

Libya Roadmap

for Human Rights Reform & Restoring the Rule of Law

Accountability

Peaceful Assembly

Justice

Judiciary

Elections

Migrants

Institutions

Freedom of Expression

Detention



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مركز القاهرة لدراسات حقوق الإنسان

Libya Platform

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I.Context

While many observers may have written off Libya's future as hopeless, the current Roadmap underscores the potential for peace and democracy in Libya, but only with the recognition that respect for human rights, the fight against impunity, and the prevalence of the rule of law are essential parts of the Libyan roadmap toward democratic transition and sustainable stability.

A lack of respect for national and international standards and agreements by armed groups in Libya has undermined attempts to strengthen Libyan institutions - including the legislative, judicial, and executive authorities, especially the security institutions – all of which remain frail and dysfunctional, severely hampering their ability to ensure the rule of law and provide security.

The Platform¹ is highly concerned due to the persistence of armed clashes and human rights violations throughout Libya. On 16 January 2019, fighting in Tripoli reignited between militias, causing dozens of deaths and dozens of casualties. This renewed fighting occurred one day after the declaration of a military operation in southwestern Libya by General Khalifa Haftar, supreme commander² of the armed forces, appointed by the House of Representatives

¹ The Libya Platform is a coalition of Libyan CSOs aiming to create a safe space for Libyan civil society organizations working on the protection and promotion of human rights to engage in dialogue and coordination, and aiming to raise the capacity of those organizations to actively promote public freedoms and human rights in the country.

² Khalifa Haftar, the commander-in-chief of the armed forces, was appointed by the House of Representatives in eastern Libya. The Libyan National Army is a mix of military units, alliances and tribal armed groups, whose legitimacy is disputed by military officers and units in western Libya.

(HOR)³. The military then entered by force into southern Libyan cities, where confrontations took place with armed groups- including forces believed to be subordinate or allied with the Islamic State Organization (Da'ash) and Al Qaeda in the Maghreb. Haftar also announced the end of military operations in Derna after fierce battles with the Shura Council of Derna (Derna protection force). Reports indicate that human rights⁴ violations were committed during these operations.

The persistent violence and human rights violations in eastern Libya occurs in the context of the near-collapse of the executive power in western Libya. In an official letter on January 12 of this year, the head of the Presidential Council (PC) Fayez Sarraj, was accused of taking the country in an unknown direction by three members of the PC (Ahmed Maetig, Fathi Majbri, and Abdulsalam Kajman). The three PC members contended that Sarraj's lack of strong leadership could result in renewed armed conflict.

On 7 January 2019, UN Secretary-General António Guterres submitted a report on UNSMIL to the UNSC, which stated that between August 2018 and January 2019: **“Armed groups across Libya continued to commit violations of**

³ The House of Representatives (HoR), was elected in June 2014 and represents the legitimate legislative authority; it was supposed be based in Benghazi following the Constitutional Declaration issued in 2011. However, in the wake of the outbreak of fighting in mid-2014 between armed groups in the west (Fajr Libya) and the military led-operation by Khalifah Haftar (Al Karama), the HoR sessions took place in the Dar al-Salam Hotel in Tobruk. In November 2014, the Libyan Supreme Court issued a judgment declaring the 2014 legislative election unconstitutional. Based on this ruling, some political factions questioned the legitimacy of the HoR. The HoR was revived by the Libyan Political Agreement in 2015

⁴ “As a result of the conflicts, 200,000 people remain internally displaced. Thousands of families who fled clashes in Benghazi since 2014, and armed confrontations in Derna since May 2018 are unable to return to their homes or to reclaim their properties and livelihoods for fear of reprisals by LNA-linked groups who accuse them of supporting terrorism. Representatives from the cities of Misrata and Tawergha signed a peace accord in June that should have paved the way for the return of 48,000 people unlawfully displaced from Tawergha. But, only a few hundred have returned, due to the massive destruction and looting and ongoing security concerns and fear of reprisals.” <https://www.hrw.org/news/2019/01/17/libya-civilians-under-threat-militias>

international humanitarian law and international human rights law in a climate of continued impunity. Civilians continued to bear the brunt of the escalation of fighting and violence. UNSMIL documented 71 civilian casualties, including 46 killed and 25 injured. That included 8 boys and 1 girl who was killed, and 1 boy and 1 girl injured as a direct result of hostilities. Three more boys and one girl were killed as an indirect result of hostilities, or other violations or abuses of international humanitarian law. Leading causes of death included gunfire, shelling and explosive remnants of war.”⁵

In March 2018, the Office of the High Commissioner for Human Rights described Libya as a situation of **“near-complete lawlessness throughout the country, with almost total impunity for even the most serious crimes.”⁶**

A culture of impunity and the lack of a unified security sector has unfettered warlords in eastern, western and southern Libya, allowing them to continually block, since 2014, the implementation of local reconciliation agreements. They have impeded the execution of the agreement between the Tawergha and Misrata communities, and have thwarted attempts at a peaceful solution to the siege of Derna. Militias and warlords have also undermined reconciliation between the Tebu and Awlad Suleiman tribes.

The situation has not improved from the turbulent political environment in which active Libyan forces signed the December 2015 Libya Peace Agreement

⁵ Report of the Secretary-General António Guterres on the United Nations Support Mission in Libya: https://unsmil.unmissions.org/sites/default/files/sg_report_on_unsmil_s_2019_19e.pdf

⁶ <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22772&LangID=E>

(LPA), establishing the Presidential Council ⁷ (government) and supported by the UNSMIL⁸, and instituted three months later in Tripoli. Humanitarian conditions for local residents have deteriorated while two rival authorities,⁹ with their militias and affiliated paramilitary groups, remain in a political conflict over the choice of representatives for the executive and legislative powers, situating the LPA in an entrenched stalemate.

II. Roadblocks in Adopting a Constitution and Holding Elections

Libya's draft constitution itself faces numerous critiques, including: the lack of consensus over the drafting process, the marginalization of minorities, and the failure of the draft provisions to conform to international standards regarding fundamental rights. Moreover, the draft has repeated references to the Islamic

⁷ The Presidential Council (PC), which has been based in Tripoli since 30 March 2016. The PC is headed by Fayeze al-Sarraj – a former member of the Tobruk Parliament, where he represented a Tripoli constituency – and it was born out of the signing of the UN-brokered Libyan Political Agreement (LPA) in December 2015. According to this agreement, the PC presides over the Government of National Accord (GNA), also based in Tripoli.

⁸ The United Nations Support Mission for Libya (UNSMIL) is an integrated special political mission established on 16 September 2011 by UN Security Council Resolution 2009 (2011) at the request of the Libyan authorities to support the country's new transitional authorities in their post-conflict efforts. UNSMIL's mandate was modified and extended by the Security Council in resolutions 2022 (2011), 2040 (2012), 2095 (2013), 2144 (2014), 2238 (2015), 2323 (2016) and 2376 (2017). Its current mandate is stipulated by the latest UN Security Council Resolution 2434 (2018), which extended UNSMIL's mission until 15 September 2019.

⁹ A rival government to the GNA, is based in Tobruk and Bayda. The House of Representatives (HoR) in Tobruk would become the legitimate legislative authority under the LPA but it has so far failed to endorse GNA government. Instead, the HoR endorsed the rival government of Abdullah al-Thinni, which operates from the eastern Libyan city of Bayda.

Sharia in articles 6, 153 and 161 without reference to the international instruments relating to human rights and fundamental freedoms.

The Constitutional Drafting Assembly (CDA)¹⁰ voted on a final draft of the constitution in July of 2017. They voted for the latest draft instead of a previous draft presented to the House of Representatives (HoR) in April 2016. The vote caused controversy among CDA members.

A month later, in August, the administrative justice department of the Al-Bayda Court of Appeal ruled to freeze the CDA's vote for a final draft of the constitution, in accordance with a complaint submitted by a member of the CDA in August 2017. In February 2018, the Administrative Chamber of the Supreme Court overturned the judgment of the Court of Appeal in Al-Bayda, since the administrative justice department is not competent to consider the decisions of the CDA.

The Libyan Supreme Court's invalidation of the blockage of the CDA's vote opened the door for a referendum on constitution. Yet on November 26th 2018, the House of Representatives adopted Law no. 6/2018 with an additional condition for the draft constitution's approval via referendum; it must be accepted 50% +1 in each Libyan historical region: Tripolitania in the northwest, Cyrenaica in the east, and Fezzan in the south. This condition is considered by some CDA members and political factions to be a barrier preventing the approval of the constitutional project's by referendum. In any case, this additional condition violates Article 30 of Constitutional Declaration of 2011, which stipulates the quorum to be two- thirds of voters.

¹⁰ Constitutional Drafting Assembly (CDA) elections took place in Libya on 20 February 2014. Nominations for elections to the CDA started on 6 October 2013; registration for candidates to the assembly was over as of 11 November 2013. The assembly will be composed of 20 members each from Libya's three regions: Tripolitania, Cyrenaica and Fezzan.

Two days later, the HoR made the 10th amendment to the interim constitutional declaration, to give legitimacy to Law 6/2018 on the organization of the referendum on the draft constitution. A number of members of the CDA and State Council filed a complaint to the Supreme Court about these constitutional amendments.

On 23 January 2019, the House of Representatives discussed a draft presidential election law as a pre-emptive step in case the draft constitution was rejected by Libyans in the referendum, which was increasingly likely considering the additional conditions placed on the draft constitution's adoption by the HoR, represented by Law 6/2018 and the 10th amendment.

Thus, the pressure exerted by the military authorities in the east on the House of Representatives to postpone the Constitution and prepare for presidential elections entrenches the absolute rule of the individual. It sets the stage for the new president to make a constitutional declaration establishing a repressive state managed through extraordinary procedures, which is a dangerous step in light of the intensifying armed violence in Libya.

Regardless of the outcome of the HoR's current push to postpone the constitution, the question remains: how can the non-interference of armed and paramilitary groups in the referendum on the constitutional project and in the electoral process be guaranteed? Despite the restrictive legal framework for civil society, the CSOs already registered have observed that armed groups will likely intervene in the electoral process – to influence the election in their respective favors as well as to prevent CSO monitoring of the electoral process. There is also no guarantee that warlords in the east and west will accept the election results.

III. Missed Opportunities in International Negotiations and Peace Efforts

Despite the presence of all Libyan parties and UNSMIL at the Paris meeting in 2017 and the Palermo meeting in 2018, the Libya Platform underscores **that critical opportunities were missed. These include the opportunity to formulate a practical plan – in the form of a bill – and to draw a comprehensive and transparent national strategy restructuring the National Security Institute in the short, medium and long terms. Instead, the meetings focused on continued engagement with UNSMIL on security sector reform and the ongoing negotiations in Cairo on security reform and unification, although both processes have failed. The UN mission has not taken serious steps to prioritize drafting a national plan with the Libyan authorities to restructure the security institute and integrate combatants. The Cairo meetings have also not achieved any tangible results until now.**

CIHRS stresses that these meetings, “which lack transparency regarding what is being negotiated between commanders of armed groups, have not resulted in any practical plan regarding the unification of the armed forces, and the establishment and assurance of individual integration and a clear chain of command.”

The majority of armed groups in Libya are affiliated with either the Government of National Accord (GNA) or the supreme commander appointed by the HoR. These armed groups have been responsible for targeted persecutions and serious human rights violations against judges, prosecutors, lawyers, human rights defenders and media personnel in an attempt to hamper national accountability mechanisms and threaten long-term peace and stability in Libya. It is important

to note that a majority of armed groups involved in the recent Tripoli clashes had already received accreditation from the GNA and received public funds from the Libyan Central Bank.¹¹

Armed groups currently control the entire circulation of money and public economic resources. Vulnerable populations (internally displaced people - IDPs, migrants and minorities) are the first victims of human trafficking and forced enrollment in fighting or the transport of arms throughout Libya and also at sea. The vulnerability of such groups is underscored by the arrangements requested by the Italian Government and committed to by the Government of National Accord, in which the Libyan Coast Guard, supported by the European Union and some armed groups, increased the number of persons forcibly returned to Libya and arbitrarily detained in detention centers run by the General Directorate for Combating Illegal Immigration within the Ministry of the Interior. According to Amnesty International:¹²

"Migrants, refugees and asylum-seekers were subjected to widespread and systematic serious human rights violations and abuses at the hands of detention centre officials, the Libyan Coast Guard, smugglers and armed groups. Some were detained after being intercepted by the Libyan Coast Guard at sea trying to cross the Mediterranean to Europe. It was estimated that up to 20,000 people were held in detention centres in Libya run by the Directorate for Combating Illegal Migration (DCIM), a division of the Ministry of the Interior of the GNA. They were held in horrific conditions of extreme overcrowding, lacking access to medical care and adequate nutrition, and systematically subjected to torture and other ill-treatment, including sexual violence, severe beatings and extortion.

¹¹ UNSC report on Libya re- armed groups' connection to the GNA: http://www.un.org/ga/search/view_doc.asp?symbol=S/2018/171

¹² Report Libya 2017/2018: <https://www.amnesty.org/en/countries/middle-east-and-north-africa/libya/report-libya/>

While the DCIM formally controlled between 17 and 36 centres, armed groups and criminal gangs ran thousands of illicit holding sites throughout the country as part of a lucrative people-smuggling business."

The ruptured security sector and lack of accountability for grave violations allows the strife between Libya's myriad armed groups and paramilitaries to escalate unimpeded. This escalating strife, in turn, nurtures fertile ground for armed radical groups to proliferate, including armed groups with close ties to ISIS, Al-Qaeda and the Salafist Madkhali sect. This creates a volatile and violent national context in which Libya's state institutions are unable to achieve the three primary political processes necessary for ending the transition: reforming the security sector, holding a referendum for a national constitution, and holding presidential and parliamentary elections.

IV.Nine Entry Points for Human Rights Reform in Libya and Restoring the Rule of Law

The Libya Platform and CIHRS believe that no peace, stability and security in Libya is possible without the three steps presented in CIHRS' latest report¹³: strengthening institutions, fighting against human rights violations, and restructuring the security sector. As explained in the report, urgent action is required to end the widespread impunity and grave human rights violations that continuously fuel the cycle of violence in Libya and counter the reform of national security institutions.

13 CIHRS Analyzes Prospects for Peace and Democratic Transition in Libya: <https://cihrs.org/cihrs-analyzes-prospects-for-peace-and-democratic-transition-in-libya/?lang=en>

The nine points below aim to form a cohesive framework for action for both CIHRS and Libyan human rights organisations, and ultimately serve as pillars for peaceful coexistence and security.

1. Restructuring Security Institutions (Reform of the Security Sector and its Governance)

CIHRS and the Libya Platform request for the United Nations Mission to Support Libya (UNSMIL) to establish a specialized technical committee for the vetting process of Libya's security institutions. The committee should be composed of Libyan legal experts, police force members and military officers, and academics and international experts in the field. The committee's mandate will be extended to the evaluation and follow-up of all laws, decrees, and accreditation issued by internationally recognized and de facto Libyan authorities regulating the work of the ministries before and after 2011. The committee will have two distinct mandates:

- (A) Propose draft bills on the structure of the ministries of interior and defense, in order to set up a plan for security sector reform, in the form of a general and abstract roadmap, to:
 - Determine the mandate of the ministries of interior and defense;
 - Define the different sections and chain of commands in each of them;
 - Determine the mechanism of engagement, timeframe, and training content rules;
 - Develop the internal complaints system (to include a mechanism for citizens' complaints against members of the two ministries as well as a mechanism for complaints of members of the security sector against their superiors);

- Draft the framework for trade unions within the security sectors.
- (B) Propose a draft bill establishing a plan for individual reintegration, disbandment, disarmament and rehabilitation of members of existing militias and armed groups, in the framework of legislations regulating transitional justice and reconciliation.

2. Protecting and Empowering the Libyan Judiciary

- (A) CIHRS and the Libya Platform request for UNSMIL and the international community to press the Libyan executive authorities and assist them in enabling members of Libya's judiciary to fulfill their role in ensuring victims' access to justice. More specifically, to:
 - Enable the Public Prosecution to fulfill its role in monitoring detention facilities;
 - Enable the Public Prosecution to execute requests for summons, questioning, referral, and release;
 - Enable the executive authorities to commit to executing and enforcing judicial provisions and decrees, without interference from security institutions that provide services and protection for the courts;
 - Ensure the legal and financial independence of the judiciary;
 - Guarantee the effective separation of powers.

3. Combating Impunity

- (A) CIHRS and the Libya Platform request for the UN Human Rights Council (UN HRC) to:

- Establish an effective accountability mechanism through member states of the UN HRC, such as a Group of Experts or a Commission of Inquiry.
 - In parallel, prioritize Libya in the UN Special Procedures' thematic mandates, notably in working groups on arbitrary detention, and enforced or involuntary disappearances; and special rapporteurs on torture, human rights defenders, independence of judges and lawyers, and extrajudicial, summary or arbitrary executions.
- (B) CIHRS and the Libya Platform call on the UN Security Council (UN SC) and the EU to:
- Enable the ICC to establish an office or local base in Libya, if not in Libya then in Tunisia, to expand its investigations and facilitate access to information regarding violations within the jurisdiction of the Court.
 - Impose sanctions on violators and abusers -whether individuals, states or entities - through reports of the UN Security Council's expert committee and UN mission reports.

4.The Referendum on the Draft Constitution and Municipal, Presidential, and Legislative Elections

- (A) The Libya Platform and CIHRS request for UNSMIL, the EU, and Libyan authorities to:
- Support awareness campaigns on the elections and referendum, directed toward the population;
 - Train the High National Election Commission personnel in charge of organizing the elections and the referendum;

- Support and empower Libyan CSOs in monitoring the voting process;
 - Support and empower CSOs in monitoring media campaigns before and during the election and referendum process;
 - Support and empower CSOs in monitoring campaign financing.
- (B) If the draft constitution does not attain a quorum to vote for its approval, CIHRS and the Platform request for UNSMIL to form a technical committee:
- **Composition:** Libyan legal experts (on the model of the February 2014 Committee)
 - **Mandate:** Prepare a proposal for a draft law on presidential and legislative elections, which will include a mechanism for the conduct of both elections at the same time in 2019. The draft would then be submitted to the House of Representatives.
- (C) Tool for collecting proposals to amend the draft constitution:
- The Libya Platform, in conjunction with other Libyan CSOs, will open channels of communication and organize meetings with the Constitutional Drafting Assembly (CDA) and Libyan authorities to open dialogue on all texts that do not adequately preserve public freedoms and human rights - including the empowerment of women and marginalized groups - to be included in the new draft constitution.

5. Detention Centers (including for migrants)

(A) CIHRS and the Libya Platform request for UNSMIL to form, in cooperation with the Supreme Judicial Council (SJC), the Ministry of Justice (MoJ), a technical committee headed by the SJC, under the auspices of the United Nations.

● **Composition:** Judges and prosecutors from civil and military courts, and independent observers selected from UNSMIL who are Libyan jurists.

● **Mandate:**

- (1) Survey and classify all detention centers, and determine their subordination (interior ministry/military - outside the control and supervision of the judiciary);
- (2) Map and categorize all detainees (women/men - civilian - military - adult/minor - pre-trial detention - execution of a judicial penalty - detention without legal basis);
- (3) Establish a mechanism for detainees: classifying, monitoring their conditions, and ensuring access to them; and enabling them to be received and rehabilitated;
- (4) Establish a mechanism for detention centers: classifying, ensuring access to, monitoring conditions, and training staff.
- (5) Evaluate the legal and the legislative framework of detention.
- (6) Evaluate the restriction of freedom in Libyan criminal procedure law and develop it to provide more guarantees regarding the entry into custody and its indefinite duration, in addition to initial guarantees of fair trial and detention.

- (B) The Libya Platform and CIHRS call on the Libyan authorities to enable CSOs to visit detention sites periodically, without restrictions.

6. Protecting Migrants, Refugees and Asylum-seekers

- (A) The Libya Platform and CIHRS request for the Libyan authorities to:
- Take action to release all those detained for attempting to cross into Europe as refugees and asylum-seekers and to respect international obligations in this regard.
 - Regulate the legal framework for the application of asylum through a transparent mechanism in line with Libya's constitutional, regional and international obligations;
 - Strengthen legal protection for migrants who are victims of human rights violations both inside and outside detention centers;
 - Develop a legislative framework guaranteeing the legal status of those wishing to regulate their situation within the Libyan territory in order to work, according to the needs of the labor market.
- (B) The Libya Platform and CIHRS urge the Italian government, the European Union, and the Government of National Accord to:
- Stop the attacks and attempts to criminalize the rescue and life-saving vessels of international humanitarian organizations such as Doctors Without Borders, and to respect international obligations in this regard. The International Organization for Migration reports that there are more than 2,000 refugees and migrants, including women and children, and calls for the respect of international obligations in this regard.

- (C) The Libya Platform and CIHRS call on the Libyan authorities to:
- Enable civil society organizations to visit detention sites periodically, without restrictions.

7. Attaining Justice and Providing Medical and Psychological Assistance for Human Rights Victims

- (A) The Libya Platform - with the support of CIHRS – request for the EU, UN (UNSMIL and OCHA), and the Ministry of Health (MoH) to form a committee by the MoH under the auspices of UNSMIL:
- **Composition:** Doctors, international experts and civil society organizations.
 - **Mandate:**
 - (1) To assess the legal framework and services provided for medical assistance, including mental health rehabilitation for victims of violence, especially in regards to violence against women.
 - (2) To present a proposal to develop Libya’s legal framework and improve access to legal aid services for those who are entitled to it.
 - (3) To provide medical centers - through the community, with the involvement of civil society organizations - including psychological assistance and the rehabilitation of victims, especially for those most vulnerable to violations: women,

children, and displaced persons; migrants, asylum-seekers, and refugees; and those living in remote areas.

8. Freedom of Expression, Association, and Peaceful Assembly

- (A) CIHRS and the Libya Platform call on UNSMIL and the EU to press the Libyan authorities to protect freedom of expression, notably the Presidential Council (PC) and the Ministry of Information, in regards to:
- Restrictive and arbitrary decisions taken by executive powers;
 - Necessary adjustments to the legislative framework;
 - Amendments required in the draft constitution;
 - Harassment & assaults from armed groups affiliated with security institutions.
- (B) CIHRS and the Libya Platform call on UNSMIL and the EU to press the Libyan authorities to protect the freedom and independence of the media by supporting the establishment of an independent constitutional body for media.¹⁴
- **Legal form:** An institution or a constitutional body concerned with the press and audiovisual media, as well as the establishment of media independence and the promotion of freedom of expression.
 - **Composition:** Independent members recognized for their experience, competence, and integrity.
 - **Mandate:** To support media independence, promote freedom of expression, and combat hate speech and incitement to violence, and violent armed extremism.

¹⁴ On the model of the High Independent Authority of Audiovisual Communication - HAICA in Tunisia.

- This mission is essential to supporting the media's role as a space for democratic dialogue, and aims to establish legal and ethical rules guaranteeing freedom of expression, media pluralism, the independence of journalists, and high-quality information.
 - This institution shall provide the framework for the preparation of the upcoming electoral calendar. It also seeks to protect media from any interference by executive authorities.
- (C) The Libya Platform and CIHRS request for UNSMIL and the EU to press the PC, the Civil Society Commission, and the House of Representatives (HoR) to protect the freedom of association. They will advocate specifically:
- For the repeal of resolution-1 and resolution-2 of the 2016 Civil Society Commission, as they undermine any attempt at civil action and oppose the Constitutional Declaration of 2011 and Libya's international and regional obligations;
 - For the Civil Society Commission to issue the new draft law for associations, prepared by the Libyan experts with the UN mission and with the participation of the 2016 Civil Society Commission in Tunisia that protects freedom of association, in line with the International Covenant on Civil and Political Rights and the Constitutional Declaration of 2011;
 - To stop administrative restrictions on the Civil Society Commission and support its technical role in assistance and support, so as to prevent it from being a repressive and controlling entity that interferes in the work of associations and detracts from civil society independence;

- To stop harassment from armed groups.
- (D) The Libya Platform and CIHRS request for the EU and UNSMIL to press the PC and the HoR to protect the freedom of peaceful assembly, specifically for them to:
- Review the legal framework restricting this freedom;
 - Stop harassment from armed groups.

The Libya Platform and CIHRS will also support Libyan defenders in using complaint mechanisms such as Treaty Bodies and Special Procedures at the UN HRC.

9. National Mechanism for the Promotion and Protection of Human Rights

The Libya Platform and CIHRS call on the United Nations Support Mission in Libya and the European Union to exert pressure on all Libyan authorities to enable the National Council for Public Freedoms and Human Rights to act in accordance with the law of its establishment, and to not undermine its financial independence from the Executive, in accordance with Libyan law and the Paris Principles.