

Libya

Libya faced enormous challenges in 2015, witnessed by the rapid expansion of ISIS, which gained control of further territories, a total breakdown of state structures with two concurrent authorities in power and their operation with armed and paramilitary groups. This has created political division and instability, which has threatened the country with chaos and undermined unity as territory has been divided into several sub-states, and extremist groups have taken control of more cities. Ongoing grave breaches to human rights and international humanitarian law continued to be perpetuated by all armed factions, targeting civilians and HRDs with total impunity. This year also witnessed the continuous failure of attempts to begin a peace process aimed at reestablishing state institutions and the rule of law. Regional and international actors also continue to worsen the situation in Libya by arming parties against one another, which constitutes a violation of the UNSC resolution and cripples any hope for peace.

General Context: Failure of State Institutions and a Crippled Peace Process:

For 42 years the Qaddafi dictatorship ruled over Libya during which political parties, civil society and any form of activism were

prohibited and harshly punished. After the revolution, revenge operations were carried out against supporters of the Qaddafi regime. Revolutionary forces were divided into several armed groups, most of whom were loyal only to their own cities and often expressly motivated by a “revenge” agenda for Qaddafi-era abuses and repression. A complete breakdown of law and order and national security institutions in the country has emboldened armed groups to commit crimes with total impunity. Currently dozens of militias, paramilitary and extremists groups operate throughout Libya.¹ Over the last four years, the National Transitional Council, the General National Conference, the House of Representatives and successive governments have failed to establish the rule of law and build functioning state institutions. Instead, “state institutions” have become subservient to militias and paramilitary groups.

The successive governments thus far have set no standards for a mechanism to address the over-arching impunity in the country and have instead given militia and paramilitary leaders sovereign positions in the Ministry of Defense and Interior Ministry, such as the High Security Committee to Defend Libya, the Chamber of Libyan Revolutionaries, the National Guard, Libyan Dawn, and Operation Dignity. Furthermore, laws and decrees adopted by the Transitional Council, the General National Congress, and the Council of Deputies since 2011 have fostered the creation of paramilitary structures not controlled by the state. In addition, amnesties issued by the Libyan government have meant there is no accountability, and the Libyan authorities have failed to establish an instrument for transitional justice, thus denying Libyan citizens a national mechanism for redress. This coupled with the inability of the Libyan criminal justice system to carry out any national investigations has created weak state institutions that foster impunity instead of ensuring accountability.

The main opponents of a UN facilitated dialogue are armed groups and paramilitary groups who are seeking to preserve their zones of control, to escape from potential removal if a vetting process is put in place, and who fear mechanisms of accountability for the grave violations they are continuing to perpetrate throughout Libya. The

¹ European Council on Foreign Relations, “Mapping Libya’s Factions,” <http://www.ecfr.eu/mena/mappinglibya>

most known groups are Haftar² leading dignity operation in the East and Salah Bady,³ leading operation Libya dawn II, “Steadfastness Front “ in the West. There is also Zintan military forces⁴ that have refused the proposition of a unity government and the announcement of members of a new presidency council according to the fifth version of the peace agreement presented by UNSMIL in September 2015.

In spite of signing the latest peace agreement on December 17, 2015⁵ politicians from both the House of Representatives (HOR) and General National Congress (GNC) are not accepting concessions on their political gains and are seeking to insure that they will have influence and key positions. In addition, they are backing armed groups to ensure their own protection and the fulfillment of their political plans.

Expansion of Terrorism and Grave Breaches of International Human Rights and Humanitarian Law:

As of last May, the Mediterranean city of Sirte, a few hundred kilometers away from Europe, fell under the total control of the self-proclaimed Islamic State (IS), with the latter using the city as its main nerve center in Libya. IS launched a campaign of terror against the city’s population. Recent attempts to break free from the extremist group’s grip were met with crushing violence, most recently the killing of an unidentified number of individuals in mid-August. Sirte is the same city that IS staged public executions of Christians in 2015.

² “Haftar Pledges Loyalty to HoR – Unless it Accepts the Political Accord, *Libya Herald*, Oct. 18, 2015,

<https://www.libyaherald.com/2015/10/18/hafter-pledges-loyalty-to-hor-unless-it-accepts-the-political-accord/>

³ “Steadfastness Front Rejects Leon government,” *Libya Observer*, Oct. 17, 2015, <http://www.libyaobserver.ly/news/steadfastness-front-rejects-leon-government>

⁴ “Zintan Rejects Leon's Proposed Government, Lashes out at HoR,” Oct. 10, 2015, *Libya Observer*,

<http://libyaobserver.ly/news/zintan-rejects-leons-proposed-government-lashes-out-hor>

⁵ Libyan Parties sign the Libyan Political Agreement in Skhirat, Morocco, Dec. 17, 2015,

<http://unsmil.unmissions.org/Default.aspx?tabid=3561&ctl=Details&mid=8549&ItemID=2099400&language=en-US>

As rival politicians and armed groups continue to stall the conclusion of a peace agreement, the enduring political and security vacuum has given IS the opportunity to quickly stretch its influence across the country, with additional territorial gains made in the east and west of Sirte and a significant presence in and around a number of Libyan cities, including Benghazi, Misrata, Derna and Tripoli. The most recent exception was in June 2015, during which Derna Shourah Council, managed to expel IS fighters from Derna following weeks of fighting.

The reason behind the rapid expansion of IS is apparent, especially to the international community exerting efforts to resolve the situation in Libya. IS and similar groups have been left with no real local counter-force on the ground to limit their expansion and combat extremist ideologies. As noted by the UN Secretary General's envoy on Libya in his briefing to the Security Council on August 26: "the message to Libya's leaders is clear: there is simply no other alternative to unified and collective action if Libyans are to successfully prevent a repeat of the catastrophic advances that Daesh has made in countries like Syria and Iraq." Simply put, the de-facto situation on the ground has proven that actors in Libya are invested more in fighting each other than in halting the threat of violent extremism.

Part of the problem lies in the continuous use of different political groups of armed factions and militias, which have led to a snowballing cycle of violence. This prepared the ground and created a suitable environment for ISIS and migrant smugglers to continue their criminal actions in total impunity. Another important factor is the continuous feeling of injustice among the community; impunity keeps fueling the cycle of violence and revenge. The violations committed during the Gaddafi era and during and after the revolution, were not accounted for and have even increased. Victims have yet to find effective channels for remedies. The chaos caused by continuous fighting on the ground, backed by politicians, combined with the lack of accountability also makes it easier for ISIS propaganda to spread across cities such as Sirte and Derna.

The Libyan population continues to suffer from parallel structures that continue to commit grave human rights violations in total impunity, and that impose severe restrictions on public space by targeting initiatives by civil actors and rights activists. Armed groups from all sides continue to commit serious human rights violations, some liable to amount to international crimes, including direct and indiscriminate attacks against civilians and civilian infrastructure, unlawful killings, torture and ill treatment in unlawful detention facilities, arbitrary arrests, abductions, enforced disappearances, and forced displacement. Additionally, the oil-rich country stands on the verge of economic collapse with severe malfunction in its infrastructure, including health care and other vital facilities, as well as a creeping shortage in food, electricity and other vital necessities across the country, especially in the east. According to recent figures relayed by the UN envoy on Libya, 1.9 million Libyans remain in need of access to basic health care, while 1.2 million face challenges to access to food. There are now over 500,000 IDPs in Libya. Libya failed to ensure the safe return of IDPs, to provide adequate housing and to prevent violent raids on IDP camps. Over the past three years, there has been an average of two attacks per month against IDP camps in Libya.⁶

Civilians, state institutions, and parties of the political dialogue are under the threat and indiscriminate fire of hundreds of armed groups across the country, involving more than 200,000 fighters who continue to be paid from central state funds. There is rampant violence and armed clashes targeting civilians, human rights activists, women, children, minorities, foreigners and continuous indiscriminate attacks on vital infrastructure and key state institutions as witnessed by daily attacks on medical facilities, airports used for civil aviation, schools, and oil fields. Armed groups commit daily gross and systematic human rights violations in the west, center, east and south of Libya in total impunity. Over the course of 2014, 2,825 individuals were killed and more than 394,000 people were forced from their homes to live as internally displaced persons across 25 cities in the country.

⁶ Mercy Association for Charitable and Humanitarian Aid (Alrahma) UPR report.

Powerlessness in the Libyan Criminal Justice System Under Rule of Armed Groups:

Hundreds of cases of alleged grave violations, including extrajudicial killings, widespread use of torture and arbitrary arrest have been submitted to Libya's General Public Prosecutor, during 2012, 2013, and 2014 against a number of armed groups with no concrete measures taken to date towards achieving accountability. Additionally, the national courts in Libya are unable to prosecute alleged perpetrators of serious crimes due to continuing threats to judges, lawyers and prosecutors by armed groups. To date, no perpetrator belonging to any of the armed groups on the ground has been held accountable for committing human rights abuses in Libya since 2011.

The cycle of violence in Libya has been continuously fed by overarching impunity for serious violations and the lack of an effective vision liable to strengthen the country's security institutions.⁷ Unless this is properly addressed, talking about peaceful coexistence and fighting violent extremism in a country built against the rule of law will remain void of any meaning.

The CIHRS holds militias and paramilitary groups responsible⁸ for large-scale human rights violations all over Libya, adding that Daesh has been able to gain a foothold in several Libyan cities because of such actions. Without restructuring security institutions and bringing rights violators to justice, any attempt to bring peace to Libya will only lead to further deterioration. If there is no genuine progress on the ground to consolidate the rule of law and democratic governance and ensure basic liberties, the idea of reaching a permanent peaceful resolution to the crisis will remain an unattainable dream.

⁷Cairo Institute for Human Rights Studies, "CIHRS Argues that Ensuring Accountability and Rebuilding Security Institutions are the Only Paths to Peace in Libya," Sept. 2, 2015,

<http://www.cihrs.org/?p=17205&lang=en>

⁸CIHRS, "Spiral of Violence in Libya is Natural Result of Impunity,"

<http://www.cihrs.org/?p=17427&lang=en>

Militias and paramilitary groups have continuously sought to derail peace in Libya. They have killed and terrorized demonstrators⁹ across Libya, and assassinated activists, judiciary members and state officials. They are terrorizing civilians and attacking civilian infrastructure and aviation¹⁰ under the justification of protecting the February revolution or fighting against terrorism. They are putting pressure on politicians from both assemblies to not accept any peace agreement unless their positions in security institutions are cemented and they are guaranteed immunity from persecution.

The UNSMIL, in its report on November 16, 2015¹¹ jointly with the OHCHR, continued to express its profound concern with regards to grave breaches of human rights and international humanitarian law, highlighting the deteriorating situation within the Libyan justice system to address these crimes.¹² The report stated the following:

The justice system continued to be severely hampered due to ongoing fighting and insecurity. Courts have not been functioning in Sirte, Derna and Benghazi since 2014. Although on June 14, 2015, judges and prosecutors at the Court of South Benghazi decided to reactivate the work of the Court, it is unclear whether their work had actually resumed ... Judges, prosecutors, and law enforcement officials have continued to face violent attacks and threats.

The report further stated that:

Due to the collapse of the criminal justice system in parts of the country, victims have little avenue to seek protection and remedy amidst total impunity. Even in those rare cases where police reports

⁹ “Benghazi Survivors Tell of Missiles, Chaos at Protest Against UN Plan,” *Middle East Eye*, Oct. 24, 2015,

<http://www.middleeasteye.net/news/benghazi-survivors-tell-missiles-chaos-protest-against-un-plan-523933417#sthash.CQvCcUYo.dpuf>

¹⁰ “Libyan Helicopter Shot Down, Killing Senior Tripoli Officers,” Oct. 27, 2015, <http://www.trust.org/item/20151027205248-snul3/?source=fiOtherNews2>

¹¹ UNSMIL, Report on the Human Rights Situation in Libya, Nov. 16, 2015, http://www.ohchr.org/Documents/Countries/LY/UNSMIL_OHCHRJointly_report_Libya_16.11.15.pdf

¹² “Human Rights Defenders Under Attack,” Mar. 25, 2015, <http://www.ohchr.org/Documents/Countries/LY/HumanRightsDefendersLibya.pdf>

had been filed, little action was taken to open prompt, thorough, effective, impartial, and independent investigations and to bring perpetrators to justice. To the best knowledge of UNSMIL, no perpetrator belonging to an armed group has been convicted since 2011.

Since the end of the reporting date of the abovementioned report, the ability of the justice system in Libya to carry out transparent and effective investigations and prosecute ongoing serious violations of international human rights and humanitarian law have continued to deteriorate¹³ with courts around the country unable to begin or implement legal proceedings or prosecute perpetrators of crimes due to direct threats and attacks against judges, lawyers and other members of the legal community. Such attacks also included attacks against prosecution offices and courthouses. For example, on December 15, the Tajura public prosecutor's office was destroyed during fights between two armed groups.

According to the Libyan Judges Association (LJA),¹⁴ 2014 was one of the worst years for the legal community in Libya after 2011. The legal community was targeted by all parties to the conflict including militias from the west of Libya, forces under the internationally recognized government, and extremist groups. Since 2014, attacks have intensified with dozens of documented cases of public prosecutors and judges being subjected to assassination, kidnapping, inhuman treatment, and other forms of intimidations and threats that forced a considerable number to flee Libya. According to the LJA, in the period between 2013 - 2015, 8 members of the judiciary and 3 lawyers were murdered, including human rights activist Salwa Bugaighis,¹⁵ who was also one of the prominent actors in the national initiative for reconciliation launched in August 2013 in addition to

¹³Interview with Marwan Tashani, head of Libyan Judges Association on Dec. 15, 2015.

¹⁴ 2014 Annual Report of the Libyan Judges Association: in Arabic, Annex I.

¹⁵Amnesty, "Libya Must Ensure Proper Investigation After Prominent Lawyer Shot Dead," Jun. 26, 2014, <https://www.amnesty.org/en/latest/news/2014/06/libya-must-ensure-proper-investigation-after-lawyer-salwa-bugaighis-shot-dead/>.

being a member of the independent National Dialogue Preparatory Commission.¹⁶

The latest documented attack was on December 13, 2015 where Khaled Ali Koweid,¹⁷ a member of the prosecutor's office, was kidnapped while on duty in the prosecutor's complex in Tripoli by armed groups and kept for four hours before he was released.

Continuing Attacks on Human Rights Defenders, CSOs, and Media:

Human rights defenders, local CSOs¹⁸ and the media¹⁹ continue to face serious threats to their lives, and have been prevented from working. They have been confined to exile, death or a decision to abandon their activities. Many have fled the country, and now operate from neighboring countries in very fragile and unsafe environments, where they face socioeconomic challenges, continuous threats, and a professional incapacity to continue working with their colleagues remaining inside the country.

According to CIHRS's partner, the Coalition of Human Rights Organizations:

On November 21, 2015, the Head of the General Authority of Information and Culture, Omar El-Gawairi, issued a statement urging security agencies to "capture the spies and traitors and thus ban any media or civil society organizations funded by foreign sponsors or linked to foreign departments. In addition, Libyan citizens should take the initiative to close shops of agents and hideouts of spies, and then expel them outside of Libya." The Culture and Civil Society Ministry also issued a notification on November 25, 2015 requiring all

¹⁶ Libya National Dialogue Preparatory Commission: <http://ndpc.ly/en/>.

¹⁷ Libyan Judges Association, Press Release, Dec. 14, 2015, Annex II.

¹⁸ International Federation for Human Rights, "Libya- Exile or Death: Violence and Collapsed State Leave Human Rights Defenders with Few Options, Aug. 8, 2015, <https://www.fidh.org/en/region/north-africa-middle-east/libya/libya-exile-or-death-violence-and-collapsed-state-leave-human-rights>.

¹⁹ Human Rights Watch, "War on the Media- Journalists Under Attack in Libya," Feb. 9, 2015, <https://www.hrw.org/report/2015/02/09/war-media/journalists-under-attack-libya>.

individuals working for civil society organizations to provide notice and seek approval from the ministry prior to attending meetings, workshops and conferences outside of Libya.²⁰

What is needed is a bottom up approach in Libya, which means understanding the Libyan context and making use of its various power holders and the historic tensions that has led to its current power dynamics. The role of key civil actors from local municipalities and the National Council for Human Rights and Liberties as well as activists on the ground also need to be augmented and included as major components to the success of the UN-led peace process. Empowering and enabling those actors could very well be Libya's only hope to fight extremism of all kinds. The only way to empower them is through limiting the threat of militias against them.

Accountability as Deterrence Mechanism to Achieve Peace in Libya:

To date, the Libyan justice system throughout the country has been unable to ensure effective national accountability for grave violations and abuses of human rights and humanitarian law. This is due in large part to attacks against judges, lawyers and others and other forms of interference of armed groups within the judicial, executive, and legislative institutions of the country. The escalation of the armed conflict, in May 2014 in the east of the country and in July 2014 in the west, coupled with weak state institutions has made the prospects of a functioning national accountability process extremely unlikely at this time. As such, it is the responsibility of the Libyan government and international community to ensure accountability and rule of law for international crimes committed in Libya through international investigations and legal proceedings.

²⁰ Lawyers for Justice in Libya, "The Coalition of Libyan Human Rights Organizations is Concerned by Recent Attempts to Restrict Unlawfully Freedom of Expression, Assembly and Association," Dec. 2, 2015, <http://www.libyanjustice.org/news/news/post/221->

There have been some attempts on the international level, albeit not comprehensive nor sufficient, to address the issue of impunity for violations in Libya. In June 2015, the UN Security Council discussed sanctions against leaders of militias and paramilitary groups from both sides of the conflict, followed by the EU in July, which threatened sanctions against spoilers of the Libyan peace process. These steps arguably allowed municipalities and local actors in the west of the country to work together, as they were given some space to conclude ceasefire agreements and exchange detainees. Also, in large part due to the threat of international accountability and fear of targeted sanctions, significant militias within the Misrata armed groups (one of the most influential armed factions that compose the GNC backed Operation Libyan Dawn) stopped opposing local ceasefire efforts and instead, in July 2015, declared their support of local ceasefire agreements and the UN mediated peace talks. However, no genuine follow-up steps have been taken to effectively enforce the provisions of the UN Security Council Resolution 2174 (2014) authorizing asset freezes and travel bans against individuals believed to have committed serious rights violations in the country.

On November 5, 2015, the ICC asked the UNSC, during a briefing to the Council's members, to provide necessary resources to proceed to investigate violations based on information submitted by civil society organizations and other information collected by the UN.

The ICC report noted:

The Office remains equally concerned that all sides including the Libyan National Army (“LNA”), Libya Dawn, Islamists, ISIL; and their respective allies, and international actors continue to commit attacks resulting in civilian casualties, some of which appear to be indiscriminate in nature. Common methods of attack include air strikes, sniper fire and shelling.

However, there still remains a lack of sufficient international evidence gathering activities and an absence of formal legal proceedings against individuals that have or continue to carry out grave violations of international law in Libya.

Due to ongoing and widespread attacks against judges, lawyers and other members of the judiciary, the fostering of impunity through government policies, and the breakdown of state institutions, international accountability measures are currently required to deter ongoing violations and provide the necessary conditions for peace and the building of state institutions in Libya.

In this context, capacity building and technical cooperation with the Libyan judicial and security institutions will remain largely ineffective until sufficient measures are taken to ensure international criminal accountability for ongoing violations committed by particular individuals in Libya. International, independent, effective, and transparent investigations into past and ongoing violations is the most immediate requirement to provide the basis for an effective international accountability process. Any such investigation must establish the facts, identify individuals and groups that have perpetrated grave violations, and delineate a clear chain of command and individual responsibility for such crimes.

The investigation mission led by the Office of the UN High Commissioner for Human Rights into violations committed in Libya since the beginning of 2014 has a critical role to play in providing information and making recommendations on how such information should be used to ensure effective accountability measures are taken by the international community, including in relation to follow-up UN action, ICC investigations and the use of universal jurisdiction by particular states.

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