

⁷⁸ Human Rights Watch interview with al-Siddiq al-Sur, general prosecutor, Misrata, September 21, 2024.

evidence and arguments presented against them. It further requires that states provide a fair hearing before a legally constituted, competent, independent, and impartial judicial body, a trial without undue delay, and a right to appeal to a higher judicial body.⁷⁹

Obstacles to Summons, Transfer, and Release

The Libyan justice system faces significant obstacles in summoning, transferring, and releasing detainees. Three defense lawyers, a Court of Appeal lawyer, the head of a first instance court, and the general prosecutor said that summons by prosecutors and requests for transfer of detainees were not always respected, and that armed groups and quasi-state forces who controlled detention facilities do not always carry out release orders. This has resulted in major delays and prolonged pre-trial detention of defendants, they said.⁸⁰

Judicial Police officers are responsible for transferring detainees from their places of detention to their hearings, organized in several daily trips.⁸¹ They currently use pick-up trucks with a box-like cover to transport detainees between sessions, but the GNU justice minister said they were in the process of obtaining more humane vehicles such as buses.

Video Hearings

Due to challenges in physically transferring detainees to attend hearings in person, the GNU justice minister said there had been an increase in the use of videoconferencing in cases of serious crimes, where the transfer of detainees caused security risks. She said that “one or two rooms” had been designated for this use in “some prison facilities” and that the practice was in compliance with Libyan law.

In 2014, Libya’s parliament passed a law amending articles 241 and 243 of the Libyan Code of Criminal Procedure, allowing defendants, expert witnesses, and others to testify via “modern communication methods” without having to be in the courtroom. The law

⁷⁹ “Libya: Fair Trial Concerns for Ex-Officials,” Human Rights Watch news release, April 14, 2014, <https://www.hrw.org/news/2014/04/14/libya-fair-trial-concerns-ex-officials>; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Libya on May 15, 1970.

⁸⁰ Human Rights Watch interviews with three defense lawyers, a Court of Appeal lawyer, the head of a First Instance court, and Libya’s general prosecutor, Tripoli, Zawiyah and Misrata, April and September 2024.

⁸¹ Human Rights Watch interview with Halima Ibrahim Abdelrahman, GNU justice minister, Tripoli, September 19, 2024.

stipulates that these measures should be used only in urgent cases and where officials fear for the defendant's safety. The measures were first used in the 2014 trial of former Gaddafi officials, including Saif al-Islam Gaddafi, although at the time it was not clear that he had waived his right to appear in person.⁸²

The head of the Zawiyah Court of First Instance told Human Rights Watch that the use of closed-circuit video to conduct prosecutions, instead of bringing defendants to court to be tried in person, presented an additional fair trial challenge. The camera angle focused on defendants, and it was not possible to see the whole room to ascertain whether they were testifying freely. He said the law needed to be amended to include stricter standards.⁸³

Human Rights Watch has found that conducting hearings only by video is inherently abusive as it undermines detainees' right to be brought physically before a judge to assess the legality and conditions of detention, the well-being of detainees, and for the detainees to be able to speak to the judge directly and to their lawyers without delay and in private.⁸⁴

The fair trial principles articulated by the African Commission on Human and Peoples' Rights hold that the accused has the right to appear in person before a judicial body.⁸⁵

Arbitrary and Provisional Detention

Long-term arbitrary detention and provisional detention are commonplace in Libya. According to Al-Siddiq al-Sur, Libya's general prosecutor, the majority of detainees were held in pre-trial or pre-charge detention as of September 2024.⁸⁶

According to al-Sur, the use of pre-trial detention has increased to "achieve a deterrent effect." Although he said he was against the practice, he argued that "if you release someone, the case is closed" due to "open borders, widespread possession of weapons,

⁸² "Libya: Fair Trial Concerns for Ex-Officials," Human Rights Watch news release, April 14, 2014, <https://www.hrw.org/news/2014/04/14/libya-fair-trial-concerns-ex-officials>.

⁸³ Human Rights Watch interview with Zawiyah Court of First Instance, Zawiyah, April 23, 2024.

⁸⁴ "Egypt: Pretrial Detention Renewals by Video," Human Rights Watch news release, May 26, 2023, <http://hrw.org/news/2023/05/26/egypt-pretrial-detention-renewals-video>.

⁸⁵ African Commission on Human and People's Rights, "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa," adopted May 29, 2003, entered into force May 29, 2003, <https://achpr.au.int/en/node/879/> (accessed May 7, 2025).

⁸⁶ Human Rights Watch interview with al-Siddiq al-Sur, general prosecutor, Misrata, September 21, 2024.

and banditry” in Libya. An Appeals Court lawyer confirmed that lengthy pre-trial detention was mostly used as a deterrent.⁸⁷

By contrast, the GNU justice minister told Human Rights Watch that “nobody (was) detained in prisons under the Justice Ministry without any legal procedure” and that 70 percent of those held in facilities under her ministry’s control were either being tried or had been sentenced. If a detainee was acquitted and still remained in detention, it was because they were a suspect in other cases, she said, and a new digital database that included all investigations and judgements since 1990 could be used to improve public policies.⁸⁸

Under international and Libyan law, detention is subject to strict due process and authorities must promptly charge or release a person, promptly present them before a judge to rule on the legality of detention, and provide regular opportunities to challenge the lawfulness of detention. Failure to respect such procedural safeguards renders a detention arbitrary. Under international law, pre-trial detention should be the exception and not the rule.⁸⁹

⁸⁷ Human Rights Watch interview with a criminal defense lawyer (name withheld), Tripoli, September 17, 2024.

⁸⁸ Human Rights Watch interview with Halima Ibrahim Abdelrahman, GNU justice minister, Tripoli, September 19, 2024.

⁸⁹ Human Rights Watch, *The Endless Wait: Long-Term Arbitrary Detentions and Torture in Western Libya* (New York, Human Rights Watch, 2015), <https://www.hrw.org/report/2015/12/03/endless-wait/long-term-arbitrary-detentions-and-torture-western-libya>; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Libya on May 15, 1970.

Sentencing

Death Penalty

At least 30 articles in the Libyan Penal Code provide for the death penalty, including for peaceful speech and association.⁹⁰ There is a de-facto moratorium on executions in Libya and no death sentences have been carried out under formal state courts since 2010.⁹¹

According to the general prosecutor, 250 people were sentenced to death in Libya as of September 2024, including legacy cases from before the 2011 conflict. 105 of them had exhausted all appeals. Of the 105, only 19 were still held in detention and three had received waivers from victims' families, reducing their sentence to life in prison, while the rest were at large.⁹²

The general prosecutor told Human Rights Watch he planned to push to resume executions, arguing that Libyans were “indifferent” to killing and that it would be a deterrence.

Human Rights Watch opposes capital punishment in all countries and in all circumstances as a matter of principle because this form of punishment is inhumane, unique in its cruelty and irreversibility, and universally plagued with arbitrariness, prejudice, and error.⁹³ More than two-thirds of countries have abolished or ceased executions,⁹⁴ recognizing that capital punishment violates the right to life and the prohibition⁹⁵ against cruel, inhuman, or degrading punishment.⁹⁶

⁹⁰ Libyan Penal Code (1954), <https://security-legislation.ly/latest-laws/penal-code/> (accessed May 7, 2025).

⁹¹ “Libya: Suspend Death Sentences Against Gaddafi Loyalists,” Human Rights Watch news release, October 4, 2013, <https://www.hrw.org/news/2013/10/04/libya-suspend-death-sentences-against-gaddafi-loyalists>.

⁹² Human Rights Watch interview with al-Siddiq al-Sur, general prosecutor, Misrata, September 21, 2024.

⁹³ Olivia Ensign (Human Rights Watch), “The Death Penalty Is Inhumane. States Should Follow Biden’s Example of Mercy,” commentary, *US News*, December 23, 2024, <https://www.usnews.com/opinion/articles/2024-12-23/biden-was-right-to-commute-death-row-sentences-the-death-penalty-is-inhumane> (accessed May 7, 2025).

⁹⁴ Amnesty International, “Death Penalty 2021: Facts and Figures,” May 24, 2022, <https://www.amnesty.org/en/latest/news/2022/05/death-penalty-2021-facts-and-figures/> (accessed May 7, 2025).

⁹⁵ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948).

⁹⁶ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Libya on May 15, 1970.

Corporal Punishment

The Libyan Penal Code stipulates corporal punishment for *Hudud* crimes of alcohol consumption, illicit sexual intercourse, theft and violent theft, and slander. *Hudud* crimes are derived from the Quran or Sunnah and have mandatory and fixed punishments. These range from lashings to amputation of limbs to the death penalty.⁹⁷

According to lawyers and the general prosecutor, while authorities were not amputating limbs as punishment, lashings for alcohol consumption were being carried out.⁹⁸ A defense lawyer said that 40 lashes were usually mandated for the consumption of alcohol.⁹⁹

The general prosecutor said the corporal punishments of lashing and limb amputations were carried out during the former Gaddafi government. But that as a policy, his office currently dismissed charges for morality crimes and illicit drinking in most cases as there was “overcrowding in prisons and many more serious crimes.” The general prosecutor identified rape and sexual assault also as a “morality crime,” but said it was still being punished with up to seven years in prison. In some cases, he said, illicit alcohol consumption was punished with brief imprisonment instead of corporal punishment. The punishment of 80 lashes for adultery still stands for men and women, he said, but Libyan law stipulates that four witnesses are needed to prove adultery and this punishment was sometimes not carried out. He added that the punishment was often converted to 2-3 years in prison.¹⁰⁰

Corporal punishment constitutes a clear violation of international law, including the International Covenant on Civil and Political Rights, which prohibits subjecting anyone to “torture or to cruel, inhuman or degrading treatment or punishment.”¹⁰¹ The UN Human Rights Committee explicitly extends this prohibition to corporal punishment.¹⁰² The African

⁹⁷ Human Rights Watch, *Priorities for Legislative Reform* (New York: Human Rights Watch, 2014), <https://www.hrw.org/report/2014/01/21/priorities-legislative-reform/human-rights-roadmap-new-libya>.

⁹⁸ Human Rights Watch interview with three defense lawyers (names withheld), members of the Libyan Bar Association, and al-Siddiq al-Sur, general prosecutor, Tripoli and Misrata, September 2024.

⁹⁹ Human Rights Watch interview with a criminal defense lawyer (name withheld), Tripoli, September 16, 2024.

¹⁰⁰ Human Rights Watch interview with al-Siddiq al-Sur, general prosecutor, Misrata, September 21, 2024.

¹⁰¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Libya on May 15, 1970, art. 7.

¹⁰² See UN Human Rights Committee General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), adopted March 10, 1992, Forty-fourth Session of the Human Rights Committee, art. 5.

Charter states “every 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.”¹⁰³ Treating adultery as a criminal offence infringes the International Covenant on Civil and Political Rights, including the rights linked to privacy, and is often used to repress women’s rights.¹⁰⁴

Failure to Pay Compensation

One of the biggest challenges facing the judicial sector is that sentences against the state are not being implemented. Authorities in the east and west have failed to pay out financial compensation for damages and losses in some cases since 2009,¹⁰⁵ including judgments against the Justice Ministry and the Prime Ministry.¹⁰⁶ The Libyan Bar Association estimated the total amount of unpaid compensation to be around 1 billion Libyan dinar (around US\$200 million at the time), and said they met with the finance minister, the prime minister, and the former governor of the central bank, but they all “made excuses.”¹⁰⁷ The state has not designated a budget to pay compensation, which is mostly linked to property damage or loss, said an Appeal Court lawyer.¹⁰⁸

Clients depend on compensation payments to pay their lawyers, and because compensation is not being paid, clients are often unable to pay their lawyers’ fees. As a result, many private lawyers bringing lawsuits in such cases do not get paid, putting financial strain on them, according to the Bar Association.¹⁰⁹

¹⁰³ African [Banjul] Charter on Human and Peoples’ Rights (ACHPR), 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. 5. In Curtis Francis Doebbler / Sudan - 236/00, the African Commission found that Sudan had violated article 5 of ACHPR, for flogging of students as a form of punishment, stating “There is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture [...],” 33rd Ordinary Session in Niamey, Niger, May 2003,

<https://achpr.au.int/en/decisions-communications/curtis-francis-doebbler-sudan-23600> (accessed May 5, 2025).

¹⁰⁴ Office of the United Nations High Commissioner for Human Rights, Working Group on discrimination against women and girls, “The criminalization of adultery: a violation of women’s human rights,” n.d., <https://www.ohchr.org/en/special-procedures/wg-women-and-girls/criminalization-adultery-violation-womens-human-rights> (accessed May 7, 2025).

¹⁰⁵ Human Rights Watch interviews with the Libyan Bar Association and a criminal defense lawyer (name withheld), Tripoli, September 17, 2024.

¹⁰⁶ The general prosecutor confirmed the failure to pay out compensation. Human Rights Watch interview with al-Siddiq al-Sur, general prosecutor, Misrata, September 21, 2024.

¹⁰⁷ Human Rights Watch interview with the Libyan Bar Association, Tripoli, September 17, 2024.

¹⁰⁸ Human Rights Watch interview with a criminal defense lawyer (name withheld), Tripoli, September 17, 2024.

¹⁰⁹ Human Rights Watch interview with the Libyan Bar Association, Tripoli, September 17, 2024.

According to the general prosecutor, there is a need to increase litigation and implementation of laws on the environment, medical liability, inheritance, and corruption. He said his office trained staff on these issues, leading to a hike in judgments as a result. However, in the absence of a state budget, compensation rulings have accumulated and are not being paid.¹¹⁰

¹¹⁰ Human Rights Watch interview with al-Siddiq al-Sur, general prosecutor, Misrata, September 21, 2024.

International Criminal Court

The International Criminal Court (ICC) has a mandate to investigate grave international crimes, including alleged war crimes and crimes against humanity in Libya. It is a court of last resort operating under the “principle of complementarity,” which means that it will only step in if national authorities do not genuinely investigate and prosecute crimes within the ICC’s mandate.

On February 26, 2011, mere days after the start of the revolution that ousted former leader Muammar Gaddafi, the UN Security Council unanimously adopted resolution 1970, referring the situation in Libya to the ICC prosecutor. On March 3, the prosecutor opened an investigation into alleged crimes against humanity and war crimes committed in Libya since February 15, 2011.¹¹¹

On May 12, the Libyan government submitted a declaration to the ICC accepting the court’s jurisdiction over alleged crimes committed in Libya from 2011 to the end of 2027.¹¹²

Militias and armed groups linked with the competing Libyan authorities continue to commit serious international crimes that may fall under the ICC’s jurisdiction with impunity. These include arbitrary arrests and detentions, enforced disappearances, torture and ill-treatment, and cruel and inhuman or degrading treatment of Libyans and non-Libyans in detention that may constitute crimes against humanity and war crimes. Militias and traffickers, often working in tandem, continue to subject migrants, asylum seekers, and refugees to torture, cruel treatment, trafficking, forced labor, sexual violence, and extortion.¹¹³

The ICC is not expected to try all crimes or all perpetrators, and there will be limits to the scope and number of cases brought by the Office of the Prosecutor in each situation.

¹¹¹ “ICC: Prosecutor to Open an Investigation in Libya,” Human Rights Watch Q&A, March 3, 2011, <https://www.hrw.org/news/2011/03/03/icc-prosecutor-open-investigation-libya>.

¹¹² “Libya accepts ICC jurisdiction over alleged crimes from 2011 to the end of 2027,” International Criminal Court press release, May 15, 2025, <https://www.icc-cpi.int/news/libya-accepts-icc-jurisdiction-over-alleged-crimes-2011-end-2027> (accessed May 20, 2025).

¹¹³ “Libya: UN experts alarmed at reports of trafficking in persons, arbitrary detention, enforced disappearances and torture of migrants and refugees,” UN Office of the High Commissioner for Human Rights press release, July 21, 2023, <https://www.ohchr.org/en/press-releases/2023/07/libya-un-experts-alarmed-reports-trafficking-persons-arbitrary-detention> (accessed May 7, 2025).

Domestic prosecutions of international crimes are both consistent with the principle of complementarity and often necessary to bring about comprehensive accountability. But domestic prosecutions typically face specific obstacles.¹¹⁴

The fractured nature of Libya's judiciary, pervasive fair trial concerns, and unaddressed security concerns for judicial professionals only worsen prospects for independent investigations and prosecutions. Prosecutions of mass atrocity crimes also require specialized expertise and support, including witness protection, and benefit from legal frameworks providing for international crimes and a range of modes of liability. The reforms highlighted in this report are also important for Libya's ability to bring those responsible for serious international crimes to account.

Cooperation between Libyan Authorities and the International Criminal Court

Fourteen years after the Security Council referral, cooperation with the ICC by Libyan authorities remains largely inadequate.¹¹⁵ Leading Libyan judicial authorities have gone so far as to oppose the trial of Libyans outside of Libya and to question the need for the ICC's involvement in some investigations in Libya.¹¹⁶ This is despite the lack of domestic judicial proceedings for the same crimes being investigated by the ICC, ongoing impunity, and an inadequate domestic legal framework covering grave international crimes.

Resolution 1970 requires Libya to cooperate with the ICC, which includes arresting and surrendering all individuals wanted by the court who are in Libya. Without its own police force, the ICC relies on states to enforce arrest warrants. At the time of writing, the ICC has issued warrants of arrest against 12 individuals in relation to the Libya situation. Three of them have since died and 8 remain at large.¹¹⁷ ICC judges declared the case against Abdullah Al-Senussi, former intelligence chief under Gaddafi, inadmissible before the

¹¹⁴ See Open Society Justice Initiative, *International Crimes, Local Justice: A Handbook for Rule-of-Law Policymakers, Donors, and Implementers* (Open Society Foundations, 2011), <https://www.justiceinitiative.org/uploads/4d978a66-7e25-4f40-a231-08388779c18c/international-crimes-local-justice-20111128.pdf> (accessed May 5, 2025).

¹¹⁵ "Libya: 10th Anniversary of Referral to the ICC," Human Rights Watch news release, February 25, 2021, <https://www.hrw.org/news/2021/02/25/libya-10th-anniversary-referral-icc>.

¹¹⁶ Human Rights Watch interview with Halima Ibrahim Abdelrahman, GNU justice minister, Tripoli, September 19, 2024.

¹¹⁷ "Situation in Libya," International Criminal Court, accessed March 12, 2025, <https://www.icc-cpi.int/situations/libya> (accessed May 7, 2025).

court.¹¹⁸ Consecutive interim authorities and governments in the east and west of the country have failed to arrest and surrender to the court ICC suspects on Libyan territory.

Libya's Government of National Unity (GNU) justice minister told Human Rights Watch that "as a matter of principle," she was against extraditing any Libyan national to be tried abroad, and that she had conveyed this message to the court's prosecutor, Karim Khan, during his visit to Tripoli in April 2024.¹¹⁹

Libya's general prosecutor said the ICC's investigation in Libya and the issuing of arrest warrants was important and had a deterrent effect to some extent, but that it "was not needed" for the investigation of mass graves in Tarhouna where hundreds went missing between 2013 and 2020. It was not useful for the Court to look into issues of international humanitarian law, he said, arguing that it might harm the Libyan judiciary's credibility.¹²⁰

Libyan authorities have failed to arrest Saif al-Islam Gaddafi, who is still at large and wanted by the ICC for crimes against humanity and war crimes in relation to the 2011 revolution. Al-Sur said that Gaddafi was wanted by the Libyan authorities, but that his arrest was "not a priority for them." He said that, during deputy ICC prosecutor Nezhat Shameem Khan's April 2024 visit, she did not request information about Gaddafi from Libyan authorities. In addition to the ICC case against him, Gaddafi was convicted and sentenced to death in absentia before a Libyan court in 2014, in a process Human Rights Watch found to have been marred by grave due process violations.¹²¹ Under Libyan law, this conviction would require him to be retried, al-Sur said.¹²²

Italian authorities did not comply with their obligation to cooperate with the ICC in relation to the Libya situation after failing to surrender Osama Elmasry Njeem, who was in Italy at the time and wanted by the ICC for the war crimes of outrages upon personal dignity, cruel treatment, torture, rape and sexual violence and murder, and the crimes against humanity

¹¹⁸ International Criminal Court, "Decision on the admissibility of the case against Abdullah Al-Senussi," Pre-Trial Chamber Decision ICC-01/11-01/11-466-Red, October 11, 2013, <https://www.icc-cpi.int/court-record/icc-01/11-01/11-466-red> (accessed May 19, 2025).

¹¹⁹ Human Rights Watch interview with Halima Ibrahim Abdelrahman, GNU justice minister, Tripoli, September 19, 2024.

¹²⁰ Human Rights Watch interview with al-Siddiq al-Sur, general prosecutor, Misrata, September 21, 2024.

¹²¹ "Libya: Flawed Trial of Gaddafi Officials," Human Rights Watch news release, July 28, 2015, <https://www.hrw.org/news/2015/07/28/libya-flawed-trial-gaddafi-officials>.

¹²² Human Rights Watch interview with al-Siddiq al-Sur, general prosecutor, Misrata, September 21, 2024.

of imprisonment, torture, rape and sexual violence, murder, and persecution, despite being in Italian custody. On January 18, 2025, the ICC issued a sealed arrest warrant against Njeem.¹²³

Italian authorities took him into custody on January 19, but released him citing “procedural technicalities” two days later and transported him back to Libya on an Italian state aircraft on January 21 without informing the ICC.¹²⁴ Italy now faces a potential finding of non-compliance by ICC judges, which could then be transmitted to the court’s Assembly of State Parties or the UN Security Council for further action.¹²⁵ Libyan authorities did not arrest Njeem upon arrival, as they were obligated to do, and had not commented on his status at time of writing.¹²⁶ Njeem is a Judicial Police commander who oversees detention facilities nominally under the GNU, including Mitiga prison in Tripoli notorious for its history of abuse.¹²⁷

Six other suspects remain at large and are wanted by the ICC in relation to their alleged roles in crimes in the city of Tarhouna, where hundreds of people were disappeared and buried in mass graves between 2013 and 2020.¹²⁸ Abdurahem Khalefa Abdurahem Elshgagi, Makhlof Makhlof Arhoumah Doumah, Nasser Muhammad Muftah Daou, Mohamed Mohamed Al Salheen Salmi, Abdelbari Ayyad Ramadan Al Shaqaqi, and Fathi Faraj Mohamed Salim Al Zinkal are wanted by the court for war crimes including murder, outrages upon personal dignity, cruel treatment and torture. Al Zinkal and Al Salheen Salmi are also wanted for the war crimes of sexual violence and rape.¹²⁹

¹²³ International Criminal Court, *Decision unsealing the ‘Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem’*, ICC-01/11-153, January 18, 2025, <https://www.icc-cpi.int/court-record/icc-01/11-153> (accessed May 7, 2025).

¹²⁴ “Situation in Libya: ICC arrest warrant against Osama Elmasry Njeem for alleged crimes against humanity and war crimes,” International Criminal Court press release, January 22, 2025, <https://www.icc-cpi.int/news/situation-libya-icc-arrest-warrant-against-osama-elmasry-njeem-alleged-crimes-against-humanity> (accessed May 7, 2025).

¹²⁵ International Criminal Court, “Public redacted version of the ‘Prosecution’s request for a finding of noncompliance under article 87(7) against the Republic of Italy for the release of Osama Elmasry / Almasri NJEEM’”, ICC-01/121 February 2024, ICC-01/11-163-US-Exp,” Request by the Office of the ICC Prosecutor, February 25, 2025, <https://www.icc-cpi.int/court-record/icc-01/11-163-red2> (accessed May 7, 2025).

¹²⁶ Claudio Francavilla, “From Israel to Libya, Italy is Protecting Alleged War Criminals,” Human Rights Watch dispatch, January 29, 2025, <https://www.hrw.org/news/2025/01/29/israel-libya-italy-protecting-alleged-war-criminals>.

¹²⁷ Office of the High Commissioner for Human Rights, “Abuse Behind Bars: Arbitrary and unlawful detention in Libya,” April 2018, https://www.ohchr.org/sites/default/files/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf (accessed May 7, 2025).

¹²⁸ “Libya: Militia Terrorized Town Leaving Mass Graves,” Human Rights Watch news release, January 7, 2021, <https://www.hrw.org/news/2021/01/07/libya-militia-terrorized-town-leaving-mass-graves>.

¹²⁹ “Situation in Libya,” International Criminal Court, n.d., accessed March 12, 2025, <https://www.icc-cpi.int/situations/libya>.

Future of the Court's Investigation in Libya

In 2021, the Office of the Prosecutor issued a policy outlining the office's approach to the completion of its work in a given situation.¹³⁰ According to the policy, the investigative phase is completed when the office decides that it will not seek additional arrest warrants in a given situation.¹³¹

The ICC prosecutor announced in November 2023 that his office planned “to complete investigative activities in relation to the key lines of inquiry” in the Libya situation by the end of 2025.¹³² The violations related to some of these key lines of inquiry, in particular crimes against migrants and crimes in detention, are well documented and remain ongoing.¹³³

Civil society organizations,¹³⁴ including Human Rights Watch, have raised concerns about this timeline, publicly and privately, with the Office of the Prosecutor, citing in particular the ongoing lack of effective cooperation with the ICC by the Libyan authorities, lack of credible domestic prosecutions of serious crimes that continue to be committed across Libya with impunity, and the absence of international oversight following the end of the mandate of the UN Independent Fact-Finding Mission on Libya in March 2023.¹³⁵

¹³⁰ “Policy on Situation Completion,” International Criminal Court, June 15, 2021, <https://www.icc-cpi.int/news/policy-situation-completion> (accessed May 7, 2025).

¹³¹ After the completion of the investigation phase, the Office can still seek arrest warrants for obstruction of justice under article 70 of the Rome Statute.

¹³² International Criminal Court, “Statement of ICC Prosecutor Karim A.A. Khan KC to the UN Security Council on the Situation in Libya, pursuant to Resolution 1970 (2011),” November 9, 2023, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-un-security-council-situation-libya-pursuant-o> (accessed May 7, 2025). In its May 15, 2025, report to the United Nations Security Council, the Office of the Prosecutor indicated that some limited investigative activities may need to continue into the first months of 2026. See International Criminal Court, “Twenty-Ninth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council Pursuant to Resolution 1970 (2011),” <https://www.icc-cpi.int/sites/default/files/2025-05/250515-icc-otp-report-unsc-libya-eng.pdf>, para. 82 (accessed May 20, 2025).

¹³³ International Criminal Court, “Twenty-Fourth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council Pursuant to Resolution 1970 (2011),” Office of the Prosecutor, November 9, 2022, <https://www.icc-cpi.int/sites/default/files/2022-11/2022-11-09-otp-report-unsc-libya-eng.pdf> (accessed May 7, 2025).

¹³⁴ “Alarming Announcement by ICC to Complete Investigation in Libya by 2025 Puts Justice for Victims at Risk,” Lawyers for Justice in Libya news release, November 9, 2023, <https://www.libyanjustice.org/news/alarming-announcement-by-icc-to-complete-investigation-in-libya-by-2025-puts-justice-for-victims-at-risk> (accessed May 7, 2025).

¹³⁵ “Libya: Urgent action needed to remedy deteriorating human rights situation, UN Fact-Finding Mission warns in final report,” UN Office of the High Commissioner for Human Rights press release, March 27, 2023, <https://www.ohchr.org/en/press-releases/2023/03/libya-urgent-action-needed-remedy-deteriorating-human-rights-situation-un> (accessed May 7, 2025).

The ICC Office of the Prosecutor announced in 2024 that inaugurating a liaison office in Tripoli was a priority to further cooperation with domestic authorities, but had not released details at time of writing.¹³⁶

In its response to a letter from Human Rights Watch, the Office of the Prosecutor recalled that completion of its investigative activities in Libya depends on the cooperation of Libyan authorities. According to the office, such cooperation has in practice varied over time including in relation to the execution of ICC arrest warrants. It noted the “difficult situation” of the Libyan judiciary and “credible reports of influential suspects fleeing detention and prisons to thereafter resume their public and private life with impunity.”

The office also noted that the prosecutor welcomed the Libyan government's May 15, 2025 declaration accepting the court's jurisdiction for crimes occurring between 2011 and the end of 2027 “as [a] request from Libya to extend the investigation to the end of 2027, with an explicit commitment to cooperate.”¹³⁷ In his statement to the UN Security Council on May 15, 2025, the ICC prosecutor re-stated his office's intention to complete its mandate in Libya under resolution 1970 while also looking at beginning “a new chapter of action and investigations” based on the Libyan government's declaration.¹³⁸

The Office of the Prosecutor should reassess the timeframe for the completion of its investigative activities in Libya. While not explicitly cited in the office's policy on situation completion, the readiness of domestic authorities to take up the court's responsibilities of investigating and prosecuting serious crimes, should be factored in the assessment, as it is critical to avoid exacerbating the existing accountability vacuum. The Office of the Prosecutor is in a unique position to catalyze progress and the much-needed reform of domestic justice, both in law and practice. Addressing serious structural deficiencies in the domestic justice system should be a priority for the ICC's engagement with Libyan judicial authorities, in addition to capacity-building.

¹³⁶ International Criminal Court, “The Law in Action for All,” Office of the Prosecutor annual report, December 4, 2024, <https://www.icc-cpi.int/sites/default/files/2024-12/2024-12-04-ICC-Annual-Report-OTP-web.pdf>, p. 30, (accessed May 7, 2025).

¹³⁷ Letter from the International Criminal Court's Office of the Prosecutor to Human Rights Watch, May 19, 2025, *infra* Annex IV.

¹³⁸ International Criminal Court, “Statement of ICC Prosecutor Karim A.A. Khan KC to the United Nations Security Council on the Situation in Libya, pursuant to Resolution 1970 (2011),” May 15, 2025, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-united-nations-security-council-situation-libya-o> (accessed May 20, 2025).

In addition to the wide-ranging legal and practice reforms cited in this report, Libyan authorities should also consider the establishment of an internationalized justice mechanism. Such mechanism, staffed with both international and Libyan practitioners, could complement the work of the ICC and domestic courts and contribute to filling the current accountability gap, while also bolstering the national capacity to investigate and prosecute serious international crimes.¹³⁹

The Office of the Prosecutor should conduct meaningful consultations with survivors, families of victims, affected communities, and civil society groups to ensure that its decisions around the completion of its investigative activities are informed by their views and concerns. Shutting down the office’s investigations prematurely could preclude justice for these crimes and undermine the court’s legitimacy and credibility in Libya.

¹³⁹ “Central African Republic: First Trial at the Special Criminal Court,” Human Rights Watch news release, April 12, 2022, <https://www.hrw.org/news/2022/04/12/central-african-republic-first-trial-special-criminal-court>.

Acknowledgments

This report was researched and written by Hanan Salah, associate Middle East and North Africa director at Human Rights Watch. Bassam Khawaja, deputy Middle East and North Africa director, edited the report. Senior legal advisor, Clive Baldwin, conducted legal review. Tom Porteous, deputy program director, conducted program review.

Anna Bacciarelli, senior researcher in the Technology, Rights and Investigations division, Bill Frelick, Refugee and Migrant Rights director, Bill Van Esveld, associate Children's Rights director, Maria Elena Vignoli, senior International Justice counsel, and Skye Wheeler, senior researcher in the Women's Rights Division, provided specialist reviews.

Charbel Salloum, senior officer in Human Rights Watch's Middle East and North Africa division, helped prepare the report for publication.

Human Rights Watch would like to acknowledge the willingness of Libya's general prosecutor and GNU justice minister to meet with researchers and discuss these issues. We express our gratitude to all those who spoke with us during this research, including Libyan lawyers, judges, and civil society members.

Annex I: Letter to Libya's General Prosecutor

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: +1-212-290-4700
Fax: +1-212-736-1300; 917-591-3452

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Balkees Jarrah, *Executive Director (Acting)*
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Tom Porteous, *Program Director (Acting)*
James Ross, *Legal and Policy Director*
Bruno Stagno Ugarte, *Chief Advocacy Officer*
Minjon Tholen, *Global Head of Diversity, Equity, and
Inclusion*

May 5, 2025

al-Siddiq al-Sur
General Prosecutor
Libya

Delivery by email:

Reference #: L/102/050525

Subject: State of the Judiciary in Libya

Dear Mr. Al-Sur,

After greetings,

We write to express our appreciation for the ongoing constructive dialogue with Human Rights Watch and for meeting with researchers in September 2024, in Misrata, to discuss the state of the judiciary in Libya and challenges to judicial staff. We further write to share key findings of our research and to request additional information.

As you know, Human Rights Watch is an independent nongovernmental organization that monitors and reports on the human rights situation in more than 100 countries. We have conducted extensive research and advocacy on a range of rights issues in Libya for many years, including on conditions in detention, the state of the judiciary, and the need for legislative reform.

Between April and September 2024, Human Rights Watch conducted interviews with officials and judicial personnel in Tripoli, Zawiya, and Misrata. In addition to the meeting with your office, researchers met with the Justice Minister of the Government of National Unity and with lawyers and judges in Western Libya. They also reviewed and analysed relevant Libyan laws and practices and open-source information.

Our preliminary research has found that Libya's justice sector is fragmented, and many serious violations and crimes are currently going unpunished. Military courts continue to prosecute civilians while many detainees are held in long-term arbitrary detention and government authorities have only

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nominal control over many prisons. Libya's penal code and other legislation do not adequately address international crimes and reform of outdated and abusive laws remains elusive. Fair trial rights are not being fulfilled, particularly the right of defendants to meet with lawyers throughout the course of their judicial procedures. Legal professionals, including judges, prosecutors and lawyers, remain exposed to attacks, intimidation, and harassment by armed groups.

The International Criminal Court has a mandate to prosecute perpetrators of serious international crimes committed in Libya, and eight individuals are subject to public ICC arrest warrants in the Libya situation. All of them remain at large. The office of the ICC prosecutor further announced in November 2023 its intent to complete investigative activities in Libya by the end of 2025.

It is our practice to give relevant authorities the opportunity to provide information and respond to questions prior to publishing our research. We will endeavor to reflect timely responses in our published findings and may publish your response in whole or in part.

We would appreciate your response to the following questions:

- 1) In the absence of a comprehensive legislative reform, has your office taken any measures to suspend application of laws, or parts of laws, that violate international law or the 2011 Libyan Constituent Covenant?
 - a. If so, please provide details of any laws for which your office has suspended application thereof.
- 2) Has your office taken any measures to ensure fair trial standards and due process rights in line with international law are being applied?
- 3) Has your office taken any action to ensure the release all those held in arbitrary detention without a legal basis?
 - a. If so, please provide details of steps taken and anyone released as a result.
- 4) Has your office taken any action to end military trials of civilians?
- 5) Has your office taken any action to issue a moratorium on court-issued death sentences or corporal punishments, including floggings?
 - a. If so, please provide details of any moratoriums issued.
- 6) Has your office taken any action to ensure international humanitarian organizations with a detention mandate have regular and unfettered access to all places of detention?

- 7) How is your office ensuring compliance with Libyan authorities' obligation to fully cooperate with the ICC?
- 8) Please provide details on any steps taken by your office to promptly arrest and surrender to the ICC all individuals on Libyan territory subject to ICC arrest warrants.

Thank you for your attention to this important matter. We would be grateful if you could provide us with a response to these questions by May 18, 2025. We would also welcome an opportunity to meet with you to discuss our findings further.

Should you have any questions or comments, please reach out to Hanan Salah at [REDACTED]

Respectfully,

Bassam Khawaja

[REDACTED]
Deputy Director
Middle East and North Africa Division
Human Rights Watch

[REDACTED]

Annex II: Letter to the GNU Justice Minister

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: +1-212-290-4700
Fax: +1-212-736-1300; 917-591-3452

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Sam Bahour
Ishac Diwan
Bahey El Din Hassan
Hassan Elmasy
Mansour Farhang
Loubna Freih Georges
Amr Hamzawy
Nadim Houry
Shawan Jabarin
Ahmed Mansoor
Mai El-Sadany
Nabeel Rajab
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James Ross, *Legal and Policy Director*
Bruno Stagno Ugarte, *Chief Advocacy Officer*
Minjon Tholen, *Global Head of Diversity, Equity, and
Inclusion*

May 5, 2025

Halima Ibrahim
Justice Minister
Ministry of Justice
Government of National Unity
Libya

Delivery by email:

Reference #: L/103/050525

Subject: State of the Judiciary in Libya

Your Excellency,

After greetings,

We write to express our appreciation for the ongoing constructive dialogue with Human Rights Watch and for meeting with researchers in September 2024, in Tripoli, to discuss the state of the judiciary in Libya and challenges to judicial staff. We further write to share key findings of our research and to request additional information.

As you know, Human Rights Watch is an independent nongovernmental organization that monitors and reports on the human rights situation in more than 100 countries. We have conducted extensive research and advocacy on a range of rights issues in Libya for many years, including on conditions in detention, the state of the judiciary, and the need for legislative reform.

Between April and September 2024, Human Rights Watch conducted interviews with officials and judicial personnel in Tripoli, Zawiya, and Misrata. In addition to the meeting with your office, researchers met with the General Prosecutor and with lawyers and judges in Western Libya. They also reviewed and analysed relevant Libyan laws and practices and open-source information.

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Our preliminary research has found that Libya's justice sector is fragmented, and many serious violations and crimes are currently going unpunished. Military courts continue to prosecute civilians while many detainees are held in long-term arbitrary detention and government authorities have only nominal control over many prisons. Libya's penal code and other legislation do not adequately address international crimes and reform of outdated and abusive laws remains elusive. Fair trial rights are not being fulfilled, particularly the right of defendants to meet with lawyers throughout the course of their judicial procedures. Legal professionals, including judges, prosecutors and lawyers, remain exposed to attacks, intimidation, and harassment by armed groups.

The International Criminal Court (ICC) has a mandate to prosecute perpetrators of serious international crimes committed in Libya, and eight individuals are subject to public ICC arrest warrants in the Libya situation. All of them remain at large. The office of the ICC prosecutor further announced in November 2023 its intent to complete investigative activities in Libya by the end of 2025.

It is our practice to give relevant authorities the opportunity to provide information and respond to questions prior to publishing our research. We would appreciate your response to our questions, annexed to this letter. We would be grateful if you could provide us with a response to the questions we raise by May 18, 2025. We will endeavor to reflect timely responses in our published findings and may publish your response in whole or in part.

Thank you for your attention to this important matter. We would also welcome an opportunity to meet with you to discuss our findings further.

Should you have any questions or comments, please reach out to Hanan Salah at [REDACTED]

Respectfully,

Bassam Khawaja

[REDACTED]
Deputy Director
Middle East and North Africa Division
Human Rights Watch
[REDACTED]

Annex

We would appreciate your response to the following questions:

Detention

- 1) Has the Ministry of Justice taken any steps to ensure all detention facilities are brought under the direct control of the ministry? If so, please provide details of the steps taken.
- 2) Has the Ministry of Justice taken steps to end long-term, arbitrary detention?
- 3) Has the Ministry of Justice taken any steps to end serious abuses in detention and ensure that viable complaint mechanisms are available in detention centers?
 - a. If so, please provide details regarding the complaint mechanisms provided, the extent of their use, and the outcomes of complaints.
- 4) Has the Ministry of Justice taken any steps to reduce overcrowding and inhumane detention conditions?
- 5) Please provide details of how the Ministry of Justice coordinates release, transfer, and hearings appearances for individuals detained by authorities in the east and south of the country, given such facilities are not under the ministry's direct control.

Accountability

- 1) Has the Ministry of Justice taken any steps to ensure that members of the Judicial Police responsible for serious violations are removed from active duty and are held accountable for their crimes?
 - a. If so, please provide details of the number of Judicial Police members removed from active duty, and the outcomes of any investigations or accountability measures taken.
- 2) Has the Ministry of Justice taken any steps to communicate publicly that inhumane treatment and torture will not be tolerated and seek accountability for abuses?
 - a. If so, please provide details of any accountability measures as well as any officers and guards found to have committed abuses or removed from active duty.

Due Process

- 1) Has the Ministry of Justice taken any steps to ensure fair trial standards and due process rights in conformity with international law? In particular, defendants' right to an adequate defense, to private and unfettered access to legal counsel, to know the charges levied against them, to defend themselves in court, and to access their case file.
- 2) Has the Ministry of Justice taken any steps to ensure a safe work environment for legal professionals including judges, defense lawyers, and prosecutors?

International Criminal Court

- 1) How is your office ensuring compliance with the obligation of Libyan authorities to fully cooperate with the ICC?
- 2) Please provide details on steps taken by the Ministry of Justice to ensure Libya abides by its obligation to promptly arrest and surrender to the ICC all individuals on Libyan territory subject to ICC arrest warrants.

Annex III: Letter to the International Criminal Court's Office of the Prosecutor

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: +1-212-290-4700
Fax: +1-212-736-1300; 917-591-3452

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Lama Falah Chief Programs Officer (Acting)

Senior Leadership

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Angela Deane, Chief Development Officer
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May 5, 2025

Nazhat Shameem Khan
Deputy Prosecutor
International Criminal Court
The Hague

**Subject: Upcoming Human Rights Watch Report on the State of
the Judiciary in Libya**

Dear Deputy Prosecutor Khan,

I'm writing on behalf of Human Rights Watch to share key findings of our research on the state of the judiciary and challenges to judicial staff in Libya, to seek your response to recommendations to your Office we plan to include in the report, and to request additional information from your office to inform our findings.

As you know, Human Rights Watch is an independent nongovernmental organization that monitors and reports on the human rights situation in more than 100 countries. We have conducted extensive research and advocacy on a range of rights issues in Libya for many years, including on conditions in detention, the state of the judiciary, and the need for legislative reform.

Between April and September 2024, Human Rights Watch conducted interviews with officials and judicial personnel in Tripoli, Zawiya, and Misrata. Researchers met with the Justice Minister of the Government of National Unity, the General Prosecutor, and with lawyers and judges in Western Libya. They also reviewed and analysed relevant Libyan laws and practices and open-source information.

Our preliminary research has found that Libya's justice sector is fragmented, and many serious violations and crimes are currently going unpunished. Libya's penal code and other legislation do not adequately address international crimes and reform of outdated and abusive laws remains elusive. Military courts continue to prosecute civilians while many detainees are held in long-term arbitrary detention and government authorities have only nominal control over many prisons. Fair trial rights are not being fulfilled, particularly the right of defendants to meet with lawyers throughout the course of their judicial procedures. Legal professionals, including judges, prosecutors and lawyers, remain exposed to attacks, intimidation, and harassment by armed groups.

Consecutive Libyan authorities have failed to arrest and surrender to the ICC individuals subject to ICC arrest warrants in the Libya situation and have not effectively cooperated with the court. The office of the ICC prosecutor announced in November 2023 its intent to complete investigative activities in



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Libya by the end of 2025. Given the lack of credible domestic prosecutions of serious crimes that continue to be committed across Libya with impunity, and the absence of international oversight, Human Rights Watch is concerned that the office's intent to complete investigative activities at the end of this year is premature.

It is our practice to give relevant bodies the opportunity to provide information and respond to questions prior to publishing our research. We will endeavor to reflect timely responses in our published findings and may publish your response in whole or in part.

We would appreciate your response to the following findings and recommendations concerning the Office of the Prosecutor:

- Given the lack of credible domestic prosecutions of serious crimes that continue to be committed across Libya with impunity, and the absence of international oversight, Human Rights Watch is concerned that the office's intent to complete investigative activities at the end of this year is premature and urges the office to reassess the end of 2025 timeframe for the completion of its investigative activities in Libya to adequately deliver on its mandate under UNSC Resolution 1970 (2011) and consolidate its legacy for justice in Libya.
- Human Rights Watch urges the office to engage with national authorities to strengthen the domestic system for the investigation and prosecution of serious international crimes by addressing structural deficiencies in the current legal framework and practice.
- Human Rights Watch urges the office to conduct meaningful consultations with survivors, families of victims, affected communities, and civil society organizations to integrate their views and concerns into the office's decisions about the completion of its investigative activities in Libya.

In addition, we would welcome your responses to the following questions in order to inform our conclusions regarding the state of the judiciary:

- 1) How do you assess Libyan authorities' effective cooperation with the court on all matters, including Libya's obligations to execute the ICC arrest warrants for eight individuals in the Libya situation?
 - a. Does your office have any concerns with regard to the level of engagement of the Libyan authorities?
- 2) The Office's engagement with authorities include strengthening the domestic judicial system for the investigation and prosecution of serious international crimes, according to reports provided by the Office to the UN Security Council. Can you provide details on any progress that has been achieved in this regard that is not contained in your public reports?
 - a. Has your office identified structural deficiencies in Libya's current legal framework and practice? If so, how has the office engaged with the authorities to address them? Does your office plan to address those deficiencies before the end of 2025?

We would be grateful if you could provide us with a response to our findings and recommendations as they relate to the Office of the Prosecutor, as well as the questions we raise, by May 19.

Thank you for your attention to this important matter. We would also welcome an opportunity to meet with you to discuss our findings further. Should you have any questions or comments, please reach out to my colleague Hanan Salah via email at [REDACTED].

Respectfully,

[REDACTED]

Bassam Khawaja
Deputy Director
Middle East and North Africa Division
Human Rights Watch

Annex IV: Response from the International Criminal Court's Office of the Prosecutor

Subject: RE: Letter from Human Rights Watch seeking response in advance of publishing report on the state of the judiciary in Libya/recommendations to the Office of the Prosecutor
Date: Monday, May 19, 2025 at 7:47:50 AM Eastern Daylight Time
From: [REDACTED]
To: [REDACTED]
CC: [REDACTED]

[ICC] RESTRICTED

Dear Liz,

I am writing on behalf of Deputy Prosecutor Khan, who has reviewed your email and attachment, and wishes to provide the following response.

Thank you for sharing your key research findings and recommendations on the state of the judiciary and challenges to judicial staff in Libya, and for seeking our views.

Let me first express my appreciation for the relentless work of Human Rights Watch ("HRW") and other civil society organizations in a challenging situation such as Libya. Our partnership has continued to strengthen even further through our proactive approach to engagement with civil society organizations and victims associations in our common goal towards international justice - highlighting your central role as a voice of the victims and the stakeholders in Libya.

On your important queries, the Office of the Prosecutor highlights the following:

First, as you know, the ICC is an international court that investigates and prosecutes those most responsible for crimes under its jurisdiction, pursuant to the principle of complementarity. In practice, this means that in terms of resources and jurisdiction the ICC will prosecute a smaller number of cases that reach a high threshold of gravity and seriousness with national jurisdictions to complement that with domestic prosecutions of international crimes of similar or lesser gravity. Yet, the ICC cannot prosecute all crimes in Libya nor in any situation, and thus cannot and does not want to replace domestic jurisdictions. The ICC Prosecutor has highlighted that completion is dependent on cooperation, giving the Libyan judicial system the chance to step up and end impunity for international crimes by strengthening their willingness and capacity to do so, including through international and domestic technical support. This is the sustainable solution for Libyan victims to which we all aspire. We are aware of the difficult situation facing the Libyan judiciary, in particular due to the presence of the militias, and the challenges of arrest and custody. We observed credible reports of influential suspects fleeing detention and prisons to thereafter resume their public and private life with impunity.

For the ICC, a meaningful cooperation includes execution of the ICC arrest warrants. The ICC

reiterates its call for the Libyan authorities to surrender to the ICC those persons against whom ICC arrest warrants have been issued.

Very recently, the government of Libya took a significant, positive step in cooperation, by lodging an article 12(3) declaration to accept the exercise of jurisdiction by the Court for crimes that have occurred in Libya between 2011 and 2027. The ICC Registrar accepted the declaration and the ICC Prosecutor welcomed it as request from Libya to extend the investigation to the end of 2027, with an explicit commitment to cooperate. This is a new voluntary commitment on behalf of Libya.

In practice, the cooperation of the Libyan authorities has varied from one official entity to another over time. The obstruction of the transfer of Mr NJEEM to the ICC showed that some Libyan authorities' cooperation remains unsatisfactory, while others demonstrate increased positive steps towards concrete forms of cooperation. The ICC remains ready to support the Libyan judiciary to exercise its role however possible. We encourage the Libyan judiciary to benefit from United Nations technical assistance – through the specialized agencies - to strengthen the ability of the judiciary to arrest the perpetrators of international crimes in Libya, including those who are subject to ICC arrest warrants. We call on the Attorney General to arrest Mr Ossama Njeem, along with others who are wanted by the ICC, and to surrender them to the ICC.

We remain ready to support the Libyan judiciary to strengthen its capacity. We await any request in that regard. This can be in support of or in coordination with relevant UN human rights and rule of law agencies.

We reiterate our appreciation for the work of HRW and other the civil society organizations who work in Libya. We recognize how challenging this task is in difficult times. We stand in partnership with the victims to end impunity and to ensure that justice is served in Libya.

Kind regards,

██████████, on behalf of DP Nazhat Shameem Khan

Injustice By Design

Need for Comprehensive Justice Reform in Libya

Libya's justice sector faces significant challenges. It is fragmented and deeply polarized, with key judicial institutions in deep conflict amid entrenched political divisions. The judiciary is unwilling and unable to conduct meaningful investigations into serious crimes, while the justice system is marked by serious due process violations.

The report, *Injustice By Design: Need for Comprehensive Justice Reform in Libya*, documents how Libya's Penal Code and other related legislation are outdated, do not address international crimes, and include repressive and abusive provisions and laws. Fair trial rights are not respected and judicial procedures are marred by serious due process violations, including long-term arbitrary detention. Military courts continue to prosecute civilians under the guise of "terrorism"-related crimes. Detention facilities, often under the control of armed groups, are fragmented, violent, and marked by inhumane conditions. Torture, ill-treatment, and overcrowding are rampant.

The report calls on Libyan authorities to repeal all laws that violate international law and Libya's Constitutional Declaration, lay the groundwork for comprehensive legislative reform, amend the Penal Code to criminalize grave international crimes, ensure fair trial standards and due process rights, assume genuine effective control over all detention facilities, release all those held in arbitrary detention, and end military trials of civilians. It further calls on authorities to comply with their obligation to cooperate with the International Criminal Court, including by promptly arresting and surrendering to the court all individuals on Libyan territory subject to ICC arrest warrants.



A member of the Libyan judicial police guards detainees at a Misrata prison, Misrata, Libya, April 27, 2022.
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