

Enshrining Impunity: A decade of international engagement in Libya



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محامون من أجل العدالة في ليبيا

 **LFJL**
LAWYERS FOR JUSTICE IN LIBYA

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LIST OF ABBREVIATIONS

AFRICOM	United States Africa Command
CSO	Civil Society Organisation
DCIM	Department for Combatting Illegal Migration
ECHR	European Court of Human Rights
EU	European Union
EUTF	European Trust Fund for Africa
FFM	UN Fact-Finding Mission on Libya
GNA	Government of National Accord
GNC	General National Congress
GNS	Government of National Salvation
GNU	Government of National Unity
HoR	House of Representative
HRC	United Nations Human Rights Council
ICC	International Criminal Court
IS	Islamic State
LAAF	Libyan Arab Armed Forces
LCG	Libyan Coast Guard
LFJL	Lawyers for Justice in Libya
LNA	Libyan National Army
LPA	Libyan Political Agreement
LPDF	Libyan Political Dialogue Forum
MoU	Memorandum of Understanding
NATO	North Atlantic Treaty Organisation
NTC	National Transitional Council
PoE	United Nations Panel of Experts on Libya
UAE	United Arab Emirates

UK	United Kingdom
US	United States
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNSMIL	United Nations Support Mission in Libya

1. INTRODUCTION

The 2011 Libyan uprising galvanised an unparalleled momentum of multilateral efforts ostensibly aimed at upholding the safety, rights and freedoms of the Libyan population. After Muammar Gaddafi's threat of 'no mercy or compassion'¹ towards revolutionaries, the United Nations Security Council (UNSC) authorised a set of measures with the central goal of protecting civilians, including by way of military intervention.² Some observers saw this as the high point of multilateralism. Others soon criticised intervening states for using humanitarian principles to justify their foreign policy aspirations.³

If multilateral efforts in the name of humanitarian principles were already covering up self-serving interests in 2011, 11 years later, overt unilateralism has taken centre stage. Driven by a complex mix of geopolitical, security and economic interests, at least ten foreign states have been involved in the conflicts that have ravaged Libya in the last decade, projecting their global and regional rivalries into Libyan dynamics.⁴ The 2021 report by the UN-mandated Independent Fact-Finding Mission (FFM) on Libya⁵ concluded that 'the involvement of foreign States in the NIACs [non-international armed conflicts in Libya] was such that they were considered parties thereto'.⁶

The resulting violence has led to an untold cost for people in Libya. In a decade of conflict marked by widespread human rights violations and significant allegations of war crimes and crimes against humanity, thousands of people in Libya have

been killed or injured, and hundreds of thousands have been forcibly displaced.⁷ An estimated 10,000 people are missing⁸ and thousands of Libyans from all walks of life continue to be disappeared,⁹ tortured and abused. The 600,000 migrants, refugees and asylum seekers estimated to be in Libya¹⁰ have also fallen victim to the ongoing lawlessness and a brutal war economy in which they are seen as objects to be exploited, extorted and enslaved.¹¹ Throughout 2021, 800,000 of Libya's 6.8 million people¹² were considered to be in need of humanitarian assistance, a figure projected to reach 1.5 million in 2022.¹³ Covid-19 and a floundering economy have further worsened living conditions, amid power cuts and a lack of access to water, health care and education.

While redressing human rights violations and abuses was one of the key drivers of the 2011 Libyan uprising,¹⁴ 11 years later these aspirations have remained unanswered. Women, men and children across Libya continue to demand justice and accountability for the harm they have suffered from the Gaddafi regime, as well as the armed conflicts and political

1 David D. Kirkpatrick and Kareem Fahim, 'Qaddafi Warns of Assault on Benghazi as U.N. Vote Nears', The New York Times, 17 March 2011, available at: <https://www.nytimes.com/2011/03/18/world/africa/18libya.html>

2 UN Security Council, Resolution 1970 (2011), UN Doc S/RES/1970 (2011), 26 February 2011, available at: <https://www.un.org/securitycouncil/s/res/1970-%282011%29>; UN Security Council, Resolution 1973 (2011), UN Doc S/RES/1973 (2011), 17 March 2011, available at: <https://www.un.org/securitycouncil/s/res/1973-%282011%29>

3 Jide Martyns Okeke, 'Why NATO Intervention in Libya is not a Victory for Responsibility to Protect', Institute for Security Studies, available at: <https://issafrica.org/amp/iss-today/why-nato-intervention-in-libya-is-not-a-victory-for-responsibility-to-protect> and Bruno Pommier, 'The use of force to protect civilians and humanitarian action: the case of Libya and beyond', December 2011, available at: <https://www.corteidh.or.cr/tablas/r29540.pdf>

4 Ramy Allahoum, 'Libya's war: Who is supporting whom', Aljazeera, January 2020, available at: <https://www.aljazeera.com/news/2020/1/9/libyas-war-who-is-supporting-whom>

5 This was established by the UN Human Rights Council in June 2020. See: UN Human Rights Council, 'List of HRC-mandated Commissions of Inquiries / Fact-Finding Missions & Other Bodies', available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/ListHRCMandat.aspx>

6 Human Rights Council, 'Report of the Independent Fact-Finding Mission on Libya' UN Doc A/HRC/48/83, 1 October 2021, p.5, available at: https://www.ohchr.org/EN/HRBodies/HRC/FFM_Libya/Pages/Index.aspx

7 Libya presents a complex displacement scenario, with alternating waves of internal displacement and return. In 2021, Libya counted more than 270,000 internally displaced persons and a returnee population of more than 600,000. See IOM's displacement portal, available at: <https://dtm.iom.int/libya>

8 This estimate includes persons who have been missing since the Gaddafi era. See: International Commission on Missing Persons, 'Libya' [accessed July 2021], available at: <https://www.icmp.int/the-missing/where-are-the-missing/libya/#:~:text=There%20are%20estimated%20to%20be,Muammar%20Gaddafi's%2042%2Dyear%20rule.>

9 For a comprehensive study of enforced disappearance in Libya see: LFJL, 'Unforgotten: Enforced Disappearance in Libya', September 2020, available at: https://uploads-ssl.webflow.com/5a0d8805f2f99e00014b1414/5f69fcd2d9c3bd879cb661c86_Unforgotten%20-%20Enforced%20Disappearances%20in%20Libya%20-%20September%202020%20Final%20Arabic.pdf

10 IOM, Displacement Tracking Matrix: Libya (accessed January 2020), available at: <https://dtm.iom.int/libya>

11 See for example: LFJL, FIDH, and ECCHR, 'No way out: Migrants and Refugees Trapped in Libya Face Crimes Against Humanity' November 2021, available at: https://uploads-ssl.webflow.com/5a0d8805f2f99e00014b1414/619bcb382269d993bb7b5183b_No-Way-Out-migration-lfjl-libya-report-icc-ar.pdf

12 Most recent available value from 2020 available at: <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=LY>

13 OCHA, 'Humanitarian needs overview: Libya' (December 2021), available at: <https://www.humanitarianresponse.info/en/operations/libya/document/2022-hpc-libya-humanitarian-needs-overview-hno>

14 One of the sparks of the Libyan revolution was the weekly protests organised by families of the victims of a 1996 mass killing of detainees of Abu Salim prison, many of whom were political prisoners, who demanded justice and reparations for the violations they suffered. See for example: Joe Backer, 'Events of 2 years ago sparked current uprising in Libya', The World (11 March 2011), available at: <https://www.pri.org/stories/2011-03-11/events-2-years-ago-sparked-current-uprising-libya>

repression that followed.¹⁵ Justice and accountability, however, have been overlooked by international actors engaging in Libya. They are often subordinated for the sake of political expediency and geopolitics, at times in the name of peace. However, neither peace nor justice have been achieved.

After a decade of conflict, the establishment of an interim unity government in March 2021 raised hopes for a more peaceful and stable Libya. At the same time, the unilateral meddling of foreign powers in Libya remains unresolved, and a transition to lasting peace will require a stark change from the trends that have characterised the involvement of international actors in Libya so far.

This report reflects on the last decade of international engagement in Libya, looking at the impact of unilateral international engagement on the conflict and on the lives of people in Libya. After providing an overview of Libya's conflicts and related foreign interference since 2011, it analyses how the different ways in which foreign states have engaged in Libya, including through military assistance, weapon transfers, and cooperation in the field of counter-terrorism and migration, have directly or indirectly exacerbated violence and human rights abuses. The report further shows how self-interested foreign engagement has resulted in the marginalisation of human rights concerns and the failure to respond to Libyans' aspirations for justice and accountability, allowing impunity to prevail. Lastly, it reflects on the impact of a unilateral approach and the marginalisation of international law and standards in efforts to achieve sustainable peace.

This report aims to inform international policy makers on how to refocus their efforts away from unilateral interests and narrow security goals towards a more comprehensive, principled and human rights-based approach to support the people of Libya in a sustainable transition to peace, justice and democracy. To this end, the report provides concrete recommendations to third states, as well as relevant international institutions and mechanisms, for constructive engagement in Libya.

¹⁵ A 2020/2021 survey conducted by LFJL, referred in this report as the Perceptions of Justice Survey, revealed a strong demand for justice and accountability for human rights violations among more than 350 respondents from different demographics across the country. Key findings of this study are presented in the following sections.

2. LIBYA'S (UN)CIVIL WARS

CIVIL WAR AND INTERNATIONAL SPONSORS

In January 2011, against the backdrop of uprisings in neighbouring Egypt and Tunisia, protests swept through many cities in Libya. By the middle of February, this had evolved into a fully-fledged uprising in the eastern city of Benghazi.¹⁶ As the Libyan state sought to crack down on opposition using lethal force, international pressure on Gaddafi mounted. The UNSC passed resolution 1970 (2011), which imposed an arms embargo, along with sanctions including travel bans and the freezing of assets.¹⁷ In a rare move, the UNSC also referred the situation to the International Criminal Court (the **Court** or the **ICC**).¹⁸ Foreign states gradually started recognising the interim National Transitional Council (**NTC**), formed as the political face of the revolution, as Libya's de facto government.¹⁹

Some countries, including France and the United Kingdom (**UK**) started calling for military intervention, which was eventually authorised by UNSC resolution 1973 on 17 March 2011.²⁰ The resolution called for an immediate ceasefire and the establishment of a no-fly zone to protect civilians. Two days later, an international coalition led by the UK, France and the United States (**US**) started operations in Libya. This intervention, over which the North Atlantic Treaty Organisation (**NATO**) took command,²¹ changed the course of the civil conflict and led to the overthrow of the four-decade-long Gaddafi regime.

16 For a timeline of the Libyan conflict since 2011 see LFJL 'Reporting Libya' website, available at: <https://www.reportinglibya.org/>

17 UN Security Council, Resolution 1970(2011), UN Doc S/RES/1970 (2011), 26 February 2011, available at: [https://www.undocs.org/S/RES/1970%20\(2011\)](https://www.undocs.org/S/RES/1970%20(2011))

18 UNSC resolution 1970 (2011) is the second instance in which the UNSC referred a country situation to the ICC. It had only previously occurred once, with the referral of the situations in Darfur with resolution 1593 (2005).

19 After bilateral endorsement by individual states, the NTC was recognised by the UN General Assembly in September 2011: <https://www.un.org/press/en/2011/ga11137.doc.htm>

20 UN Security Council, Resolution 1973 (2011), UN Doc S/RES/1973(2011), 17 March 2011, available at: [https://www.undocs.org/S/RES/1973%20\(2011\)](https://www.undocs.org/S/RES/1973%20(2011)). Germany, Russia, China as well as India and Brazil abstained from the vote. Russia, which generally opposed any infringement of sovereignty on humanitarian grounds, did not use its veto power, reportedly influenced by the Arab League. See: Julian Borger, 'Libya no-fly resolution reveals global split in UN split', The Guardian, 18 March 2011, available at: <https://www.theguardian.com/world/2011/mar/18/libya-no-fly-resolution-split>

21 The operation made use of naval and air force. See: NATO, 'Operation UNIFIED PROTECTOR Final Mission Stats' 2 November 2011, available at: https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2011_11/20111108_111107-factsheet_up_factsfigure.pdf

Following Gaddafi's fall, the UNSC established the United Nations Support Mission in Libya (**UNSMIL**) to support national efforts towards a democratic transition.²² In the summer of 2012, national elections were held in Libya, resulting in the establishment of the General National Congress (the **GNC**).²³ Initial post-Gaddafi governance attempts, however, were fraught with challenges, and the GNC was weakened politically by internal divisions.²⁴

It soon became clear that the revolutionary groups that shared the objective of deposing Gaddafi in 2011 would not continue to work together, nor would they demobilise. In the post-2011 period, armed groups that had formed in opposition to Gaddafi's forces benefited from state weakness, while new ones continued to emerge.²⁵ From 2012, revolutionary fighters were integrated into formal security institutions such as the interior and defence ministries without any vetting processes to exclude those responsible for gross human rights violations.²⁶ While the prospect of a salary led to growth in their memberships, many of these militias and armed groups²⁷ continued to act with a high degree of autonomy.²⁸ By May 2015, a Libyan government committee reported that it was seeking to reintegrate 110,000 armed group members.²⁹

22 UN Security Council, Resolution 2009 (2011), UN Doc S/RES/2009 (2011), 16 September 2011, available at: <https://www.un.org/securitycouncil/s/res/2009-%282011%29>

23 David D. Kirkpatrick, 'Libyans Vote in First Election in More Than 40 Years', The New York Times, 7 July 2012, available at: <https://www.nytimes.com/2012/07/08/world/africa/libyans-vote-in-first-election-in-more-than-40-years.html>

24 For example, political parties frequently announced boycotts: Nigel Ash, 'The two biggest parties to boycott GNC except for work on constitution', Libya Herald, 5 July 2013, available at: <https://www.libyaherald.com/2013/07/05/the-two-biggest-parties-to-boycott-gnc-except-for-work-on-constitution/>

25 Human Rights Council, 'Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings' UN Doc A/HRC/31/CRP.3, 15 February 2016, para 53, available at: https://www.ohchr.org/Documents/Countries/LY/A_HRC_31_CRP_3.pdf

26 Human Rights Council, 'Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya and on related technical support and capacity-building needs', UN Doc A/HRC/28/51, 12 January 2015, p.10, available at: <https://undocs.org/A/HRC/28/51>

27 In this report, the term **militias** is used to refer to armed groups affiliated to the authorities and often supported by the State. The term **armed groups** refers to groups and criminal gangs not affiliated to the authorities. However, affiliations and alliances are often fluid and change over time.

28 Frederic Wehrey, 'Ending Libya's Civil War: Reconciling Politics, Rebuilding Security', September 2014, available at: https://carnegieendowment.org/files/ending_libya_civ_war.pdf

29 Human Rights Council, 'Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings' UN Doc A/HRC/31/CRP.3, 15 February 2016, para 53, available at: https://www.ohchr.org/Documents/Countries/LY/A_HRC_31_CRP_3.pdf

In this context of growing fragmentation, Libyan military and political leaders often capitalised on the networks of foreign support that were formed during the 2011 conflict to strengthen their clout.³⁰ In parallel, some states sought to influence the post-2011 outcomes in their favour. Most notably, Qatar and the United Arab Emirates (UAE) played out their regional rivalry by supporting different groups during and after the 2011 conflict. Libya thus became the scene of their scramble for influence to shape post-revolutionary states in the region, motivated by divergent views on the role of political Islamist groups, such as the Muslim Brotherhood, as well as ambitions over Mediterranean trade and energy routes.³¹

At the same time, Western states gradually retreated from the scene. Both the UK and US, as well as other former coalition members, focused on limited stabilisation efforts such as the training of different security units. These were largely unsuccessful due to the emerging fragmentation of Libya's security landscape.³² The US particularly distanced itself from Libya after the 2012 assassination of Ambassador Chris Stevens in Benghazi,³³ adopting a policy of 'no ownership' of the post-Gaddafi transition.³⁴ This retrenchment left the space for regional powers, and later Russia, to become key players in the Libyan conflicts.

FROM CIVIL WAR TO PROXY WAR

By 2014, tensions had erupted into full-scale civil war. In February 2014, protests took place after the GNC extended its own mandate, which was set to expire that month.³⁵ At the same time, in oil-rich eastern Libya, a growing number of violent attacks by militias and armed groups, targeted at Gaddafi-era officials but also activists, journalists and the judiciary, had been gradually undermining successive

governments.³⁶ The violence, which reportedly killed more than 640 people in 2013,³⁷ laid the groundwork for General Khalifa Haftar – a Gaddafi-era officer who spent two decades in exile in the US – to consolidate power.

As the government failed to tackle the violence, Haftar presented himself as the solution. On 14 February 2014, in a televised speech, he announced a new 'Libya roadmap' that included the formation of an interim government and a defence military council.³⁸ In May 2014, bringing together Gaddafi-era army units and other armed groups in the self-proclaimed Libyan National Army (LNA), later to become known as the Libyan Arab Armed Forces (LAAF),³⁹ Haftar launched 'Operation Dignity'. This was presented as a counter-terrorism operation against violent groups which had been on the rise in and around an increasingly unstable Benghazi.⁴⁰ In practice, the operation targeted those perceived as opponents by Haftar, and used disproportionate force.⁴¹ In parallel, on 18 May 2014, pro-Haftar militias also stormed the GNC in Tripoli.⁴² Unified by these threats, several political and military factions formed a coalition, later known as 'Libya Dawn', and mobilised against Haftar-allied groups.

Amidst growing violence in the east and west, in June 2014, the House of Representatives (HoR), set to replace the outgoing GNC, was elected with a low turnout, with candidates largely supportive of Haftar.⁴³ Although it was supposed to hold its sessions in Benghazi, the HoR relocated to the eastern city of Tobruk citing security considerations

30 Frederic Wehrey, "This War is Out of Our Hands": *The Internationalization of Libya's Post-2011 Conflicts From Proxies to Boots on the Ground*, New America, 14 September 2020, chapter 3, available at: <https://www.newamerica.org/international-security/reports/this-war-is-out-of-our-hands/the-backdrop-proxy-rivalries-within-a-revolution-and-political-contestation-2011-2014>

31 Camille Lons, 'Ports and politics: UAE-Qatar competition in the Mediterranean', ISPI, July 2020, available at: <https://www.ispionline.it/en/pubblicazione/ports-and-politics-uae-qatar-competition-mediterranean-26967>

32 Wehrey, 2020, op. cit.

33 Luke Harding, Chris Stephen and agencies in Tripoli, 'Chris Stevens, US ambassador to Libya, killed in Benghazi attack', The Guardian, 12 September 2012, available at: <https://www.theguardian.com/world/2012/sep/12/chris-stevens-us-ambassador-libya-killed>

34 Wehrey, 2020, op. cit., Chapter 3.

35 Patrick Markey and Ghaith Shennib, 'In standoff, Libyans protest over parliament extension' Reuters, 7 February 2014, available at: <https://www.reuters.com/article/us-libya-crisis-idUSBREA161MH20140207>

36 Human Rights Watch, *Counting the Dead in Benghazi*, 6 June 2014, available at: <https://www.hrw.org/news/2014/06/06/counting-dead-benghazi> and Saferworld, 'Civil society under threat in Libya', 2 December 2014, available at: <https://www.saferworld.org.uk/resources/news-and-analysis/post/141-civil-society-under-threat-in-libya>

37 The Daily Star, 'Libya violence kills 643 people in 2013: parliament', 23 January 2014, available at: <http://www.dailystar.com.lb/News/Middle-East/2014/Jan-23/245054-libya-violence-kills-643-people-in-2013-parliament.ashx#axzz32ZGVB8bS>

38 'Announcing the military coup led by Khalifa Haftar in Libya', 14 February 2014, available at: <https://www.youtube.com/watch?v=W3-LFMxX284> [own translation]

39 Wolfgang Lacher, 'A Most Irregular Army The Rise of Khalifa Haftar's Libyan Arab Armed Forces', SWP, 2 November 2014, available at: https://www.swp-berlin.org/publications/products/arbeitspapiere/2020WP02_FG06_lac.pdf

40 Wehrey, 2014, op. cit.

41 Amnesty International, 'Libya: Civilians trapped in Benghazi in desperate conditions as fighting encroaches' 30 September 2016, available at: <https://www.amnesty.org/en/latest/news/2016/09/libya-civilians-trapped-in-benghazi-in-desperate-conditions-as-fighting-encroaches/> 42 Ahmed Elumami and Ulf Laessing, 'Gunmen loyal to ex-general storm Libyan parliament, demand suspension' Reuters, 18 May 2014, available at: <https://www.reuters.com/article/us-libya-violence-idUSBREA4G04A20140518>

43 BBC, 'Libyan elections: Low turnout marks bid to end political crisis', 26 June 2014, available at: <https://www.bbc.co.uk/news/world-africa-28005801>

in light of ongoing violence in Tripoli and Benghazi.⁴⁴ The relocation of the HoR marked the beginning of political divisions and the creation of parallel institutions. Aligned with the HoR, the Interim Government took seat in Bayda. Meanwhile former GNC members aligned with Libya Dawn formed their own government in Tripoli – the Government of National Salvation (GNS). Libya thus found itself with parallel governments and institutions: the GNS in Tripoli and a parallel administration in the east aligned with the HoR.⁴⁵ This rupture in the governance structure paved the way for protracted conflict in the years to come.

During the ensuing conflict, two regional alliances formed around Libya.⁴⁶ On the one hand, anti-Haftar actors were supported by Qatar and Turkey. For Qatar, opposing Haftar was part of its regional rivalry with the UAE. Turkey, in addition to being ideologically close to Libya's branch of the Muslim Brotherhood, had – and continues to have – key economic interests, maritime ambitions and geopolitical aspirations in Libya.⁴⁷

On the other hand, the UAE and Egypt aligned with Haftar's counter-terrorism narratives. In line with its rivalry with Qatar and opposition to the rise of political Islamist groups domestically and regionally, in 2014, the UAE started supporting Haftar with weapons and air power.⁴⁸ It also pushed for pro-Haftar propaganda against Qatari-sponsored anti-Haftar news.⁴⁹ Egyptian President Abdel-Fattah al-Sisi, having himself seized power from Egypt's first democratically elected Muslim Brotherhood President in 2013, saw in Haftar an ally to prevent a violent spill-over on Egypt's western border. Additionally, Egypt reportedly sought to address energy concerns and to revitalise a struggling economy through opportunities for its business elites and labour force.⁵⁰

After being one of the strongest proponents of the NATO intervention, France also returned to the Libyan scene. Guided by security and defence calculations in the context of its broader military investments in the Sahel, France reportedly engaged in covert counter-terrorism operations in support of Haftar.⁵¹ These operations were revealed by the killing of three French intelligence agents in eastern Libya in 2016,⁵² and the later discovery of French missiles in a pro-Haftar base in July 2019.⁵³

As a result of the internationalisation of the conflict, weapon shipments to members of the two loosely constituted factions in the east and the west increased, in contravention of the arms embargo established by the UN in 2011.⁵⁴ Against the backdrop of an uptake in violence in 2015, the UN brokered a political dialogue between representatives of Libya's warring parties. This dialogue culminated with the signing of the Libyan Political Agreement (LPA) in Skhirat, Morocco, which birthed the internationally recognised Government of National Accord (GNA) – led by Fayez al-Sarraj. However, the LPA held little local legitimacy and was unable to address Libya's governance split. The GNA failed to establish a monopoly on security institutions, becoming little more than a shell government that maintained the bare minimum of formal international representation.⁵⁵ The HoR, set to become the legitimate legislative authority under the LPA, did not endorse the GNA, continuing to support the interim government in Bayda. By 2016, Libya thus had three centres of power: the 'internationally-recognised' GNA in Tripoli; the GNS, also based in Tripoli, but which had gradually lost control and support; and the authorities in Tobruk and Bayda.⁵⁶

44 Al Hurra, 'A consultative session for the Libyan Parliament in Tobruk', 3 August 2014, available at: <https://arbne.ws/3jO3ULu>

45 Mary Fitzgerald and Mattia Toaldo, 'A quick guide to Libya's main players', 19 May 2016, available at: https://ecfr.eu/special/mapping_libya_conflict/

46 UN Security Council, 'Letter dated 1 June 2017 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council' UN Doc S/2017/466, 1 June 2017, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/N1711623.pdf>

47 Valeria Talbot, 'Turkey's Struggle for Influence in the Eastern Mediterranean', ISPI, July 2020, available at: <https://www.ispionline.it/en/pubblicazione/turkeys-struggle-influence-eastern-mediterranean-26977>

48 Eleonora Ardemagni and Federica Saini Fasanotti, 'The UAE in Libya and Yemen: Different tactics, one goal', ISPI, July 2020, available at: <https://www.ispionline.it/it/pubblicazione/uae-libya-and-yemen-different-tactics-one-goal-27138>

49 Ibid. See also pp. 13–14 of this report.

50 Khalil al-Anani, 'Understanding Egypt's strategy in Libya', Arab Center Washington DC, July 2020, available at: http://arabcenterdc.org/policy_analyses/understanding-egypts-strategy-in-libya/

51 Karim Mezran and Federica Saini Fasanotti, 'France must recognize its role in Libya's plight', Atlantic Council, 21 July 2021, available at: <https://www.atlanticcouncil.org/blogs/new-atlanticist/france-must-recognize-its-role-in-libyas-plight/>

52 France's covert operations in Libya were first report by Le Monde in February 2016: Le Monde, 'La France mene des operations secrets en libye', 23 February 2016, available at: https://www.lemonde.fr/international/article/2016/02/24/la-france-mene-des-operations-secretes-en-libye_4870605_3210.html

53 Eric Schmitt and Declan Walsh, 'U.S. Missiles Found in Libyan Rebel Camp Were First Sold to France', The New York Times, 9 July 2019, available at: <https://www.nytimes.com/2019/07/09/world/middleeast/us-missiles-libya-france.htm>

54 Wehrey, 2020, op. cit.

55 Muriel Asseburg, Wolfram Lacher and Mareike Transfeld, 'Mission Impossible? UN Mediation in Libya, Syria and Yemen', SWP-Berlin, October 2018, available at: https://www.swp-berlin.org/fileadmin/contents/products/research_papers/2018RP08_Ass_EtAl.pdf

56 Mary Fitzgerald and Mattia Toaldo, 'A quick guide to Libya's main players', 19 May 2016, available at: https://ecfr.eu/special/mapping_libya_conflict/

FROM INTERNATIONALISATION TO PEACE?

The LPA was never recognised by Haftar, who instead continued with efforts to seize control of the country militarily. By mid-2018, Haftar's forces had taken control of the majority of eastern Libya, and, in January 2019, of the southern region of Fezzan. In April 2019, while UN Secretary-General António Guterres was on an official visit to Tripoli days before a planned UN-led national conference to broker a power-sharing deal, the LAAF launched an offensive on Tripoli.⁵⁷ In response, several militias and armed groups in western Libya united against Haftar's offensive, including some not formerly aligned with the GNA.

As violence escalated, the UNSC failed to react. Both the US and Russia vetoed a resolution drafted by the UK calling for a ceasefire.⁵⁸ The US veto came days after a phone call between President Donald Trump and Haftar to discuss "counter-terrorism efforts", in an apparent contradiction of US support of UN efforts in Libya.⁵⁹ Despite official claims to the contrary,⁶⁰ France's policy in Libya continued to diverge from its fellow European Union (EU) members, and Paris allegedly blocked an EU statement against Haftar's offensive.⁶¹ Amidst the UN silence and American and European ambivalence, other foreign states fully entered the fray.

In support of Haftar, the UAE conducted more than 850 drone and jet strikes, and sent more than 6,000 tons of weapons and ammunition through airlifts between April 2019 and 2020.⁶² In addition to facilitating weapons transfers in collaboration with the UAE, Egypt provided aerial and tactical support,

and repeatedly threatened to deploy ground-combat troops.⁶³ To capitalise on American and European incoherence and position itself as a geopolitical powerbroker, Russia also threw its weight behind Haftar. Moscow provided Haftar with billions in a parallel Libyan currency printed outside of Libyan official channels. This was estimated at 4.5 billion Libyan dinars between February and June 2019.⁶⁴ Russian private military personnel from the Wagner Group also started operating in Libya.⁶⁵

Coming to the rescue of the GNA, Turkey deployed troops to Libya. The intervention was based on a military cooperation agreement signed between the GNA and Turkey in November 2019.⁶⁶ At the same time, Ankara secured its economic interests in a Memorandum of Understanding (MoU) with the GNA covering maritime boundaries in the Mediterranean, including an exclusive economic zone.⁶⁷ Turkey also recruited Syrian fighters to take part in hostilities, including children,⁶⁸ adding to the tens of thousands of mercenaries from Russia, Chad and Sudan already in the country.⁶⁹ Turkey's intervention effectively rolled back Haftar's gains, which halted his advance on Tripoli, and the conflict entered a period of stalemate in Libya's central region.

Building on previous diplomatic efforts and its position as a neutral conflict actor, Germany hosted an international conference to bring together international actors involved in Libya, known as the Berlin Conference. Participants committed to redoubling efforts to de-escalate the conflict

57 UNSMIL, 'Statement by the Special Representative of the Secretary General in Libya, Ghassan Salame, on the National Conference', 9 April 2019, available at: <https://unsmil.unmissions.org/statement-special-representative-secretary-general-libya-ghassan-salam-%C3%A9-national-conference>

58 Michelle Nichols, 'U.S., Russia say cannot support a U.N. call for Libya truce: diplomats', Reuters, 19 April 2019, available at: <https://www.reuters.com/article/us-libya-security-un-idUSKCN1RU2ML>

59 Steve Holland, 'White House says Trump spoke to Libyan commander Haftar on Monday', Reuters, 19 April 2019, available at: <https://www.reuters.com/article/us-libya-security-trump/white-house-says-trump-spoke-to-libyan-commander-haftar-on-monday-idUSKCN1RM1D0>

60 In a 2019 interview, for example, French Foreign Minister Jean-Yves Le Drian stated that "France has continuously supported Sarraj's government. We have lent a great deal of support to the UN and with respect to security": Ministère de l'Europe et des Affaires étrangères, 'Minister Jean-Yves Le Drian: "France is in Libya to combat terrorism"', 2 May 2019, available at: <https://www.diplomatie.gouv.fr/en/our-ministers/jean-yves-le-drian/press/article/minister-jean-yves-le-drian-france-is-in-libya-to-combat-terrorism-02-05-19>

61 Gabriela Baczyńska and Francesco Guarascio, 'France blocks EU call to stop Haftar's offensive in Libya', 10 April 2019, available at: <https://www.reuters.com/article/us-libya-security-eu-tajani-idUSKCN1RM1D0>

62 Eleonora Ardemagni and Federica Saini Fasonetti, 'The UAE in Libya and Yemen: Different tactics, one goal' ISPI, July 2020, available at: <https://www.ispionline.it/it/publicazione/uae-libya-and-yemen-different-tactics-one-goal-27138>

63 Al Jazeera[elsewhere this is Aljazeera – please choose and check], 'Egypt's parliament approves troop deployment to Libya', 20 July 2020, available at: <https://www.aljazeera.com/news/2020/7/20/egypts-parliament-approves-troop-deployment-to-libya>

64 In November 2019, Malta seized a shipment of Russia-printed Libyan banknotes on their way to Haftar. See: Middle East Institute, 'Seized Russian-printed dinars highlight an opportunity to reform Libya's civil war economy' Middle East Institute, 7 November 2019, available at: <https://www.mei.edu/publications/seized-russian-printed-dinars-highlight-opportunity-reform-libyas-civil-war-economy>; and Patrick Wintour, 'Malta halts shipment of cash destined for Libyan rebel chief' The Guardian, 1 November 2019, available at: <https://www.theguardian.com/world/2019/nov/01/malta-halts-shipment-of-cash-destined-for-libyan-rebel-chief>

65 UN General Assembly, 'Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination', UN Doc A/75/259, 28 July 2020, available at <https://undocs.org/en/A/75/259>

66 Ece Toksabay, Ahmed Elumami, 'Turkey to send troops to Libya at Tripoli's request', Reuters, 26 December 2019, available at: <https://www.reuters.com/article/us-turkey-libya-erdogan-idUSKBN1YU0EZ> <https://www.theguardian.com/world/2019/dec/20/libyan-government-activates-cooperation-agreement-with-turkey>

67 Reuters, 'Turkey-Libya maritime deal rattles East Mediterranean', 25 December 2019, available at: <https://www.reuters.com/article/us-turkey-libya-eastmed-tensions-explain-idUSKBN1YT0JK>

68 Human Rights Council, 'Report of the Independent Fact-Finding Mission on Libya' UN Doc A/HRC/48/83, 1 October 2021, p.20, available at: https://www.ohchr.org/EN/HRBodies/HRC/FFM_Libya/Pages/Index.aspx

69 OHCHR, 'Libya: Violations related to mercenary activities must be investigated – UN experts', 17 June 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25970&LangID=E>

and end hostilities, to support UN-backed negotiations, and to respect and implement the arms embargo.⁷⁰ The process also resulted in the formation of the 5+5 joint military commission, which finally agreed to a ceasefire on 23 October 2020.⁷¹

The conclusions of the Berlin Conference were endorsed by the UNSC in resolution 2510, which set the framework for UNSMIL to facilitate the Libyan Political Dialogue Forum (the **LPDF**).⁷² Under the LPDF framework, 75 Libyan representatives agreed on a roadmap⁷³ and selected the members of an interim executive authority to lead the country to national elections scheduled for 24 December 2021.⁷⁴ In an historic moment, on 10 March 2021, the Government of National Unity (the **GNU**) replaced the GNA, and was endorsed by the HoR in the central city of Sirte. This was the first peaceful handover of government since 2012.

However, tensions and uncertainties continued amidst disagreements over the laws that should govern the elections and a vote of no confidence in the GNU by the HoR in September 2021.⁷⁵ In December 2021, elections were delayed, raising further uncertainty over Libya's future.⁷⁶

Meanwhile, it remains unclear how the competing visions of foreign states involved in Libya will take shape in this expected new chapter of transition. Turkey has been advocating for its forces to remain on Libya's soil for tactical

and training purposes,⁷⁷ and in July 2021 a report claimed that regular Russian troops have been stationed in Libya.⁷⁸ Despite the development of an Action Plan for the withdrawal of mercenaries,⁷⁹ and reports of partial withdrawals,⁸⁰ many remain on the ground.⁸¹ The American administration of President Biden raised some hopes for constructive engagement through renewed support to the UN⁸² as well as keeping foreign powers in check.⁸³ The US, Europe and the UK have also applied sanctions on individuals allegedly involved in human rights violations.⁸⁴ Constructive engagement will need to be sustained to reverse the trends of the last decade, which has seen self-interested unilateralism triumph in Libya – with disastrous implications for people in Libya.

70 German Federal Government, 'The Berlin Conference on Libya: conference conclusions', 19 January 2020, available at: <https://www.bundesregierung.de/breg-en/news/the-berlin-conference-on-libya-1713882>

71 The 5+5 joint military commission consists of five military officers representing the Tripoli-based government, and five representing the east. UNSMIL, 'UN salutes new Libya ceasefire agreement that points to 'a better, safer, and more peaceful future' (23 October 2020), available at: <https://news.un.org/en/story/2020/10/1076012>

72 S/RES/2510 (15 February 2020), available at: [https://undocs.org/S/RES/2510%20\(2020\)](https://undocs.org/S/RES/2510%20(2020)). For general information on the LPDF see UNSMIL's website, available at: <https://unsmil.unmissions.org/libyan-political-dialogue-forum>. A second Berlin conference was held in June 2021, reiterating the commitment of participating foreign powers to a peaceful transition. See: The Second Berlin Conference on Libya, 'Conference Conclusions', 23 June 2021, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/210623-lby-abschlusserk-downloaden-data.pdf>

73 UNSMIL, 'Roadmap For the Preparatory Phase of a Comprehensive Solution', available at: https://unsmil.unmissions.org/sites/default/files/lpdf_-_roadmap_final_arabic_0.pdf

74 UNSMIL, 'Acting Special Representative of the Secretary-General for Libya Stephanie Williams remarks following the closing of the vote on the new executive authority' (5 February 2021), available at: <https://unsmil.unmissions.org/acting-special-representative-secretary-general-libya-stephanie-williams-remarks-following-closing>

75 Aljazeera, 'Libya's parliament passes no-confidence vote in unity government', 21 September 2021, available at: <https://www.aljazeera.com/news/2021/9/21/libya-parliament-withdraws-confidence-from-unity-government>

76 Aljazeera, 'Why Libya's election got postponed: A quick guide', 23 December 2021, available at: <https://www.aljazeera.com/news/2021/12/23/why-libya-election-got-postponed>

77 TRT World, 'Turkey: Mercenaries in Libya should not be confused with legitimate troops', 6 May 2021, available at: <https://www.trtworld.com/turkey/turkey-mercenaries-in-libya-should-not-be-confused-with-legitimate-troops-46513>

78 Daily Sabah, 'Regular Russian troops stationed in Libya', 23 July 2021, available at: <https://www.dailysabah.com/world/africa/regular-russian-troops-stationed-in-libya>

79 This was developed by the 5+5 Joint Military Commission in October 2021 as a step towards the full implementation of the 23 October 2020 ceasefire. See: '13th round of the 5+5 JMC talks', 6–8 October 2021, available at: https://unsmil.unmissions.org/sites/default/files/jmcs_statement_geneva_meeting_6-8_oct_2021_20211008_english.pdf

80 Middle East Monitor, '300 foreign mercenaries leave Libya at France's request', 7 January 2022, available at <https://www.middleeastmonitor.com/20220107-300-foreign-mercenaries-leave-libya-at-frances-request/> 81 More than 20,000 foreign fighters were estimated to be in Libya as of May 2021. See: Edith Lederer, 'UN chief: Foreign fighters in Libya are violating cease-fire', AP, 15 May 2021, available at: <https://apnews.com/article/united-nations-libya-africa-middle-east-f3a758d5ab63f21e71a50ee1c95b9a8c>

82 For example, under the Biden administration, the US has rejoined the UN Human Rights Council, after former President Trump had withdrawn US membership in 2018. See: Katie Rogers, 'Biden Administration Moves to Rejoin U.N. Human Rights Council', The New York Times, 7 February 2021, available at: <https://www.nytimes.com/2021/02/07/us/politics/human-rights-council-biden-administration.html>

83 ECFR, 'How a Biden win could transform US policy in the Middle East and North Africa', 3 November 2020, available at: <https://ecfr.eu/article/how-a-biden-win-could-transform-us-policy-in-the-middle-east/>

84 See for example: US Department of the Treasury, 'Treasury Sanctions Criminal Network Threatening the Stability and Security of Libya', 6 August 2020, available at: <https://home.treasury.gov/news/press-releases/sm1083> and Council of the European Union, 'Libya: EU imposes additional sanctions for human rights abuses and arms embargo violations', 21 September 2020, available at: <https://www.consilium.europa.eu/en/press/press-releases/2020/09/21/libya-eu-imposes-additional-sanctions-for-human-rights-abuses-and-arms-embargo-violations/> and UK Government, 'UK sanctions Libyan al-Kaniyat militia and its leaders: Minister's statement', 13 May 2021, available at: <https://www.gov.uk/government/news/uk-sanctions-libyan-al-kaniyat-militia-and-its-leaders-ministers-statement>

3. ENTRENCHING CONFLICT AND ABUSE

In their unilateral pursuit of self-interest in Libya, international actors have provided support militarily or entered into security cooperation with a multitude of local actors, impacting complex local dynamics, and often directly or indirectly empowering armed groups and militias. From military intervention and illegal arms sales to narrow securitised approaches to counter-terrorism and migration, the ways in which international actors have engaged in the country have exacerbated the conflict and the suffering experienced by people in Libya.

A MORE DEADLY BATTLEFIELD

One of the main ways in which foreign states have intervened in Libya is through the provision of military support to factions in Libya's conflict. This has primarily taken the form of weapons transfers in violation of the arms embargo, leading to a proliferation of diverse types of weapons in the country.⁸⁵ The exact scale of the illegal arms transfers is hard to gauge, but the problem is so serious that Libya has been called 'a testing ground for foreign military equipment'.⁸⁶ This includes Chinese-made Turkish and UAE drones, making Libya one of the biggest 'drone war theatre[s]' in the world.⁸⁷ Russian landmines, banned by the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, have also been found.⁸⁸ Some of the world's main arms exporters, including the US, the UK and a number of EU countries, have also continued to sell arms to states flaunting the arms

embargo in Libya, showing little consideration for human rights concerns in their security relations.⁸⁹

Advanced weaponry imported from abroad has made the conflict more deadly, especially as it has been used in densely populated civilian areas.⁹⁰ Moreover, some foreign states have directly deployed military force through airstrikes and foreign fighters and troops. Attacks allegedly carried out by foreign actors have only further escalated the conflict, raising the possibility that foreign states might be responsible for death, injury and potential war crimes in Libya.

The trend had already started in 2011: NATO strikes reportedly resulted in 223 to 403 'likely civilian deaths', which NATO has never acknowledged.⁹¹ In the following years, more than 4,500 strikes have been documented, operated by 15 different actors including local factions and foreign states.⁹² By 2020, Libya had become one of the worst countries in the world for civilian killings and maiming.⁹³ In the first months of 2020, UNSMIL reported a 45% increase in civilian deaths in comparison to the previous year.⁹⁴ The number of internally displaced persons also peaked in 2019–2020, with more than 250,000 people forced to leave their homes between April 2019 and June 2020, especially in Tripoli and other conflict-affected areas.⁹⁵

Some of the incidents buried in these numbers have been well documented. Airstrikes seemingly targeted at civilian facilities have been allegedly traced back to the UAE,

85 UN Security Council, 'Letter dated 29 November 2019 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council', UN Doc S/2019/914, 9 December 2019, available at: https://www.ecoi.net/en/file/local/2021151/S_2019_914_E.pdf

86 Markus Kaim, René Schulz, 'The EU Will Not Be Able to Enforce the UN Arms Embargo in Libya', German Institute for International and Security Affairs, 8 March 2020, available at: <https://www.swp-berlin.org/10.18449/2020C08/>

87 Wolfram Lacher, 'Drones, deniability, and disinformation: warfare in Libya and the new international disorder', 3 March 2020, available at: <https://warontherocks.com/2020/03/drones-deniability-and-disinformation-warfare-in-libya-and-the-new-international-disorder/>

88 UN Security Council, 'Letter dated 8 March 2021 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council', UN Doc S/2021/229, 8 March 2021, available at: <https://undocs.org/S/2021/229>. See also: Human Rights Council, 'Report of the Independent Fact-Finding Mission on Libya' UN Doc A/HRC/48/83, 1 October 2021, pp.7-8, available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/ListHRCMandat.aspx>

89 For an overview of arms exports see: Sipri, 'Trends in International Arms Transfers 2020', March 2021, available at: https://sipri.org/sites/default/files/2021-03/fs_2103_at_2020.pdf. See also: Dan Sabbagh, 'UK sells arms to nearly 80% of countries under restrictions, says report' The Guardian, 26 January 2021, available at: <https://www.theguardian.com/world/2021/jan/26/uk-sells-arms-to-nearly-80-of-countries-under-restrictions-shows-report>.

90 Karen MvVeigh, 'Steep rise in civilians killed or injured in Libya by explosive weaponry', The Guardian, 7 January 2020, available at: <https://www.theguardian.com/global-development/2020/jan/07/steep-rise-in-civilians-killed-or-injured-in-libya-by-explosive-weaponry>

91 Oliver Imhof, 'Ten years after the Libyan revolution, victims wait for justice', Airwars, 18 March 2021, available at: <https://airwars.org/news-and-investigations/ten-years-after-libyan-revolution-victims-wait-for-justice/>

92 Airwars, 'All Belligerents in Libya, 2012–present', [accessed 27 July 2021], available at: <https://airwars.org/conflict/all-belligerents-in-libya/>

93 MvVeigh, op. cit.

94 UNSMIL, 'Civilian casualties report: 1 January– 31 March 2020' available at: https://unsmil.unmissions.org/sites/default/files/first_quarter_civilian_casualty_report_2020_2.pdf

95 IOM, 'Internal displacement in Libya: Displacement from Tripoli during hostilities in 2019–2020', available at: https://displacement.iom.int/system/tdfs/reports/DTM_MinistryOfDisplacement_2019-2020_Report_ENGLISH.PDF?file=1&type=node&id=10894

including the bombing of a food factory near Tripoli⁹⁶ and a migrant detention centre in Tajoura, which killed 53 detained migrants in July 2019.⁹⁷ Turkey has been accused of being implicated in the indiscriminate killing of civilians in densely populated areas in 2020, at times resulting in the deaths of entire families.⁹⁸ For example, on 3 June 2020, GNA-allied air forces conducted four airstrikes in a residential neighbourhood in Qasr Ben-Ghashir, south of Tripoli, which caused the deaths of at least 12 civilians, including women and children.⁹⁹ According to the 2021 FFM report, 'the attacks were intentionally directed against individual civilians not taking direct part in hostilities, thereby potentially amounting to a violation of [international humanitarian law] and a war crime.'¹⁰⁰ Weapon fragments found on the site of the attack suggest that the laser-guided

munitions used were produced by a Turkish manufacturer.¹⁰¹ This type of munition is often used by Turkish military aircraft.¹⁰² Moreover, the Wagner group has reportedly been involved in extrajudicial killings, including the alleged execution of three civilians near Tripoli in September 2019,¹⁰³ which may amount to war crimes.¹⁰⁴

Journalists, activists, and human rights defenders documenting these incidents within Libya have faced unlawful detention, enforced disappearance and torture. For example, a young man from Derna who started documenting war crimes after witnessing the civilian casualties caused by joint Egyptian/Libyan airstrikes in 2015¹⁰⁵ was arbitrarily detained and eventually forced into exile after reportedly being accused of being 'a spy' because of his documentation work.¹⁰⁶

96 Missile fragments found on the scene were reportedly launched by a type of drone that is only used by the UAE in Libya: Human Rights Watch, 'Libya: UAE Strike Kills 8 Civilians', 29 April 2020, available at: <https://www.hrw.org/news/2020/04/29/libya-uae-strike-kills-8-civilians>

97 UNSMIL, 'The airstrikes on the Daman building complex, including the Tajoura Detention Centre', 2 July 2019, available at: https://unsmil.unmissions.org/sites/default/files/unsmil-ohchr_report_airstrikes_at_tajoura_arabic-27012020.pdf

98 Libya Crimes Watch, 'Airstrikes targeting a house in Qasr Bin Ghashir', 5 June 2020, available at: <https://libyancrimeswatch.org/?p=23222>; and Al Marsad, 'Turkish Drones Bombs Civilians South of Sirte, Commits the Second Massacre in Days' (6 June 2020), available at: <https://almarsad.co/en/2020/06/06/turkish-drones-bombs-civilians-south-of-sirte-commits-the-second-massacre-in-days/>

99 LFJL conducted an interview with a witness and relative of some of the victims. For information on the incident, see: Airwars, 'LC413', 3 June 2020, available at: <https://airwars.org/civilian-casualties/lc413-june-3-2020/>

100 Human Rights Council, 'Report of the Independent Fact-Finding Mission on Libya', UN Doc A/HRC/48/83, 1 October 2021, p.7, available at: https://www.ohchr.org/EN/HRBodies/HRC/FFM_Libya/Pages/Index.aspx

LIVING IN A COUNTRY FULL OF WEAPONS

The proliferation of arms also impacts the everyday lives of Libyans outside the battlefield. In September 2020, machine

101 Investigations conducted by LFJL.

102 UN Doc S/2019/914, 2019, p. 32.

103 OHCHR, 'Libya: Violations related to mercenary activities must be investigated – UN experts', 17 June 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25970&LangID=E>

104 A/HRC/48/83, 1 October 2021, p. 7.

105 Human Rights Watch, 'Libya/Egypt: Civilian Toll in Derna Air Strikes', 4 February 2015, available at: <https://www.hrw.org/news/2015/02/24/libya/egypt-civilian-toll-derna-air-strikes>

106 Testimony of a Libyan man currently in exile in Turkey because of risks arising from his work documenting the conflict available at: Da Miri, Tariq Elmeri '46: Accept the life you choose with its bitterness', 16 March 2021 [own translation], available at: <https://apple.co/3vGcQH1>



guns and anti-aircraft weapons, reportedly provided by Turkey, were fired by GNA-affiliated militias to crack down on largely peaceful protests in Tripoli, allegedly killing one protester and wounding many.¹⁰⁷ Moreover, openly sold in markets or online, firearms are widespread in Libya not only among armed groups and militias, but also for personal use, such as self-defence against recurrent robberies and kidnappings.¹⁰⁸ Echoing a common sentiment, a Libyan woman from Tripoli explained:

“I do not feel safe, and what worries me the most are armed groups and the weapons all around us.”¹⁰⁹

The normalisation of violence can be particularly concerning among young people, as exemplified by an incident of a university student holding a professor at gunpoint to seek a better grade,¹¹⁰ or a professor being attacked by armed students to be forced to leak exam questions.¹¹¹ The ever-looming threat of weapons, combined with patriarchal norms, has particularly impacted women. Simple activities, such as doing groceries, going to the hospital, or attending a wedding can become a source of anxiety.¹¹² Small arms also make domestic violence more dangerous and potentially deadly.¹¹³ According to a 2017 study on Libya and Yemen, women generally identify disarmament as a key priority for peace and security, linking their lack of safety and freedom to the potential of armed violence in their everyday lives.¹¹⁴

Small arms have also made the increasing attacks against critical voices and human rights defenders, particularly women, more dangerous and often deadly. The long list includes human rights activist and lawyer Salwa Bugaighis, as well as political activist and lawyer Hanan al-Barassi, both murdered in Benghazi in

2014 and 2020 respectively.¹¹⁵ Small arms were similarly used during the kidnapping of Libyan lawmaker Seham Sergewa in July 2019, during which her husband was shot in the leg.¹¹⁶ Her whereabouts are still unknown.

THE INFORMATION WAR

Some foreign states intervening in Libya's conflicts have accompanied their military involvement in the country with what has been referred to as the 'information warfare'. Gulf countries, as well as Egypt and Turkey, host, fund, and at times direct outlets pushing narratives that promote the warring parties they support.¹¹⁷ The same occurs in Libya's social media scene, where propaganda is distributed by both foreign and Libyan social media pages, some of which are run by militias and armed groups.¹¹⁸ As explained by media expert Ahmed Gatnash:

“[There are] networks of hundreds of thousands of accounts [...] run by what we can only conclude is the highest levels of states¹¹⁹ [...] to peddle outright lies, or sometimes to attack specific people to reduce their credibility, sometimes to drive them offline, to threaten and to scare them.”¹²⁰

The information war often intensifies in parallel with conflict escalation on the ground. During the initial phase of Haftar's attack on Tripoli in April 2019, tweets with the hashtag #Haftar from Egyptian, Emirati and Saudi accounts dominated the Twittersphere, while Qatari and Turkish tweets in support of the GNA soon followed.¹²¹ A study of Facebook posts related to Haftar's offensive on Tripoli found that more than half of the posts originated from outside Libya and that 'there is a substantively meaningful relationship between the location of content

107 Human Rights Watch, 'Libya: Armed Groups Violently Quell Protests', 10 September 2020, available at: <https://www.hrw.org/ar/news/2020/09/10/376334>

108 While many light weapons were imported into Libya during the Gaddafi regime, the presence of weapons manufactured in at least 12 states and attributable to post-2011 imports has also been documented: Jenzen-Jones and Ian McCollum, 'Web Trafficking: Analysing the Online Trade of Small Arms and Light Weapons in Libya', April 2017, available at: <https://www.smallarmssurvey.org/resource/web-trafficking-analysing-online-trade-small-arms-and-light-weapons-libya-working-paper-26>

109 LFJL interview conducted between October 2020 and January 2021.

110 Rebecca Murray, 'Libya's lost generation: How the country's ongoing conflict has impacted its youth', Middle East Eye, 25 September 2019, available at: <https://www.middleeasteye.net/news/psychological-toll-conflict-libya-hits-youth-hard>

111 Khaoula Sliti, 'Libya's Civil Disorder Has Closed 8 Universities', Al-Fanar Media, September 2017, available at: <https://www.al-fanarmedia.org/2017/09/libyas-civil-disorder-closed-8-universities/>

112 Cordaid, 'Libyans at risk: Measuring the daily safety for effective peacebuilding in Libya', November 2020, available at: <https://www.cordaid.org/en/wp-content/uploads/sites/11/2020/12/Cordaid-Research-Paper-Libyans-at-Risk.pdf>

113 Ibid.

114 WILPF, 'Feminism at the Frontline: Addressing Women's Multidimensional Insecurity in Yemen and Libya', May 2017, available at: <https://wilpf.org/wp-content/uploads/2017/08/LIBYA-YEMEN-WEB.pdf>

115 LFJL, 'LFJL pays its respect to women's rights activist Salwa Bugaighis following her tragic murder', 25 June 2014, available at: <https://www.libyanjustice.org/news-arabic/rhyl-lsyd-slw-bwqaayqys>

116 LFJL, 'Silencing speech: the abduction of lawmaker Seham Sergewa is the latest attack on free speech in Libya', 19 July 2019, available at: <https://www.libyanjustice.org/news/silencing-speech-the-abduction-of-lawmaker-seham-sergawy-is-the-latest-attack-on-free-speech-in-libya>

117 Wehrey, 2020, op. cit.

118 Chatham House, 'Covering Libya: Journalism, Competition for Media Space and the Societal Impact', 15 July 2020 [online event] available at: <https://www.facebook.com/CHMENAProg/videos/969777350125119>

119 Including Saudi Arabia and the UAE, as well as other regional powers such as Egypt, Israel and Bahrain.

120 Libya Matters (podcast), '20: Libya's Information War with Ahmed Gatnash', 28 October 2020, available at: <https://www.buzzsprout.com/450046/5788057-20-libya-s-information-war-with-ahmed-gatnash>

121 Democracy Reporting International, 'Libya social media monitoring report', April-June 2019, available at: <https://democracy-reporting.org/uploads/publication/15183/document/libya-smm-report-main-findingspdf-61028b9b55dd4.pdf>

producers and a post's slant'.¹²² The discovery of hundreds of foreign accounts tweeting almost identical messages in the aftermath of Haftar's offensive also shows an automated tweeting pattern, most likely involving the use of bots.¹²³

While foreign powers battle with bots, the information war has led to the further polarisation of Libya's already fragmented media landscape (and social fabric), with incitement to violence increasingly widespread.¹²⁴ Fake news and hate speech have proliferated. The Libyan Centre for Freedom of the Press detected 23,362 breaches linked to the publication of hate speech and fake news in the 15 most followed media outlets in Libya in the period between January and June 2020.¹²⁵ Similar trends have been documented in Libya's social media spaces.¹²⁶ Some foreign actors have reportedly created fake analyst profiles to provide commentaries for international media.¹²⁷

This occurs against the backdrop of increasing harassment and attacks against independent journalists and the curtailment of media freedom.¹²⁸ In addition, online violence against women has been on the rise, with the primary aim of silencing women's online voices by targeting female activists, human rights defenders and women working in political affairs.¹²⁹ Such online violence can have a deep psychological impact on women, and can translate into offline violence, with serious implications for their active participation in public life.¹³⁰ The killing of political activist and lawyer Hanan al-Barassi, murdered in 2020 in Benghazi a few minutes after posting a video online criticising the LAAF, is one of the most prominent

examples of the toxic mix between online restrictions to free expression and offline violence.¹³¹ As stated by Nadine Dahan, a legal consultant:

*"Especially in the Libyan context, when you're threatened online, it is not just a comment or a message – it can very easily turn into physical danger."*¹³²

This also shows how dissenting voices, particularly when belonging to women, are being excluded from narratives in and on Libya, which are instead dominated by a toxic mix of propagandist, militarised, and violent content. Indeed, a 2019 report found that 'users on public social media pages are more interested in security-related topics than in elections, the constitution, or the UN-backed roadmap',¹³³ with alleged war crimes widely shared on Facebook and YouTube by the very militias committing them.¹³⁴ The domination of war propaganda in Libya's mediascapes, exacerbated by the engagement of foreign actors in Libya's information war, contributes to the normalisation of violence and impunity in Libyan society.¹³⁵

COUNTERING TERROR?

From 2014 onwards, foreign supporters of the GNA and Haftar invoked counter-terrorism to justify their support or interventions in Libya. This coincided with the slow embedding of Islamic State-(IS) affiliated groups in Sirte in 2013 and 2014, which exploited pre-existing networks, political fissures and social tensions.¹³⁶ In September 2014, several militia groups in the port city of Derna announced that they had pledged their affiliation to IS.¹³⁷ As winds were picking up globally for an anti-IS campaign, the emergence of IS affiliates in Libya, less than 300 kilometres from Europe, galvanised international attention.

122 Stanford Internet Observatory, 'Slanted Narratives, Social Media, and Foreign Influence in Libya', 10 November 2020, available at: <https://fsi.stanford.edu/news/social-media-foreign-influence-libya>

123 Democracy Reporting International, op. cit.

124 Media Landscape, 'Libya', available at: <https://medialandscapes.org/country/libya>

125 Libyan Centre for Freedom of the Press, 'Releasing the final results of the professional breaches of the Libyan media', 21 September 2020, available at: <https://mailchi.mp/e1392cd10071/press-release?e=c3c13ae01d>. The results for each analysed media outlet have been published separately on Falso, an online platform to monitor hate speech and fake news.

126 Democracy Reporting International, op. cit.; and DFRLab, 'Walking on Hot Coals: How Disinformation Is Fueling the Fight in Libya' May 2019, available at: <https://medium.com/dfrlab/walking-on-hot-coals-how-disinformation-is-fueling-the-fight-in-libya-41a0474d757e>

127 The New Arab, 'News outlets published propaganda by non-existent Middle East analysts', investigation finds', 7 July 2020, available at: <https://english.alaraby.co.uk/english/news/2020/7/7/news-outlets-duped-by-fake-middle-east-analyst-personas>

128 On attacks against journalists in Libya see for example: RSE, 'Seven years after its revolution, Libya is losing its journalists', 16 February 2018, available at: <https://rsf.org/en/news/seven-years-after-its-revolution-libya-losing-its-journalists>; and CPI, '13 journalists killed in Libya', [accessed 29 July 2021], available at: <https://rsf.org/ar/news/-31>

129 LFJL, "We will not be silenced": Online Violence Against Women in Libya, March 2021, available at: https://uploads-ssl.webflow.com/5a0d8805f2f99e00014b1414/6047a914cc7f78cd72e3c3ea_LFJL%20Online%20Violence%20Against%20Women%20Report_EN.pdf

130 Ibid.

131 LFJL, 'Libya must end systematic impunity and investigate the killing of lawyer and political activist Hanan al-Barassi', 11 November 2020, available at: <https://www.libyanjustice.org/news/joint-statement-libya-must-end-systematic-impunity-and-investigate-the-killing-of-lawyer-and-political-activist-hanan-al-barassi>

132 LFJL, 2021, op. cit., p.8.

133 Democracy Reporting International, op. cit.

134 BBC, 'Libya war crimes' videos shared on social media', April 2019, available at: <https://www.bbc.com/news/av/world-africa-48105968>. The ICC arrest warrant against Al-Werfalli was itself based on Facebook footage openly showing crimes. See: ICC-01/11-01/17, available at: https://www.icc-cpi.int/CourtRecords/CR2017_05031.PDF

135 Chatham House, op. cit.

136 Wehrey, 2020, op. cit.

137 Mirco Keilberth, Julianne von Mittelstaedt and Christoph Reuter Islamic, 'State's Gradual Expansion into North Africa', Spiegel International, 18 November 2014, available at: <http://www.spiegel.de/international/world/islamic-state-expanding-into-north-africa-a-1003525.html>

As Haftar announced the launch of Operation Dignity as an effort to counter terrorism, pro-Haftar media outlets echoed this narrative and framed Haftar's operations as a war on terrorism, picking up on this renewed international focus. Haftar's opponents included groups that the US had designated as 'terrorists,' including suspects in the attack on the US diplomatic mission in Benghazi in September 2012.¹³⁸ This reportedly resulted in 'a more tolerant stance toward Haftar's operation by some elements in Washington and even some tacit acceptance of Emirati and Egyptian support'.¹³⁹

It was not until two years later that the US launched a full counter-terrorism operation. In August 2016, soon after the GNA was formed, the US Africa Command (AFRICOM)¹⁴⁰ launched a military campaign against suspected IS groups in Sirte. 'Operation Odyssey Lightning' followed an official request for assistance from the GNA.¹⁴¹ In support of ground forces nominally affiliated with the GNA, in the five months between August 2016 and December 2016, US forces carried out more than 495 airstrikes, reportedly killing 800 to 900 IS fighters.¹⁴² According to the United Nations, this operation decimated the IS presence in Libya, but a foothold remained.¹⁴³ The perceived success¹⁴⁴ of this operation led the US to laud the template of the Sirte operation for replication elsewhere – whereby 'special operations forces working with indigenous proxies loosely tethered to a recognised political authority [are] backed by precision airstrikes'.¹⁴⁵

Yet this perceived counter-terrorism success came at high cost for Libyans. Airwars have reported that the 2016 US/GNA joint campaign may have killed up to 50 civilians.¹⁴⁶ Similar allegations continued to be levelled against AFRICOM, including during an airstrike against al-Qaeda in the south of Libya in November 2018, which led to local demonstrations

against alleged civilian killings.¹⁴⁷ Although the US has the highest standard of reporting strikes among intervening states in Libya, AFRICOM has not reported any civilian deaths in its operations in Libya.¹⁴⁸ New America have suggested that there 'are reasons to doubt some of the Pentagon's reports of strikes and casualties,' given the steps taken by the Pentagon to conceal the extent of its operations in Libya.¹⁴⁹

Moreover, the Sirte model directly emboldened the local militias and violent groups employed by rival camps. During Operation Odyssey Lightning, coalition forces reportedly supported militias including the Misrata Brigades, a group admonished in the 2012 report of the International Commission of Inquiry on Libya for attacks against civilians, and possible crimes against humanity.¹⁵⁰ Collaboration with groups like these sent a clear message to Libyans: counter-terrorism is essential, whereas human rights are optional. For many analysts, the empowerment of militias – including those implicated in gross human rights violations and serious international crimes – is not just an unintended consequence of the counter-terrorism campaign but an integral part of its design.¹⁵¹

In addition, the switch in focus towards counter-terrorism gave many intervening states in Libya the cover to prioritise security partnerships, regardless of the toxic behaviour of the partners in question, or the likely impact of their empowerment in entrenching abuses, political divisions and conflict in the country. France in particular has adopted a regressive view that 'strongmen' like General Haftar are the only solution to counter the emergence of violent groups using terror tactics.¹⁵² When considered in concert with the willingness of Macron's government to partner with General Sisi in Egypt and the regime in UAE, the support for General Haftar should be seen as part of a wider trend. For France, and its major security investments across the north and west of Africa, preventing violent groups and mass migration is the number one security priority, and if it comes at the cost of human rights and democracy then, as one senior French

138 Wehrey, 2020, op. cit.

139 Ibid.

140 The command responsible for US military operations in Africa.

See: <https://www.africom.mil/about-the-command>

141 US Department of Defense, 'Department of Defense Press Briefing by Pentagon Press Secretary Peter Cook in the Pentagon Briefing Room', 1 August 2016, available at: <https://www.defense.gov/Newsroom/Transcripts/Transcript/Article/882676/departement-of-defense-press-briefing-by-pentagon-press-secretary-peter-cook-in/>

142 AFRICOM, 'United States Africa Command 2017 Posture Statement', 2017, available at: <https://www.africom.mil/document/28720/africom-2017-posture-satement>

143 In the months following Operation Odyssey Lightning, the UN estimated the number of the IS fighters in Libya, could range from several hundred to as many as 3,000. UNSC, 'Fourth report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat' UN Doc S/2017/97, 2 February 2017, available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2017_97.pdf

144 AFRICOM, op. cit.

145 Wehrey, 2020, op. cit.

146 Airwars, 'Incident LC052', 5 December 2016, available at: <https://airwars.org/civilian-casualties/lc052-december-5-2016/>

147 Airwars, 'US strike kills up to eleven civilians in Libya's south, locals say', 5 December 2018, available at: <https://airwars.org/news-and-investigations/us-strike-kills-up-to-eleven-civilians-in-libyas-south-locals-say/>

148 New America, 'The U.S. Counterterrorism War and Libya' available at: <https://www.newamerica.org/international-security/reports/airstrikes-and-civilian-casualties-libya/the-us-counterterrorism-war-and-libya/>

149 Ibid.

150 UN Human Rights Council, 'Report of the International Commission of Inquiry on Libya', UN Doc A/HRC/19/68, 8 March 2012, available at: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.68.pdf>

151 Elham Saudi, Thomas Ebbs and Riad Alakar, 'The US is Focusing on Counterterrorism in Libya, at Human Rights' Expense', Just Security, 21 March 2018, available at: <https://www.justsecurity.org/54152/counterterrorism-expense-human-rights-libya/>

152 Paul Taylor, 'France's double game in Libya', Politico, 17 April 2019, available at: <https://www.politico.eu/article/frances-double-game-in-libya-nato-un-khalifa-haftar/>

official reportedly quipped, ‘*tant pis* [too bad]’.¹⁵³ Indeed, deliberate efforts taken by France to legitimise Haftar over the past few years,¹⁵⁴ despite his atrocious human rights record,¹⁵⁵ have undermined any calls for accountability.

The US under Trump flirted with a similar position. Notably in 2018, during an official phone call President Trump told Haftar, that he appreciated Haftar’s “significant role in fighting terrorism”.¹⁵⁶ This was understood by many observers to be an ‘endorsement’ of both his campaign and the conduct of the forces under his command.¹⁵⁷

Ultimately, the short-term prioritisation of counter-terrorism goals has created a deep paradox in Libya. Isolated counter-terrorism efforts to remove IS from its strongholds, unmatched by adequate diplomatic, governance, and peace-building investment, have done little to resolve the fundamental political problems facing Libya and the instability and state weaknesses that allowed violent groups using terror tactics to proliferate. In turn, support for abusive militias or individuals such as Haftar risks fuelling resentment, increasing instability, and providing fertile ground for violent groups and further conflict in Libya.

In August 2020, UN reports suggested that IS retained only a few hundred fighters in Libya.¹⁵⁸ By August 2021, most of these fighters were reported to have left the country to

the Sahel region.¹⁵⁹ Nonetheless, France, Egypt and the UAE continue to frame their support and interventions in Libya as a ‘war on terrorism’.¹⁶⁰ The US is still involved with counter-terrorism cooperation within the country, conducting airstrikes and special operations raids against suspected violent groups in cities like Sirte and generally in south Libya.¹⁶¹ However, in a promising move, Biden’s administration has been reviewing the use of lethal strikes outside recognised battlefields,¹⁶² including through the use of drones, which has so far resulted in a reduction in drone attacks in Libya.¹⁶³

This could be an opportunity for the US to initiate a shift from a war-based approach to a diplomacy-centred one rooted in human rights, justice and peace-building, which should be widely followed.¹⁶⁴ As long as international actors continue to use a threat narrative while ignoring other important drivers of violence and human rights abuses, counter-terrorism will continue to be conducted at the cost of Libyan lives and freedoms. The long-term impact of empowering abusive militia groups to seek short-term military gains is still playing out, with the risk of fuelling further conflict and opportunities for violent groups using terror tactics to expand.

CONTAINING MIGRATION AT ALL COSTS

In addition to counter-terrorism, migration has become a critical priority for Western states in the last decade. Europe’s engagement in Libya has been shaped by an escalating obsession with reducing and restricting the arrival of people from Africa and the Middle East to European shores. Rather than comprehensively addressing Libya’s governance and conflict challenges, the EU and its member states have attempted to deal with ‘the repercussions that this crisis has

153 Ibid.

154 See ‘*unilateralism does not build a lasting peace*’ under section 5 of this report.

155 Human Rights Watch, ‘*Libya: Apparent War Crimes in Tripoli*’, 16 June 2020, available at: <https://www.hrw.org/news/2020/06/16/libya-apparent-war-crimes-tripoli>

156 David D. Kirkpatrick ‘*Trump Endorses an Aspiring Libyan Strongman, Reversing Policy*’ The New York Times, 19 April 2019, available at: <https://www.nytimes.com/2019/04/19/world/middleeast/trump-libya-khalifa-hifter.html>

157 Samer Al-Atrush, ‘*Trump has a new favorite strongman in Khalifa Haftar*’ Bloomberg, 3 May 2019, available at: <https://www.bloomberg.com/news/articles/2019-05-03/trump-backed-libyan-strongman-haftar-holds-out-for-regime-change>

158 UN Security Council, ‘*Eleventh report of the Secretary-General on the threat posed by ISIL (Daesh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat*’ UN Doc S/2020/774, 4 August 2020, available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2020_774.pdf. The UN also notes that ‘the ongoing conflict in Libya and the risk of escalation might create new opportunities for ISIL to expand its activity. After a period of relative quiet between February and April 2020, ISIL in Libya launched a number of attacks against local military and security forces in the Sabha and Fazzan regions. The group is concentrated mostly in the south, where it exploits tensions between Arabs and other ethnic groups for recruitment and raises funds through extortion and kidnapping for ransom. It is also assessed to retain dormant cells in the coastal cities.’

159 UN Security Council, ‘*Thirteenth report of the Secretary-General on the threat posed by ISIL (Daesh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat*’ UN Doc S/2021/682, 27 July 2021, available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2021_682_e.pdf

160 Bruno Stagno Ugarte, ‘*Macron’s Selective Indignation over Libya*’ HRW, 17 July 2020, available at: <https://www.hrw.org/news/2020/07/17/macrons-selective-indignation-over-libya>

161 US Department of State, ‘*Country Reports on Terrorism 2019: Libya*’ available at: <https://www.state.gov/reports/country-reports-on-terrorism-2019/libya/>

162 Charlie Savage and Eric Schmitt, ‘*Biden Secretly Limits Counterterrorism Drone Strikes Away From War Zones*’ The New York Times, 3 March 2021, available at: <https://www.nytimes.com/2021/03/03/us/politics/biden-drones.html>

163 Michael Hirsh, ‘*Why U.S. Drone Strikes Are at an All-Time Low*’ Foreign Policy, 1 July 2021, available at: <https://foreignpolicy.com/2021/07/01/us-drone-strikes-all-time-low-biden-forever-wars/>

164 ACLU, ‘*110+ groups’ letter to president Biden calling for an end to the U.S. program of lethal strikes abroad*’ 30 June 2021, available at: <https://www.aclu.org/letter/110-groups-letter-president-biden-calling-end-us-program-lethal-strikes-abroad>

in Europe, namely in terms of terrorism and migration, as one official put it.¹⁶⁵ This has resulted in disastrous consequences for stability, human rights and accountability in Libya.¹⁶⁶

Libya has long been a destination country for sub-Saharan migrants looking for work, as well as refugees and asylum seekers escaping conflicts and insecurity. After 2011, conflicts and rising insecurity in Libya have forced migrants, refugees and asylum seekers to seek safety across the Mediterranean.¹⁶⁷ The consequences for the rights and welfare of migrants, refugees and asylum seekers have been catastrophic, while efforts to externalise border controls, migration management and containment have also stoked conflict and the political economies driving instability. Libyan institution building and overall security priorities such as combatting fuel smuggling, illegal fishing and currency abuse, have all been overlooked in favour of a focused counter-migration policy by European states.

In the 1990s and early 2000s, European migration controls in North Africa were largely bilateral, including Italy's engagement with Libya.¹⁶⁸ As the escalation of conflict in 2014 drove more people to flee Libya and try and enter Europe, by 2015 this had become a key EU policy concern. European responses in Libya led by Italy and the EU have included naval patrols and assistance and training to the Libyan Coast Guard (LCG). EU cooperation with Libyan authorities started with the launch of the EU Border Assistance Mission in Libya in 2013, with the

goal of supporting Libyan authorities in improving and developing the security of the country's borders.¹⁶⁹

Operation Sophia, formerly EU NAVFOR MED, was an EU military operation aiming to 'dismantle the smuggling and trafficking routes' but focused greatly on training, financing and equipping the LCG. In 2020 it was succeeded by 'IRINI', which continues airborne surveillance of the Mediterranean, but with search and rescue operations now to the responsibility of the LCG. Despite being officially tasked with implementing the arms embargo at sea, IRINI has the 'secondary task' of continuing to train the LCG,¹⁷⁰ highlighting the EU's focus on containing migration even within operations ostensibly aimed at supporting peace and accountability efforts. Moreover, Operation Sophia and IRINI surveillance at sea is deliberately conducted mainly with aircrafts, not ships, in order to ensure that European actors are not put in a position where they may be under an obligation to rescue migrants at sea – a task that shifted to the LCG following the Libyan declaration of its own Search and Rescue zone in 2017.

A new EU pact on migration and asylum has been designed to help share responsibilities across Europe but will likely perpetuate the same approach in countries like Libya, with a focus on controlling migration beyond EU borders via security cooperation.¹⁷¹ With demands for even more support from the LCG, the EU is also considering providing more equipment through the controversial 'European Peace Facility',¹⁷² Funding also comes from the EU Trust Fund for Africa (EUTF), of which Libya is the second-largest recipient after Somalia. Much of the funding goes to either supporting the LCG or addressing the conditions in which migrants, refugees and asylum seekers are arbitrarily and indefinitely detained.¹⁷³

165 Anderson and Keen, op. cit., p. 29

166 This report only provides a brief overview of the complex impact of European counter-migration interventions on the human rights of migrants, refugees and asylum seekers as well as the Libyan conflict. Both LFJL and Saferworld have extensively researched and worked on these issues, and continue to do so. For a more comprehensive analysis see for example: LFJL and others, 'EU: Time to Review and Remedy Cooperation Policies Facilitating Abuse of Refugees and Migrants in Libya', NGO statement, 28 April 2020, available at: <https://www.libyanjustice.org/news/eu-time-to-review-and-remedy-cooperation-policies-facilitating-abuse-of-refugees-and-migrants-in-libya>; Ruben Anderson and David Keen, 'Partners in crime? The impacts of Europe's outsourced migration controls on peace, stability and rights', Saferworld, July 2019, available at: <https://www.saferworld.org.uk/resources/publications/1217-partners-in-crime-the-impacts-of-europeas-outsourced-migration-controls-on-peace-stability-and-rights>; Marwa Mohamed, 'Unpacking Libya's Migration Narrative' in Hassen Boubakri (ed.), *Migration in North Africa: An Uncomfortable Position Between Sub-Saharan Africa and Europe?* Konrad Adenauer Stiftung, 2021, pp. 51–64, available at: <https://www.kas.de/documents/282499/282548/Migration+in+North+Africa+-+KAS+PolDiMed+Study.pdf/a6f89474-078a-80f6-0230-75fcaddf341?t=1623168963317>

167 Ibid.

168 This included a 'Friendship Agreement' signed by President Gaddafi and Silvio Berlusconi in 2008. The agreement's provisions on 'pushing back' migrants heading for Italy was later found to be in violation of Article 3 of the European Convention on Human Rights and Fundamental Freedoms. See: BBC (2008), 'Italy seals Libya colonial deal', 30 August 2008, available at: <http://news.bbc.co.uk/1/hi/world/europe/7589557.stm>; Hirsi Jamaa and Others v. Italy, European Court of Human Rights (2012).

169 EU External Action Service, 'About EU Border Assistance Mission in Libya (EUBAM)', 20 June 2016, available at: https://eeas.europa.eu/csdp-missions-operations/eubam-libya/3859/about-eu-border-assistance-mission-libya-eubam_en

170 As described by the operation's official website, available at: <https://www.operationirini.eu/about-us/>

171 European council on Refugees and Exiles, 'Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded', 6 October 2020 <https://ecre.eu/the-pact-on-migration-and-asylum-to-provide-a-fresh-start-and-avoid-past-mistakes-risky-elements-need-to-be-addressed-and-positive-aspects-need-to-be-expanded/> Louisa Waugh, 'Navigating new waters: why the EU's new migration pact has to change the tide', Saferworld, 7 September 2020, available at: <https://www.saferworld.org.uk/resources/news-and-analysis/post/902-navigating-new-waters-why-the-euas-new-migration-pact-has-to-change-the-tide>

172 Nikolaj Nielsen, 'EU mulls using new 'peace' fund to help Libyan coast guard', EU Observer, 7 May 2021, available at: <https://euobserver.com/migration/151727>

173 Tuuli Raty, Raphael Shilhav, 'The EU Trust Fund for Africa Trapped between aid policy and migration politics' Oxfam Briefing Paper, January 2020, pp. 23–4, available at: <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620936/bp-eu-trust-fund-africa-migration-politics-300120-en.pdf>

These EU mechanisms complement bilateral cooperation between Libya and EU member states. Italy in particular solidified its long-standing collaboration with Libya through a 2017 MoU with the GNA, which shifted counter-migration efforts further to the LCG while ignoring the principle of non-refoulement and the fundamental right to asylum that Libya does not uphold.¹⁷⁴ The MoU was endorsed by the EU in the Malta Declaration,¹⁷⁵ and renewed for a three-year period in February 2020.¹⁷⁶ Civil society organisations (CSOs), journalists and international organisations have documented violence, exploitation, and ongoing crimes of enslavement, persecution, sexual violence and other human rights violations throughout migration routes from sub-Saharan Africa to Libya and on to Europe at such a scale that they may amount to crimes against humanity.¹⁷⁷ Rescue operations have further been severely hindered by southern European governments having harassed and curtailed the ability of nongovernmental organisations (NGOs) to carry out search and rescues for those who run into difficulty in the Mediterranean.¹⁷⁸

International shipping vessels that rescue migrants at sea have been instructed by the Italian maritime rescue coordination centre to land in Libya, where migrants and refugees have been violently removed from the vessels, in clear violation of the international law of the seas and the obligation to deliver rescues to a place of safety.¹⁷⁹ Meanwhile the LCG frequently forcibly returns migrants, refugees and asylum seekers intercepted at sea to Libya.¹⁸⁰ Following disembarkation in

Libya, tens of thousands of women, men and children have been transferred to detention centres run by the Department for Combatting Illegal Migration (DCIM), only nominally under the control of the Libyan Ministry of Interior. There people are detained arbitrarily for an indeterminate period of time, and inhumane conditions and overcrowding are accompanied by the prevalence of torture and other ill-treatment. Migrants, refugees and asylum seekers are also detained in unofficial detention centres, controlled by a range of armed groups, militias and state and non-state actors as part of trafficking networks. Cases of beatings, sexual violence, unlawful killings, and deaths in custody due to inadequate medical treatment or lack of adequate food, have been widely documented both in official and unofficial places of detention.¹⁸¹ Equally widespread is the torture, enslavement and exploitation of migrants, refugees and asylum seekers through forced labour and the extortion of their relatives in exchange for their freedom.¹⁸²

The EU's counter-migration focus and collusion with the LCG is not only disastrous for the rights of migrants, refugees and asylum seekers but also feeds instability in Libya and in the wider region in several ways.

Firstly, the impact of counter-migration on instability in Libya is reflected in how opportunities to address Libyan security needs are ignored in favour of counter-migration measures. In 2017, the Italian secret services reportedly circumvented the Libyan central authorities and brought several Libyan tribal leaders from the south to Rome for talks overtly aimed at addressing peace, but ultimately focused on securing their support for stopping the movement of people across Libya's southern border.¹⁸³ In other parts of Libya, policing issues of greater relevance to Libyans than counter-migration, including fuel smuggling, illegal fishing and currency abuse, have been ignored in international support.¹⁸⁴

174 Under the MoU, Italy provides training to the Libyan LCG to intercept migrants at sea, whose treatment upon their return to Libya is to be the responsibility of Libyan authorities. Although the MoU includes some humanitarian cooperation, such as support to ensure the healthcare of migrants, it does not include key human rights guarantees. In particular, the MoU is silent on Italy's obligation to provide access to asylum, given that Libya lacks a legal framework and a system for asylum. See: LFJL, 'LFJL concerned that the latest Memorandum of Understanding between Libya and Italy on Border Security Fails to Protect Migrants,' 7 February 2017, available at: <https://www.libyanjustice.org/news/267-lfjl-concerned-that-the-latest-memorandum-of-understanding-between-libya-and-italy-on-border-security-fails-to-protect-migrants>

175 European Council, 'Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route', 3 February 2017, available at: <https://www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration/>

176 Full text of the Memorandum available at: <https://www.asgi.it/wp-content/uploads/2017/02/ITALY-LIBYA-MEMORANDUM-02.02.2017.pdf>

177 See: LFJL, FIDH, and ECCHR, op. cit.

178 Judith Sunderland, Hanan Salah, 'No Escape from hell, EU Policies Contribute to Abuse of Migrants in Libya' HRW, 2019, pp. 24–5, available at: https://www.hrw.org/sites/default/files/report_pdf/eu0119_web2.pdf

179 See for example the 2018 forced disembarkation of 81 refugees and migrants from a Panamanian-flagged cargo ship to the port of Misrata: MSF, 'Over 80 refugees and migrants forcibly disembarked in Misrata after 10-day standoff', 23 November 2018, available at: <https://www.msf.org/forced-disembarkation-81-refugees-and-migrants-misrata-libya>

180 Euromed Rights, 'Migrants and Refugees in Libya 21/06/2021-05/07/2021', 2021, available at: <https://euromedrights.org/migrants-and-refugees-in-libya/#:~:text=IOM%20Libya%20reported%20that%20between,back%20to%20Libya%20in%202020>

181 LFJL, FIDH, and ECCHR, op. cit.; Amnesty International, 'Libya: New evidence shows refugees and migrants trapped in horrific cycle of abuses', 24 September 2020, available at: <https://www.amnesty.org/en/latest/news/2020/09/libya-new-evidence-shows-refugees-and-migrants-trapped-in-horrific-cycle-of-abuses/>; Rana Jawad, 'Migrant crisis: Self-immolation exposes UN failures in Libya' BBC News, 31 July 2019, available at: <https://www.bbc.co.uk/news/world-africa-49154959>

182 LFJL, FIDH, and ECCHR, op. cit. See also: Arezo Malakooti, 'The Political Economy of Migrant Detention in Libya: Understanding the players and the business models', Global Initiative Against Transnational Organised Crime, April 2019, available at: <https://globalinitiative.net/wp-content/uploads/2019/11/Final-Report-Detention-Libya.pdf>

183 Lorenzo D'Agostino, 'Italy's Failed Migration Fix Has Led to Chaos in Libya', Foreign Policy, 29 January 2021, available at: <https://foreignpolicy.com/2020/01/29/italy-failed-migration-fix-capitano-ultimo-gentiloni-mogherini-chaos-libya/>

184 Mark Micallef and Tuesday Reitano, 'The anti-human smuggling business and Libya's political end game', Institute for Strategic Studies and Global Initiative against Transnational Organized Crime, December 2017, p. 18, available at: https://globalinitiative.net/wp-content/uploads/2018/01/Libya_ISS_Smuggling.pdf

Secondly, European political support and security assistance for counter-migration creates a system that empowers abusive Libyan forces. Libyan governments, security forces and armed groups are acutely aware of the EU's strategy to halt migration and have engaged in 'double gaming', simultaneously facilitating smuggling and trafficking while presenting themselves as the only option for halting it.¹⁸⁵ Since the fall of Gaddafi, consecutive Libyan governments have leveraged the 'threat' of migrants heading across the Mediterranean in order to gain international credibility and support.¹⁸⁶ Militias have also sought to 'launder' their international reputations and seek legitimacy through leveraging their services by engaging in counter-migration, even where they have simultaneously engaged in trafficking themselves.

The potential destabilising effect of European counter-migration strategies is exemplified by the development of trafficking and anti-smuggling activities in Sabratha, which became a key smuggling and trafficking hub in 2015. In July 2017, one of the main militias controlling illicit activities in the region struck a deal with Tripoli authorities under Italian pressure to desist from human trafficking operations.¹⁸⁷ As a result, not only did departures not cease, but the deal fuelled deadly clashes between opposing militias, and fighting over control of what had become key counter-smuggling hubs.¹⁸⁸

Al Zawya LCG commander Abd al-Rahman Milad (known as Bija) provides a further example. In 2018, he was added to the list of those sanctioned by the UNSC for his involvement in trafficking and the 'sinking of migrants' boats using firearms.¹⁸⁹ He was previously trained in an EU-funded programme which saw him participating in a meeting on migration issues in Catania, Italy, in 2017,¹⁹⁰ despite existing evidence of his involvement in trafficking activities.¹⁹¹ Bija was later detained for six months only to be released in April 2021 as, according to Tripoli's attorney general, the charges against him had to be

dropped due to a 'lack of evidence' against him.¹⁹² However, observers have read his release as part of a 'package' to appease militias in the west and ensure their support for the GNU.¹⁹³

EMPOWERING MILITIAS AND ARMED GROUPS

Foreign involvement in Libya's conflict is one of the factors that has facilitated the development of militias and armed groups that have emerged since 2011. Firstly, with the growing involvement of foreign actors in Libya's conflicts, particularly since 2014, some militias and armed groups have received foreign support, whether military, financial or political. For example, Tripoli-based militias have become increasingly dependent on Turkish-supplied forces,¹⁹⁴ while LAAF's affiliated groups received military assistance from the UAE, as well as alleged financial support.¹⁹⁵ Secondly, militias and armed groups have benefited from the cooperation established by foreign states for both counter-terrorism and anti-trafficking efforts. For example, both in the west and in the south of Libya, some armed groups have tried to position themselves as potential anti-smuggling partners for the EU to access funding, while often still engaging in smuggling and trafficking activities.¹⁹⁶ Militias affiliated with successive governments have also indirectly benefited from foreign support channelled to the Libyan state, which has provided some of them with official functions and salaries, while they continue to act with *de facto* autonomy, and with little accountability to the state institutions with which they are affiliated.¹⁹⁷

The empowerment of militias and armed groups enables the continuing fragmentation of Libya's security sector – a key barrier to Libya's long-term stability. Indeed, as a major beneficiary of the war economy, militias and armed groups

185 Anderson and Keen, op. cit., p. 48.

186 Ibid. p. 28; Alex Crawford, 'Libya: UN-backed PM says 800,000 migrants could reach Europe amid instability' 16 April 2019, available at: <https://news.sky.com/story/libya-un-backed-pm-says-800-000-migrants-could-reach-europe-amid-instability-11694971>

187 Aidan Lewis and Ulf Laessing, 'Migrant flows slow to trickle in Libyan former smuggling hub', Reuters, 27 November 2018, Migrant flows slow to trickle in Libyan former smuggling hub | Reuters

188 Mark Micallef and Tuesday Reitano, 'The anti-human smuggling business and Libya's political end game' The Global Initiative Against Transnational Organised Crime, 2017, p. 18, available at: https://globalinitiative.net/wp-content/uploads/2018/01/Libya_ISS_Smuggling.pdf

189 UN Security Council, 'Security Council Committee concerning Libya Adds Six Individuals to Its Sanctions List', UN Doc SC/13371, 7 June 2018, available at: <https://www.un.org/press/en/2018/sc13371.doc.htm>

190 Lorenzo Tondo, 'Human trafficker was at meeting in Italy to discuss Libya migration' The Guardian, 4 October 2019, available at: <https://www.theguardian.com/world/2019/oct/04/human-trafficker-at-meeting-italy-libya-migration-abd-al-rahman-milad>

191 Although he was subjected to UN sanctions only in 2021, the 2017 PoE report had already revealed Bija's involvement in trafficking networks and human rights violations.

192 Lorenzo Tondo, 'Libya releases man described as one of world's most wanted human traffickers', The Guardian, 13 April 2021, available at: <https://www.theguardian.com/world/2021/apr/13/libya-releases-most-wanted-human-trafficker-bija>

193 Francesca Mannocchi, 'Cosa ci racconta della Libia di oggi la scarcerazione del trafficante Bija', L'Espresso, 13 April 2021, available at: https://espresso.repubblica.it/mondo/2021/04/13/news/cosa_ci_racconta_della_libia_di_oggi_la_scarcerazione_del_trafficante_bija-296262712/ [own translation]; and Lorenzo Tondo, 'Libya releases man described as one of world's most wanted human trafficker' The Guardian, 13 April 2021, available at: <https://www.theguardian.com/world/2021/apr/13/libya-releases-most-wanted-human-trafficker-bija>

194 Tim Eaton, Abdul Rahman Alageli, Emadeddin Badi, Mohamed Eljarh and Valerie Stocker, 'The Development of Libyan Armed Groups Since 2014: Community Dynamics and Economic Interests', Chatham House, March 2020, p. 7, available at: <https://www.chathamhouse.org/sites/default/files/CHHJ8001-Libya-RP-WEB-200316.pdf>

195 Ibid.

196 Ibid.

197 Militias and armed groups have complex revenue-generating models, which in certain cases include access to state salaries through affiliation with official authorities. For more information see: Eaton et al, op. cit. pp. 11–14.

generally have an interest in state weakness.¹⁹⁸ As violent groups continue to be empowered by their international sponsors, the daily life of many Libyans is marked by the arbitrariness of their rule: frequent checkpoints, arrests, enforced disappearances and the constant threat of violence.¹⁹⁹ Faced by a 50% unemployment rate,²⁰⁰ young people have also been greatly affected by the empowerment of armed groups and militias, which have managed to attract Libya's youth by providing them with an income as well as a sense of purpose.²⁰¹ Expressing the frustration at the continuing empowerment of militias and armed groups through foreign support, a youth activist from Tripoli stated:

“Political and military foreign intervention is based on their own country politics – and it should stop. Stopping the support [which foreign actors] provide to parties in the conflict will mean drying up their resources, and they will be[come] less powerful.”²⁰²

The power enjoyed by militias and armed groups also majorly impacts the lives of women.²⁰³ As a result of conflict, instability, and the presence of militias and armed groups, some women have faced threats to their physical security, as well as limitations to their mobility and ability to travel and work.²⁰⁴ This is particularly the case in conflict zones controlled by forces that are unknown to local communities.²⁰⁵ Even in areas of relative stability, women have experienced the arbitrary imposition of limitations to their freedoms in general, and freedom of expression in particular.²⁰⁶

The discovery of mass graves in the city of Tarhuna in mid-2020 offered a glimpse of the bleak reality of life under the control of violent militias, who have been directly and indirectly empowered by international actors. Located to the southeast of Tripoli, Tarhuna was controlled by the al-Kaniyat militia, led by seven brothers, which had established a semi-

sovereign system of rule.²⁰⁷ The al-Kaniyat ruled over Tarhuna between 2015 and June 2020, a period in which more than 300 people were reported missing.²⁰⁸ In a ‘rule by murder’ fashion, the victims were abducted, tortured, disappeared, and killed because of their real or perceived opposition to the militia, or as part of a complex pattern of local revenge killings.²⁰⁹ Since the discovery of the first mass graves, new ones continue to be found, and the number of bodies exhumed continues to rise.²¹⁰ These included several women and children, and many remain unidentified.

While being intermittently affiliated with the GNA in previous years,²¹¹ the al-Kaniyat joined Haftar during his attack on Tripoli in 2019. Tarhuna thus became a launchpad towards Tripoli, and the base of thousands of mercenaries from Russia and elsewhere supporting the LAAF.²¹² Civilian killings significantly increased after April 2019, when maintaining control of the territory was vital both for the al-Kaniyat's survival and the wider military operations by Haftar and his supporters.²¹³ This shows how foreign interference in Libya not only empowers violent militias, but also directly impacts on conflict dynamics and dramatically escalates violence.

After Turkish-backed GNA forces entered Tarhuna, the al-Kaniyat leadership sought refuge in eastern Libya, where they evaded accountability. In July 2021, Mohammed al-Kani, one of the leaders of the al-Kaniyat, was reportedly killed in Benghazi,²¹⁴ leaving a further gap in the potential for accountability and truth for crimes committed in Tarhuna.

207 Jalel Harchaoui, ‘Tarhuna, mass graves, and Libya’s internationalised civil war,’ 30 July 2020, available at: <https://warontherocks.com/2020/07/tarhuna-mass-graves-and-libyas-internationalized-civil-war/>

208 Human Rights Watch, ‘Libya: Militia Terrorized Town, Leaving Mass Graves,’ 7 January 2021, available at: <https://www.hrw.org/news/2021/01/07/libya-militia-terrorized-town-leaving-mass-graves>

209 Ibid.

210 More than 120 bodies had been exhumed by January 2021, and the discovery of new mass graves continues to add to the toll. See for example: Rabia Golden, ‘New mass grave discovered in Tarhuna’ The Libya Observer, 16 June 2021, available at: <https://www.libyaobserver.ly/inbrief/new-mass-grave-discovered-tarhuna>; Daily Sabah, ‘25 more bodies discovered in Libyan mass graves,’ 13 October 2021, available at: <https://www.dailysabah.com/world/africa/25-more-bodies-discovered-in-libyan-mass-graves>

211 The al-Kaniyat militia, also known as 7th brigade, was reportedly operating under the banner of the GNA until it launched an attack on Tripoli in August 2018 against militias nominally affiliated with the GNA. See: Hilary Matfess, ‘Targeting Tripoli: Newly Active Militias Targeting Capital in 2018’ ACLED, 6 September 2018, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/acledata.com-Targeting%20Tripoli%20Newly%20Active%20Militias%20Targeting%20Capital%20in%202018.pdf>

212 Harchaoui, op. cit.

213 Ibid.

214 Middle East Eye, ‘Libya militia leader Mohammed al-Kani reported killed,’ 27 July 2021, available at: <https://www.middleeasteye.net/news/libya-mohammed-kani-militia-leader-reported-killed>

198 Ibid.

199 Cordaid, op. cit.

200 The World Bank, ‘Libya - Unemployment, youth total (% of total labor force ages 15-24),’ available at: <https://data.worldbank.org/indicator/SL.UEM.1524.ZS?locations=LY>

201 Herve Pugi, ‘Libya: Young fighters on the front against Haftar in the Battle of Tripoli,’ The Africa Report, 17 July 2019, <https://www.theafricareport.com/15435/libya-young-fighters-on-the-front-against-haftar-in-the-battle-of-tripoli/>

202 LFJL interview conducted between October 2020 and January 2021.

203 Khadeja Ramali and Tim Eaton, ‘How Women are Dealing with Libya’s Ever-Present Armed Groups’ Chatham House, 2019, available at: <https://www.chathamhouse.org/2020/06/how-women-are-dealing-libyas-ever-present-armed-groups>

204 Ibid.

205 Ibid.

206 Ibid.

4. A DECADE OF IMPUNITY

In this decade of instability and conflict, often fed by foreign interference, Libya has been marked by widespread gross human rights violations and serious international crimes, including enforced disappearance, torture and ill-treatment, arbitrary arrest and detention, unlawful killing, forced labour, trafficking, and indiscriminate attacks on civilians and civilian objects. These crimes, in several instances, could amount to war crimes and crimes against humanity. They are committed by both state and non-state actors, between whom it is often difficult to draw a clear distinction. Foreign states intervening in the conflict could also be responsible for a series of crimes and violations.²¹⁵

Those who have been subjected to widespread violence and abuse before and after 2011 have been demanding justice for the harm they have suffered. In Tarhuna, for example, burials of exhumed bodies that have been identified are often accompanied by protests asking for perpetrators to be brought to justice.²¹⁶ These are not isolated demands. A 2020/2021 LFJL study with more than 350 individuals from different demographics across Libya, titled the Perceptions of Justice Survey, found that victims see prosecuting perpetrators as crucial for delivering justice for their suffering.²¹⁷ An overwhelming 91% of respondents called for accountability through criminal prosecutions and trials, and nearly all respondents objected to amnesties for serious international crimes committed by those in positions of authority.²¹⁸ Reparations were also considered of significant importance, including compensation and the provision of psychosocial and material support to affected communities.²¹⁹ Respondents expressed very low support for achieving justice for serious international crimes through community mechanisms, which many (particularly women and minorities) considered non-inclusive.²²⁰

As violent conflict, state weakness and the collapse of the criminal justice system impede access to justice within Libya, international actors have become increasingly important to ensure accountability for crimes committed in Libya. Justice, and particularly criminal justice, was a central feature in the international response to the Libyan crisis in 2011, when the UNSC garnered unprecedented momentum for a referral of the situation in Libya to the ICC. However, successive international efforts towards accountability are yet to result in perpetrators being brought to justice or the payment of reparations to victims. Moreover, international actors seem to have moved away from a focus on justice and accountability.²²¹ Perpetrators of gross human rights violations and serious international crimes have not only been emboldened by their international sponsorship, but also by rampant impunity. In turn, affected communities feel increasingly abandoned, nurturing feelings of stark disappointment, hopelessness and despair.²²² Expressing a growing frustration with the international response to the situation in Libya, a local government representative in Tarhuna stated:

“To the international community I would say: In 2011 you acted during the revolution; where are you now while crimes are happening in Libya? If there is an international community that is ethical and cares about its obligation, it should not leave Libya after bombing it. Now they are just watching.”²²³

IMPUNITY WITHIN LIBYA

Within Libya, victims lack adequate domestic remedies and the criminal justice system is currently unable to hold perpetrators to account. The Libyan legal framework presents major gaps in relation to international human rights, and criminal and humanitarian law standards. Crimes such as torture, enforced disappearance and slavery are either not defined at all, or not sufficiently defined in line with

215 See section 3 of this report.

216 Sara Creta, ‘A Libyan town reckons with its past horrors and uncertain future’, The New Humanitarian, available at: <https://www.thenewhumanitarian.org/news-feature/2021/2/17/Libyan-town-reckons-with-past-horrors-uncertain-future>

217 The survey was conducted between October and December 2020 with representatives, mostly victims, of 28 communities in 25 different locations across Libya. This was enriched by 35 in-depth detailed interviews with community leaders, victims’ groups representatives, civil society members, academics, lawyers and people supportive of different political views, operating at national and grassroots level in the sampled locations/communities, as well as activists from the Libyan diaspora.

218 LFJLs Perceptions of Justice Survey.

219 Ibid.

220 Ibid. Only 7% of respondents stated that they trusted community mechanisms.

221 Victor Peskin and Mieczyslaw P. Boduszynski, ‘The Rise and Fall of the ICC in Libya and the Politics of International Surrogate Enforcership’ International Journal of Transitional Justice, Volume 10, Issue 2, 18 February 2016, available at: <https://academic.oup.com/ijtj/article-abstract/10/2/272/2356875?redirectedFrom=fulltext>

222 Feelings of frustration and powerlessness among victims were highlighted by different representatives of Libyan CSOs participating in a closed roundtable on accountability in Libya organised by LFJL in June 2021.

223 LFJL interview conducted in December 2020.

international law and standards.²²⁴ Procedural and fair trial guarantees are also insufficient. For example, information extracted through torture can be admitted at trial, in contradiction with international standards.²²⁵ The legal framework governing transitional justice presents additional gaps, including ambiguity regarding its application to non-state actors and the post-2011 period, and the failure to codify crimes under international law adequately.²²⁶ A range of laws adopted since 2012 provide for blanket amnesties for serious international crimes – contrary to international law – seemingly to facilitate transition.²²⁷

Libya's institutional framework is similarly incapable of holding perpetrators to account and providing victims with reparation. A decade of conflict has led to the collapse of the Libyan criminal justice system. Many criminal courts are not functional due to insecurity, and the empowerment of armed groups and militias has led to persistent intimidation and attacks against judicial actors.²²⁸ Some groups and communities face higher barriers to access justice than others, with women, displaced people, and some ethnic minorities being particularly disadvantaged.²²⁹ As explained by a Libyan woman LFJL spoke to as part of its survey, 'anarchy and slander limit access to justice, and being a woman is an added risk'.²³⁰

Since 2011, the few trials that have taken place of individuals accused of human rights violations have been fraught with a lack of respect for international fair trial standards.²³¹ In eastern Libya, justice has become increasingly militarised through the use of military courts to try civilians, in contrast with

international standards.²³² Between 2018 and 2020, more than 20 people have been sentenced to death and hundreds imprisoned by military courts in the east amid arbitrary detention, torture and the total absence of fair trial guarantees.²³³

Some international efforts to foster domestic accountability in Libya have targeted Libyan institutions through international cooperation, often channelled through the UN, including UNSMIL and the UN Development Programme (UNDP).²³⁴ This has included supporting rule of law institutions and building the capacity of the police, judiciary and other criminal justice institutions, including on human rights principles and standards.²³⁵ Libyan authorities have also been the beneficiaries of efforts to strengthen criminal justice systems and reform in the wider region by the UN Office on Drugs and Crime (UNODC).²³⁶ UNODC has further collaborated with the EU on regional efforts to strengthen authorities' capacity in dismantling criminal networks involved in smuggling and trafficking under the framework of the EUTF.²³⁷ The extent to which victim perspectives and human rights principles are effectively mainstreamed in these efforts, however, remains unclear. A 2017 research based on an access to information request revealed that among the training materials used in the EU's trainings to the Libyan LCG, only one power point slide (amounting to 0.5% of the content) was dedicated to human rights-related content.²³⁸

For accountability to become the norm in Libya's future, it is important for international actors to support the development of effective, victim-centred and human rights-based accountability mechanisms within Libya. This includes helping to strengthen the domestic criminal justice system, as well as supporting transitional justice processes that ensure

224 International Commission of Jurists, 'Accountability for Serious Crimes under International Law in Libya: An Assessment of the Criminal Justice System' July 2019, available at: <https://www.icj.org/wp-content/uploads/2019/07/Libya-Accountability-serious-crimes-Publications-Reports-Thematic-reports-2019-ENG.pdf>

225 Ibid, pp. 87–88.

226 For an in-depth analysis of Libya's transitional justice framework see: International Commission of Jurists, 'Impunity No More A Roadmap to Strengthening Transitional Justice in Libya', July 2020, available at: <https://www.icj.org/wp-content/uploads/2020/07/Libya-Transitional-justice-Publications-Reports-thematic-report-2020-ENG.pdf> and Azza Maghur and Salah Al Marghani, 'Transitional justice evolutions, challenges and way forward in Libya', American Bar Association, February 2021.

227 For example, Law n.38 of 2012, adopted by the NTC, exempted 'revolutionaries' (al-thuwar) from any 'military or security or civil measures exercised by them for the purpose of the success of the revolution or its protection'.

228 International Commission of Jurists, op. cit.

229 80% of respondents to a survey conducted by LFJL among victims of human rights violations between January and April 2021 stated that they believe certain groups have less access to justice than others. See: LFJL, 'Victims' Voices: The Libyan Political Dialogue Forum', 28 July 2021, p. 10, available at: <https://www.libyanjustice.org/news/victims-voices-the-libyan-political-dialogue-forum>

230 Interview conducted as part of LFJL's Perceptions of Justice Survey.

231 International Commission of Jurists, op. cit.

232 UN General Assembly, 'Report of the Special Rapporteur on the independence of judges and lawyers', UN Doc A/68/285, 7 August 2013, available at: <https://undocs.org/pdf?symbol=en/A/68/285>

233 Amnesty International, 'Libya: Military courts sentence hundreds of civilians in sham, torture-tainted trials' 26 April 2021, available at: <https://www.amnesty.org/en/latest/news/2021/04/libya-military-courts-sentence-hundreds-of-civilians-in-sham-torture-tainted-trials/>

234 The list of UNDP projects in Libya is available at: <https://www.ly.undp.org/content/libya/en/home/projects.html>

235 See for example the 'UNSMIL/UNDP Policing and Security Joint Programme' which was implemented between 2017 and 2020 with funding from the US, Germany, The Netherlands, and Italy: <https://www.ly.undp.org/content/libya/en/home/projects/UNSMIL-UNDP-Policing-and-Security-Joint-Programme.html>

236 UNODC, 'Regional Programme for the Arab States (2016-2021)', available at: https://www.unodc.org/documents/middleeastandnorthafrica/Regional-Programme-doc/Regional_Programme_for_the_Arab_States_2016-2021.pdf

237 UNODC, 'Dismantling human trafficking and migrant smuggling criminal networks in North Africa', available at: <https://www.unodc.org/middleeastandnorthafrica/en/project-profiles/EUTF/index.html>

238 Access Info, 'Disclosed documents reveal that EU training of Libyan Coast Guard makes negligible reference to human rights protection', 30 November 2017, available at: <https://www.access-info.org/2017-11-30/disclosure-of-documents-used-by-eu-in-trainings-to-libyan-coast-guard-show-negligible-focus-on-protection-of-human-rights/>

accountability, truth and reparations for victims. In the absence of an adequate legal framework, functioning law enforcement and judicial authorities, perpetrators continue to enjoy impunity, while victims have no opportunity to access and obtain reparation. As Libyan human rights defenders put it:

*“Survivors and victims have lost all trust in local courts – they are desperate.”*²³⁹

*“I feel ashamed and helpless every day because I am a legal professional but I cannot achieve justice for my mother and my brothers [who were subject to human rights violations].”*²⁴⁰

IMPUNITY OUTSIDE LIBYA

While it is crucial for international actors to continue and step-up efforts to strengthen accountability mechanisms within Libya, the complex challenges faced by Libya's justice system will not be solved overnight. Foreign states and international bodies thus have a key role to play to deliver justice to victims.

Gross human rights violations and serious international crimes have been thoroughly documented by a wide range of international actors, including international investigative mechanisms, UNSMIL, the UN Panel of Experts (PoE) on Libya, as well as international and local CSOs. In the last decade, the UN Human Rights Council (HRC) has established three investigative mechanisms mandated with documenting human rights violations at different stages of the conflict.²⁴¹ The latest is the FFM on Libya established on 22 June 2020.²⁴² After delays linked to budgetary constraints and the Covid-19 pandemic, the FFM started work in April 2021 to document and preserve evidence of human rights and international humanitarian law violations since 2016, with a view to ensuring that perpetrators are held accountable.²⁴³ On 1 October 2021, the FFM presented its report to the HRC, highlighting a need for additional time and resources.²⁴⁴ On 8 October, the HRC voted to renew the FFM's mandate for an

unprecedented additional nine months,²⁴⁵ which nonetheless severely limits the ability of the investigation to establish individual and state responsibility. These documentation efforts are crucial to contribute to accountability and truth for affected communities. This growing body of information, however, is yet to be used effectively as evidence to bring perpetrators to justice.

The international momentum that led to the UNSC referral of the Libya situation to the ICC in 2011 created a rare opportunity for accountability, but this is yet to bear fruit. While investigations initially proceeded at an unprecedented pace, progress soon slowed down. In ten years, the ICC has issued public arrest warrants against five individuals, but none have been arrested and transferred to the Court.²⁴⁶ An arrest warrant against Muammar Gaddafi was withdrawn following his death, while one against Abdullah al-Senussi, intelligence chief under the Gaddafi regime, was ruled inadmissible by the Court in 2013.²⁴⁷ Egypt never handed over Gaddafi-era security chief Al-Tuhamy Khaled²⁴⁸, wanted by the ICC for alleged war crimes and crimes against humanity. He died in Egypt in February 2021.²⁴⁹

Governments holding bilateral meetings with Haftar equally failed to exert pressure on him to surrender Mahmoud al-Werfalli, a military commander of the LAAF indicted by the ICC in 2017, and again in 2018, to the Court.²⁵⁰ In fact, France, the US and the UK praised²⁵¹ the LAAF for opening an investigation on al-Werfalli, rather than calling for his transfer to The Hague. Such praise is not only unwarranted given the authorities' track record of shielding perpetrators

245 The decision was unprecedented as mandate are usually renewed on a yearly basis. You can find the decision at: UN Human Rights Council, 'Resolution adopted by the Human Rights Council on 11 October 2021' UN Doc A/HRC/RES/48/25, 13 October 2021, available at: <https://undocs.org/en/A/HRC/RES/48/25>

246 ICC, 'Situation in Libya' [accessed 30 July 2021], available at: <https://www.icc-cpi.int/libya>

247 International Criminal Court, 'Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled "Decision on the admissibility of the case against Abdullah Al-Senussi"' ICC-OI/II-OI/IIOA6, 24 July 2014, available at: https://www.icc-cpi.int/CourtRecords/CR2014_06755.PDF

248 Safa Alharathy, 'Source: Egypt is not willing to hand over Libyan fugitive Al-Tuhami to ICC', The Libya Observer, 26 April 2017, available at: <https://www.libyaobserver.ly/news/source-egypt-not-willing-hand-over-libyan-fugitive-al-tuhami-icc>

249 Arabic21 'The death of Al-Tuhamy Khaled, one of the most prominent security figures of the Gaddafi regime', 14 February 2021 [own translation], available at: <https://bit.ly/3b6zFff>. The case before the ICC remains open as of January 2022 as the Office of the Prosecutor is taking steps to verify the death of the suspect.

250 ICC, 'Al-Werfalli Case' ICC-01/11-01/17, available at: <https://www.icc-cpi.int/libya/al-werfalli>

251 US Embassy in Libya, 'ICC Arrest Warrant for Major Mahmoud al-Werfalli in Libya: Joint Statement by the Governments of France, the United Kingdom, and the United States', 18 August 2017, available at: <https://ly.usembassy.gov/icc-arrest-warrant-major-mahmoud-al-werfalli-libya-joint-statement-governments-france-united-kingdom-united-states/>

239 Libyan human rights defender participating in a closed roundtable on accountability held by LFJL in June 2021.

240 LFJL interview conducted between October 2020 and January 2021.

241 These include the International Commission of Inquiry on Libya, active from February 2011 to March 2012; the OHCHR Investigation on Libya (also known as the HRC Fact Finding Mission with UNSMIL), which operated from March 2015 to March 2016; and the Fact-Finding Mission (FFM) on Libya established on 22 June 2020.

242 UN Human Rights Council, 'List of HRC-mandated Commissions of Inquiries / Fact-Finding Missions & Other Bodies', available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/ListHRCMandat.aspx>

243 UN Human Rights Council, 'Independent Fact-Finding Mission on Libya', available at: https://www.ohchr.org/EN/HRBodies/HRC/FFM_Libya/Pages/Index.aspx

244 UN Doc A/HRC/48/83, 1 October 2021.



from accountability, but also undermines the ICC's authority. Indeed, al-Werfalli was promoted within the LAAF.²⁵² He was reportedly killed in Benghazi in March 2021.²⁵³ At the time of writing, this leaves the ICC with only one outstanding public arrest warrant in Libya, that against Saif al-Islam Gaddafi, which has remained unexecuted since 2011.

Such slow progress could be partly explained by a number of challenges, including the failure of states to support and cooperate with the Court in the execution of the above-mentioned arrest warrants, and, as often highlighted by the former ICC Chief Prosecutor, resource constraints.²⁵⁴ Increased financial, diplomatic, and technical support to the court by states is crucial to address these challenges. At the same time, in the absence of clear communication by the

Court, it remains unclear what is preventing it from playing a more prominent role in Libya, despite its broad mandate and the existence of credible information about ongoing serious international crimes committed in Libya.²⁵⁵

The absence of any meaningful progress in the ICC's investigations cannot but frustrate victims, as alleged perpetrators for the most serious crimes continue to enjoy impunity, despite the ICC's jurisdiction in Libya.²⁵⁶ In addition to general challenges it faces *vis-à-vis* victims, the Court seems to have failed to conduct effective outreach and engagement of victims in the context of the Libya situation in particular.²⁵⁷ Indeed, 90% of respondents to LFJL's Justice Perceptions Survey were unfamiliar with the ICC's work.²⁵⁸ Consequently, in addition to increased state support to the ICC in the form of cooperation and funding, improvements

252 Middle East Eye, 'Libya's Haftar promotes accused war criminal wanted by international court', 9 July 2019, available at: <https://www.middleeasteye.net/news/libyas-haftar-promotes-accused-war-criminal-wanted-international-court>

253 CNN Arabic, 'Libya: The killing of Mahmoud al-Werfalli, the most prominent commander of the Special Forces, wanted by the International Criminal Court', 24 March 2021, available at: <https://arabic.cnn.com/middle-east/article/2021/03/25/libya-mahmoud-al-werfalli-killed-international-criminal-court> The case before the ICC remains officially open as of January 2022 as the Office of the Prosecutor is taking steps to verify the reported death.

254 See for example the regular ICC Prosecutor's briefings to the UNSC, such as: ICC, 'Statement of the ICC Prosecutor to the United Nations Security Council on the Situation in Libya, pursuant to UNSCR 1970 (2011)' 17 May 2021, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=210517-otp-statement-unscl-libya>

255 The OTP has been conducting investigations for ten years, and in her briefings to the UNSC, the former Prosecutor has consistently highlighted the existence of credible information and evidence about a diverse set of serious international crimes committed in Libya. The OTP has also established a Memorandum of Understanding with Libya for mutual support in investigations and prosecutions, as well as a cooperation strategy for the exchange of evidence and information with third states. See: ICC, 17 May 2021.

256 LFJL, 'Victims' Voices: Participations and the International Criminal Court', December 2021, available at: [61dc329e57d2f3ece63e6cb4_Victims_Voices_Participation_ICC_EN.pdf](https://www.lfjl.org/IMG/pdf/cpiang752.pdf) (webflow.com)

257 Ibid. See also: FIDH, 'The victims' mandate of the International Criminal Court: disappointments, concerns and options for the way forward' June 2020, available at: <https://www.fidh.org/IMG/pdf/cpiang752.pdf>

258 LFJL's Perceptions of Justice Survey.

in the ICC's communication and outreach would be crucial for the Court to play a more relevant role in Libya.

In addition to the ICC, an existing potential pathway for accountability for crimes committed in Libya is the application of extraterritorial and universal jurisdiction, providing an opportunity for the prosecution of international crimes committed in Libya to take place at national courts in third countries. While a range of European states have been using their own laws and specialised war crimes units within their police and prosecution services to criminally prosecute crimes committed in Syria and elsewhere,²⁵⁹ few similar cases exist for crimes committed in Libya. These include trafficking-related prosecutions of sub-Saharan African nationals in Italy for crimes committed against migrants.²⁶⁰ Moreover, two complaints have been filed by victims against Khalifa Haftar in France before specialised units.²⁶¹ Haftar also faces three civil suits in the US, in which the plaintiffs are seeking compensation for the alleged killing and torture of their family members during Haftar's military operations in eastern Libya.²⁶²

While litigation in third countries has so far yielded limited results, opportunities for justice do exist. Suspects of serious international crimes committed in Libya travel abroad, providing an opportunity for their investigation and arrest. For example, one of the leaders of the al-Kaniyat militia has reportedly been receiving medical treatment in Germany since 2017.²⁶³ Several victims and witnesses live in third states and their presence gives states an opportunity to build cases for future prosecutions by collecting victim and witness testimonies. States have an obligation to hold perpetrators of

international crimes to account,²⁶⁴ and such opportunities should not be wasted.

Even if universal or extraterritorial jurisdiction proceedings are only likely to target a handful of perpetrators of international crimes in Libya, they would send a strong signal in favour of accountability and make the world a smaller place for perpetrators. These developments would also be a welcome step for victims, as expressed by a human rights defender from Tawergha:

*"Nobody has been punished to this day. Lack of accountability means the loss of rights, and I fear that a large number of victims have lost hope in obtaining real accountability for the crimes to which they have been subjected. When a person who is holding a high position in a security body or an armed militia is held accountable, it will mean a lot to the victims."*²⁶⁵

Yet, for external accountability efforts to be meaningful within Libya, better engagement of victims and affected communities is necessary. LFJL's Perception of Justice Survey registered a low level of understanding and trust in international and external accountability mechanisms.²⁶⁶ Victims' scepticism towards international accountability mechanisms also reflects a general mistrust of international involvement in Libya's affairs, informed by people's perceptions of the 2011 intervention, as well as continued meddling by foreign states in the conflict. For example, some respondents to the survey said that they would trust extraterritorial trials in countries that have not had any political or military involvement in Libya.²⁶⁷

As mistrust in domestic mechanisms was even higher, respondents generally preferred a mixed approach, such as Libyan courts with international support.²⁶⁸ This suggests the potential of a specialised or hybrid court to tackle Libya's accountability gap. Moreover, despite their distrust, members of local CSOs as well as affected communities see an important role for external accountability mechanisms to complement local accountability processes by prosecuting powerful perpetrators whose local prosecution would be

259 See for example: Trial International, 'Universal Jurisdiction Annual Review 2021', available at: https://reliefweb.int/sites/reliefweb.int/files/resources/Trial%20International_UJAR_DIGITAL.pdf, and Reem Salah, 'The road to justice for Syria goes through Europe', 14 July 2020, available at: <https://www.mei.edu/publications/road-justice-syria-goes-through-europe>

260 For example, in 2017, the court of Milan convicted and sentenced to life imprisonment a Somali national who headed a migrant camp in Beni Walid for kidnapping for extortion aggravated by murder and sexual violence. In 2020, the court of Messina sentenced to 20 years three individuals involved with torture and kidnapping of migrants in Zawiya. More information available at: https://trialinternational.org/resources/universal-jurisdiction-database/?keywords=&country=1570&topic=&source_type=Trial+Watch&body=?&orderBy=date&submitted=1

261 Trial International, *Khalifa Haftar* [last updated 15 June 2020], available at: <https://trialinternational.org/latest-post/khalifa-haftar/>

262 Jihan Abdallah, 'Two families file complaint against Khalifa Haftar in US lawsuit', Al Jazeera, 26 February 2020, available at: <https://www.aljazeera.com/news/2020/2/26/two-families-file-complaint-against-khalifa-haftar-in-us-lawsuit>. In July 2021, a district judge ruled that Haftar could not claim head-of-state immunity as claimed by his lawyers, allowing the cases to go forward, see: Matthew Barakat, 'Judge: Libya's Hifter cannot claim immunity from civil suits' Yahoo News, 1 July 2021, available at: <https://news.yahoo.com/judge-libyas-hifter-cannot-claim-161805560.html>

263 Abdulkader Assad, 'Libyan "Al-Kani" militia senior leader has received medical treatment in Germany' Libya Observer, 10 September 2020, available at: <https://www.libyaobserver.ly/news/libyan-al-kani-militia-senior-leader-has-received-medical-treatment-germany>

264 International Law Commission, 'The obligation to extradite or prosecute (aut dedere aut judicare)', 2014, available at: https://legal.un.org/ilc/texts/instruments/english/reports/7_6_2014.pdf

265 LFJL interview conducted in February 2021.

266 LFJL's Perceptions of Justice Survey.

267 Ibid.

268 50% of respondents to LFJL's Perceptions of Justice Survey expressed a preference for delivering accountability for past and ongoing serious international crimes through Libyan courts with international community support. This was preferred over other international mechanisms such as the ICC and UJ. There was strong support (66%) for trials to be held locally, and 55% of respondents preferred courts trying war-related crimes to be composed of both Libyan and international judges.

most challenging.²⁶⁹ International and external accountability mechanisms could also have a positive long-term impact at the local level if they aim to strengthen the capacity of the domestic system and build pressure for local accountability processes to commence.

ACCOUNTABILITY THOROUGH INDIVIDUAL TARGETED SANCTIONS?

In the absence of progress in individual and state accountability for gross human rights violations and serious international crimes committed in Libya, targeted sanctions have been the only consequence faced by some alleged perpetrators for their illegal acts. Using targeted measures against foreign individuals involved in gross human rights violations, the EU, the UK and the US have issued sanctions against certain human rights violators in Libya, such as the two main leaders of the al-Kaniyat militia, and individuals involved in human trafficking and crimes against migrants and refugees.²⁷⁰

Similarly at the UN level, the Libyan Sanctions Committee, a body comprising the 15 members of the UNSC, and supported by the PoE, has issued asset freezes and travel bans against individuals reportedly involved in gross human rights abuses or other violations of international law.²⁷¹ The PoE is mandated to gather information and make recommendations to the Sanctions Committee, which takes decisions on the issuing of sanctions by consensus.²⁷² Targeted sanctions can be issued against individuals or companies according to a set of criteria, including violations of international human rights and humanitarian law, violations of the arms embargo, and illicit oil exports or appropriation of state funds.²⁷³

Since 2011, 29 entries (27 individuals and two entities) have been listed by the Sanctions Committee.²⁷⁴ These include members of the Gaddafi regime; five Libyans and two Eritreans designated for their involvement in gross human rights violations related to human trafficking; and two militia leaders, Salah Badi and Ibrahim Jadhraan, listed for 'working against the stability of Libya' and 'undermining a political resolution'.²⁷⁵ Despite heightened violence in the context of Haftar's 2019 attack on Tripoli, and ample evidence of violations provided by the PoE in its latest reports, as of January 2022 only one addition had been made to the sanctions list since 2018.²⁷⁶ Whilst the list of individuals and entities recommended by the PoE for sanctioning by the Sanctions Committee is not public, it is clear that a set of individuals identified by the PoE is yet to be sanctioned, as the PoE report of March 2021 requests the Sanctions Committee to 'expeditiously consider the information provided separately by the Panel since 2018 on entities and individuals meeting the designation criteria'.²⁷⁷

Lack of consensus among members of the Sanctions Committee was highlighted by the former Chair of the Sanctions Committee, Ambassador Günter Sautter of Germany. In his December 2020 briefing to the UNSC, he lamented that 'the committee has not been able to live up to its responsibility' in its decision-making, calling for more 'transparency' and 'coherence'.²⁷⁸ Moreover, the Sanctions Committee's inconsistency becomes clear when looking at the list of designated individuals, as many individuals who seem to fit the criteria for designation are not listed. For example, Haftar's attack on Tripoli in 2019 clearly undermined the planned UN political process and Libya's stability but did not result in sanctions. Similarly, the al-Kaniyat militia took part in some of the same attacks that led to the designation of Badi and Jadhraan,²⁷⁹ and is also allegedly responsible for serious crimes in Tarhuna.²⁸⁰ In this context, the designation of militia

269 Ibid.

270 The full lists of sanctions are available, respectively, at: <https://www.gov.uk/government/publications/the-uk-sanctions-list> (UK); https://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions_en (EU); <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists> (US).

271 The Committee was established pursuant to resolution 1970 (2011) to oversee the sanctions measures imposed by the UNSC, including the arms embargo, asset freezes, and, since 2014, 'measures in relation to attempts to illicitly export petroleum'. See: UNSC, 'Libya Sanctions Committee', available at: <https://www.un.org/securitycouncil/sanctions/1970>

272 See: UNSC, 'Libya Sanctions Committee', available at: <https://www.un.org/securitycouncil/sanctions/1970>, and UNSC, 'Panel of Experts – work and mandate', available at: https://www.un.org/securitycouncil/sanctions/1970/panel-experts/work_mandate

273 The full list of criteria is available at: UN Security Council, 'Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya' available at: <https://www.un.org/securitycouncil/sanctions/1970#work%20and%20mandate>

274 The full list of sanctions individuals and entities is available at: <https://www.un.org/securitycouncil/sanctions/1970/materials/summaries>

275 Ibid.

276 Ibid.

277 UN Security Council, 'Final report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011)' UN Doc S/2021/229, 8 March 2021, available at: https://www.ecoi.net/en/file/local/2047327/S_2021_229_E.pdf

278 Permanent Mission of the Federal Republic of Germany to the United Nations, 'Statement by Ambassador Günter Sautter as Chair of the 1970 Libya Sanctions Committee in the Security Council VTC briefings by subsidiary organs', 16 December 2020, available at: <https://new-york-un.diplo.de/un-en/news-corner/-/2429840>

279 For example, in August 2018, the al-Kaniyat, also known as the 7th Brigade, led an attack on Tripoli-based militias. The Sumood brigade, led by Salah Badi, reportedly participated in the same attack. See: Matfess, op. cit. This attack is mentioned as one of the key reasons for Badi's designation. See: UNSC, 'Salah Badi', available at: <https://www.un.org/securitycouncil/sanctions/1970/materials/summaries/individual/salah-badi>

280 See 'Empowering militias and armed groups' under section 3 of this report.

leaders Badi and Jadhran seems to be explained by the fact that they had lost support within and outside Libya at the time of their designation.²⁸¹ On the contrary, the al-Kaniyat benefited from foreign protection, as shown by Russia's reported veto to a proposed asset freeze and travel ban on the al-Kaniyat militia in November 2020.²⁸²

The Sanctions Committee thus seems to have failed to apply sanctions uniformly to those allegedly sponsored by foreign powers. This has eroded the credibility of the sanctions regime and has sent "a completely wrong message: that you can get away with anything in Libya as long as you don't lose"²⁸³ Such inconsistency risks making sanctions counterproductive, and only creates more incentives for local factions to seek international sponsorship and protection.

Moreover, when selectively imposed and without complementary measures for accountability and reparations, sanctions can be perceived as arbitrary and insufficient at the local level. In the words of a youth activist from Tripoli:

*"The international pressure is biased. Indeed, sometimes it resulted in bans on travelling and freezing assets [of alleged Libyan perpetrators] but it is not enough to bring perpetrators to justice."*²⁸⁴

Sanctions used in isolation do not provide victims with any form of redress or reparation, nor do they address Libyans' demand for accountability for gross human rights violations and serious international crimes. Travel bans also risk interfering with criminal accountability efforts, as they might, for example, limit opportunities to arrest suspects travelling abroad for potential proceedings in third countries or at the ICC level. Therefore, sanctions should not only be applied in a fair and transparent manner in accordance to human rights standards and due process, but also in coordination with other accountability mechanisms, as a tool to contribute to judicial accountability and redress for victims.

HOLDING EXTERNAL ACTORS TO ACCOUNT

External actors contributing to Libya's conflicts might themselves be responsible for violations of international law in Libya.²⁸⁵ Much like their Libyan counterparts, however,

alleged perpetrators continue to enjoy a high degree of impunity. Indeed, the same geopolitical considerations that enable impunity for Libyan actors can obstruct efforts towards third country responsibility.

Most evidently, violators of the arms embargo, well documented by the PoE despite reported attempts to block the release of its reports,²⁸⁶ have suffered very few consequences.²⁸⁷ While extensive evidence exists showing that the UAE is one of the most flagrant violators of the arms embargo,²⁸⁸ the Sanctions Committee has not issued any sanctions against UAE officials or companies. The same is true for arms and military assistance provided to the GNA by Qatar and Turkey.²⁸⁹ Similarly, despite the existence of national sanctions regimes, the US, France and the UK have not issued any sanctions against arms embargo violators, with which they often have close security and economic ties.²⁹⁰ An exception is represented by US sanctions on individuals and companies linked to the Wagner group over their activities in Libya, in light of the US' long-standing rivalry with Russia.²⁹¹ Although these sanctions can represent a positive step towards tackling the activities of mercenary groups in Libya, they also reflect geopolitical dynamics.

In addition to non-compliance with UNSC measures such as the arms embargo, foreign states and their nationals have also so far managed to evade accountability for their alleged direct involvement in, and responsibility for, serious international crimes in Libya. This goes back to NATO's intervention in 2011, and the failure of members of the NATO coalition to acknowledge responsibility for the civilian casualties they reportedly caused, thereby leaving the victims with no redress to date.²⁹² Echoing the need for accountability and redress of affected communities, a teacher from the city of Sirte explained:

286 Abdulkader Assad, 'Russia, China block UN report naming and shaming arms embargo violators in Libya', The Libya Observer, 27 September 2020, available at: <https://www.libyaobserver.ly/news/russia-china-block-un-report-naming-and-shaming-arms-embargo-violators-libya>

287 UN Doc S/2019/914, 2019.

288 See for example: UN Doc S/2019/914, 2019, Annex 28.

289 See section 3 of this report.

290 Iona Craig, 'Don't ignore the UAE', 19 January 2021, available at: <https://www.tortoisemedia.com/2021/01/19/iona-craig-dont-ignore-the-uae/>

291 Daily Sabah, 'US imposes sanctions on Russia's Wagner Group over role in Libya, Sudan', 16 June 2020, available at: <https://www.dailysabah.com/politics/us-imposes-sanctions-on-russias-wagner-group-over-role-in-libya-sudan/news> Follow US sanctions, the EU also issued sanctions against the Wagner group in December 2021. See: Council of the EU, 'EU imposes restrictive measures against the Wagner Group' 13 December 2021, available at: <https://www.consilium.europa.eu/en/press/press-releases/2021/12/13/eu-imposes-restrictive-measures-against-the-wagner-group/>

292 Oliver Imhof, 'Ten years after the Libyan revolution, victims wait for justice' Airwars, 18 March 2021, available at: https://unsmil.unmissions.org/sites/default/files/first_quarter_civilian_casualty_report_2020_2.pdf

281 LFJL, Libya Matters (podcast), '12: The Sanctions charade with Wolfram Lacher', 2 October 2019, available at: <https://www.buzzsprout.com/450046/1793947-12-the-sanctions-charade-with-wolfram-lacher>

282 Michelle Nichols, 'Russia stops U.N. blacklisting of Libya militia, leader', Reuters, 21 November 2020, available at: <https://www.reuters.com/article/us-libya-security-un-idUSKBN28101P>

283 LFJL, Libya Matters (podcast), '12, 2019.

284 LFJL's Perceptions of Justice Survey.

285 See examples provided in section 3 of this report.

*“My community was subjected to violent air strikes by NATO, and our homes and properties were destroyed. For justice to be achieved, there is a need to determine the identity of all those who committed crimes against Libyans and to hold them accountable, whether they are local groups or foreign countries.”*²⁹³

Civilians have continued to be killed as a result of foreign military operations over the past 11 years, particularly through airstrikes, at times facilitated or directly conducted by foreign states.²⁹⁴ These often go unclaimed or are subject to a complex blame game by the parties involved, requiring thorough and effective investigations that are, most often, not being carried out.²⁹⁵ Even when documentation exists, geopolitical considerations might prevent accountability. The PoE itself stopped short of naming the UAE in connection with the bombing of the Tajoura detention centre in July 2019, despite evidence pointing towards its involvement.²⁹⁶

Circumventing accountability has also characterised the development of migration containment policies by the EU and its member states. In 2012, in the *Hirsi Jamaa and Others v. Italy* case, the European Court of Human Rights (ECHR) found Italy responsible for illegal pushbacks at sea after the Italian Coast Guard intercepted migrants and returned them to Tripoli, where their human rights and lives were at risk.²⁹⁷ While the ECHR's decision did not stop pushbacks, the subsequent focus on the capacity-building of the LCG has been designed to ensure that people are intercepted at sea and disembarked in Libya by non-European actors.²⁹⁸

293 LFJL interview conducted remotely between October and December 2020.

294 See examples included in section 3 of this report.

295 Wolfram Lacher, 'Drones, deniability, and disinformation: warfare in Libya and the new international disorder', March 2020, available at: <https://warontherocks.com/2020/03/drones-deniability-and-disinformation-warfare-in-libya-and-the-new-international-disorder/>

296 The PoE's 2019 report states that 'the Panel finds it highly probable that the air strike was conducted using PGM at night by a modern FGA aircraft owned and operated by a Member State, acting in direct support of the HAF. The Panel reserves identification of this Member State until further physical evidence or imagery emerges to increase attribution confidence levels, and continues to investigate the circumstances of the air strikes.' UN Doc S/2019/914, 2019, Annex 15, para 16.

297 The pushbacks breached the principle of non-refoulement: 'returning an asylum seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she would risk persecution' as Libya does not have a protection mechanism for refugees. The full ECHR decision is available at: [https://hudoc.echr.coe.int/spa/#{%22itemid%22:\[%22001-109231%22\]}](https://hudoc.echr.coe.int/spa/#{%22itemid%22:[%22001-109231%22]}) See also: LFJL and others, 'EU: Time to review and remedy cooperation policies facilitating abuse of refugees and migrants in Libya', 28 April 2020, available at: https://www.hrw.org/sites/default/files/supporting_resources/joint_statement_eu_financial_responsibility.pdf

298 LFJL and others, 'EU: Time to Review and Remedy Cooperation Policies Facilitating Abuse of Refugees and Migrants in Libya,' NGO statement, 28 April 2020, available at: <https://www.libyanjustice.org/news/eu-time-to-review-and-remedy-cooperation-policies-facilitating-abuse-of-refugees-and-migrants-in-libya>

This approach is on dubious legal grounds as multiple litigation efforts against the EU are testing.²⁹⁹ The 2021 FFM report found that crimes committed against migrants in Libya may amount to crimes against humanity, and called for further investigations to assess 'the responsibility that may be borne by third States'.³⁰⁰ The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had also previously suggested that the EU's migration strategy could amount to complicity in torture and crimes against humanity.³⁰¹ In January 2021, Italy was also found by the UN Human Rights Committee to have failed to respect its duty to protect the lives of people in distress at sea for delaying the rescue mission of a migrant boat that sank in October 2013 after departing from Libya, killing 200 people.³⁰² The decision also found that judicial proceedings initiated in Italy against the officers allegedly responsible have been 'unduly delayed'.³⁰³

Third states involved in Libya should ensure that crimes allegedly committed by their nationals in Libya are independently and thoroughly investigated, and victims provided with adequate redress. Moreover, external accountability avenues applicable to Libyan perpetrators should be explored for crimes committed by foreign nationals as well. The ICC's mandate itself can include alleged crimes committed by non-Libyan nationals regardless of the nationality and the status of their country of origin *vis à vis* the ICC.³⁰⁴ Indeed, in her briefing to the UNSC in May 2021, the former ICC Chief Prosecutor made clear that 'crimes committed by mercenaries and foreign fighters on Libyan territory may fall under the jurisdiction of the Court, no matter the nationality of the persons involved'.³⁰⁵

299 Ibid.

300 UN Doc A/HRC/48/83, 1 October 2021, pp.16-17.

301 UN Human Rights Council, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment', UN Doc A/HRC/37/50, 26 February 2018, available at: https://www.ohchr.org/Documents/Issues/Torture/A_HRC_37_50_EN.pdf

302 OHCHR, 'Italy failed to rescue more than 200 migrants, UN Committee finds', 27 January 2021, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26691&LangID=E>

303 Ibid.

304 The ICC's jurisdiction as a result of the UNSC referral includes any Rome Statute crimes committed in Libya and related to the 2011 situation. Paragraph 6 of Resolution 1970 which referred the Libya situation to the ICC states that: 'nationals, current or former officials or personnel from a State outside the Libyan Arab Jamahiriya which is not a party to the Rome Statute of the International Criminal Court shall be subject to the exclusive jurisdiction of that State for all alleged acts or omissions arising out of or related to operations in the S/RES/1970 (2011) 11-24558 3 Libyan Arab Jamahiriya established or authorized by the Council, unless such exclusive jurisdiction has been expressly waived by the State'. This does not preclude the ICC from investigating crimes committed by nationals of foreign states who might be responsible for international crimes in Libya arising from operations unrelated to the NATO intervention.

305 ICC, 'Statement of the ICC Prosecutor to the United Nations Security Council on the Situation in Libya, pursuant to UNSCR 1970 (2011)', 17 May 2021, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=210517-otp-statement-unscl-libya>

Holding foreign actors accountable for their actions in Libya is a legal imperative, and it is of paramount importance to move away from a decade of impunity that has allowed national and foreign actors alike to pursue self-seeking objectives with disregard to international law and standards. Moreover, the lack of channels for accountability between affected communities within Libya and intervening foreign actors highlights a fundamental gap in an international system that has proven unable to regulate the actions of foreign states acting with impunity outside of their territory. Establishing third state responsibility for crimes committed in Libya and corresponding accountability measures would constitute a crucial sign for victims who have grown increasingly distrustful of international actors' ability to positively engage in their country. As stated by an expert in international criminal justice:

“There seems to have been a shift from a justice and accountability project with states reprioritising other issues they consider to be critical. They need to be reminded that addressing international crimes is the responsibility of the international community, not a gift or a favour, but an obligation – and the consequences of impunity are even greater than impunity itself.”³⁰⁶

³⁰⁶ Participant of LFJL's closed roundtable on accountability in Libya, June 2021.

5. NEITHER JUSTICE, NOR PEACE

As violence and impunity have mutually fuelled each other in the last decade, foreign states and multilateral institutions have engaged in efforts to broker a political solution to Libya's conflicts and launch the country's transition towards peace and democracy. These efforts, however, have been marked by the same shift towards self-interested unilateralism that has shaped the wider behaviour of international actors in Libya. As a result, rule-based approaches rooted in international law and standards have been side-lined. The ensuing processes have failed to take into meaningful consideration the voices of communities directly affected by the conflict, including their demands for justice and accountability, nor have they secured sustainable peace.

UNILATERALISM DOES NOT BUILD A LASTING PEACE

International efforts to broker a political solution to the Libyan conflict were first tested in 2015 through the UN-led Skhirat process, which resulted in the LPA. While many internal and external factors might have contributed to the failure of the LPA, the pursuit of unilateral interests both against and within the UN-led process seems to have played a role.

Firstly, the external support enjoyed by Haftar, particularly from Egypt and the UAE, empowered him to resist a political solution in the knowledge that he would enjoy military and diplomatic support in his endeavours.³⁰⁷ This was partly enabled by the fact that Western states which backed the UN process failed to put their full weight behind keeping Haftar's international supporters in check, in light of their own bilateral economic or security cooperation.³⁰⁸ The threat of the imposition of UN sanctions on Haftar in case he spoiled the process was also allegedly limited by Russia and France's opposition at the UNSC level.³⁰⁹

Secondly, states that supported the UN framework were largely guided by the self-interested objective of having a government they could recognise and work with towards a set of national security priorities in the shortest time

possible. With IS gaining ground in Libya, the US seemed to be primarily motivated by the need to have a recognised government with which to coordinate its counter-terrorism response.³¹⁰ Similarly, the EU's support for a quick deal was shaped by considerations on containing migration, as growing numbers of migrants, refugees and asylum seekers reached Italy's shores from Libya.³¹¹ Such short-termism rushed the process, leading to an agreement which lacked both legitimacy among the Libyan people and the holistic approach necessary to bridge Libyan divides.

The continuing fragmentation of the Libyan political and military landscape was compounded by a similarly fragmented international response, as foreign states increasingly used mediation initiatives as a strategy to advance their interests, in parallel to their direct or indirect support to parties in the conflict. Consequently, mediation initiatives, at times in competition with each other, proliferated, leading to a situation in which the states acting as peace-brokers were at times the same ones who continued to fuel violence and conflict.

In 2017, for example, France organised political talks which elevated Haftar's diplomatic stance and international legitimacy, by hosting him for the first time in a Western country.³¹² A second conference held in Paris in 2018 was criticised, among other reasons, for undermining UN-led peace efforts and lacking a broad consultation process.³¹³ This was followed by a conference organised by the Italian government in Palermo in November 2018, in collaboration with then Special Representative of the Secretary-General, Ghassan Salamé, seen as an Italian effort to reassert its diplomatic leadership towards Libya *vis à vis* Paris.³¹⁴ Similar

310 International Crisis Group, 'The Libyan Political Agreement: Time for a Reset', 4 November 2016, available at: <https://www.crisisgroup.org/middle-east-north-africa/north-africa/libya/libyan-political-agreement-time-reset>

311 Ibid.

312 Ashish Kumar Sen, 'Libya's Haftar Comes Out on Top' Atlantic Council, July 2017, available at: <https://www.atlanticcouncil.org/blogs/new-atlanticist/libya-s-haftar-comes-out-on-top/>.

313 International Crisis Group, 'Making the Best of France's Libya Summit', 28 May 2018, available at: <https://www.crisisgroup.org/middle-east-north-africa/north-africa/libya/b58-making-best-frances-libya-summit>. Paris also hosted an international conference on Libya in November 2021 as a joint diplomatic initiative with the UN, Italy, and Germany. See: 'Declaration of the Paris International Conference for Libya', 12 November 2020, available at: <https://www.elysee.fr/en/emmanuel-macron/2021/11/12/declaration-of-the-paris-international-conference-for-libya>

314 Giovanna de Maio, 'The Palermo conference on Libya: A diplomatic test for Italy's new government', 19 November 2018, available at: <https://www.brookings.edu/blog/order-from-chaos/2018/11/19/the-palermo-conference-on-libya-a-diplomatic-test-for-italys-new-government/>

307 Muriel Asseburg, Wolfram Lacher and Mareike Transfeld, 'Mission Impossible? UN Mediation in Libya, Syria and Yemen' SWP Berlin, October 2018, p. 19, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766034/Libya_case_study.pdf

308 Ibid.

309 Wolfram Lacher, 'Elite Bargains and Political Deals Project: Libya Case Study', February 2018, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766034/Libya_case_study.pdf



initiatives were initiated by the UAE³¹⁵ and Egypt³¹⁶ with little in the way of concrete results.

The first Berlin Conference on Libya, convened by Germany and the UN on 19 January 2020, sought to address such international fragmentation and establish a multilateral framework to which foreign states engaged in Libya could commit. The conference resulted in an important pledge by participating states to respect international human rights and humanitarian law, comply with the arms embargo and commit to a non-military solution in Libya through a UN-led process.³¹⁷ These outcomes, endorsed by the UNSC, set an important framework for constructive multilateral engagement in Libya and for the LPDF. At the same time, they revealed a persistent gap between discourse and reality: some of the same states represented in Berlin resumed weapon transfers to Libya soon after signing the conference

outcomes.³¹⁸ Indeed, the second Berlin Conference, hosted by German Foreign Minister Heiko Maas, UN Secretary-General António Guterres and the UN Support Mission in Libya in June 2021, reiterated much of the same calls.³¹⁹

WHOSE PRIORITIES?

Ensuring that all Libyans can participate in decisions about the future of their country is a fundamental condition for a legitimate and long-term resolution to the conflict. Diverse Libyan voices, however, have often been absent from internationally-sponsored initiatives primarily focused on brokering a power-sharing deal that cater to the needs of political and military elites and their sponsors. Inclusivity and national ownership – not only by parties to the conflict but also among affected communities – constitute basic mediation

315 The New Arab, 'Libya rivals agree to hold elections during UAE meeting: UN', 28 February 2019, available at: <https://english.alaraby.co.uk/news/libya-rivals-agree-hold-elections-during-uae-meeting>

316 See for example: Lin Noueihed and Ahmed Mohammed Hassan, 'Egypt brokers Libya peace roadmap, but key figures fail to meet', 16 February 2017, available at: <https://www.reuters.com/article/us-egypt-libya-talks/egypt-brokers-libya-peace-roadmap-but-key-figures-fail-to-meet-idUSKBN15V01B>

317 The Berlin Conference, 'The Berlin Conference on Libya Conference Conclusions', 19 January 2020, available at: https://unsmil.unmissions.org/sites/default/files/berlin_conference_communique.pdf

318 UNSMIL, 'UNSMIL Statement on continued violations of arms embargo in Libya', 25 January 2020, available at: <https://unsmil.unmissions.org/unsmil-statement-continued-violations-arms-embargo-libya>

319 Second Berlin Conference on Libya, Conference Conclusions, 23 June 2021, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/210623-lby-abschlusserk-download-en-data.pdf>

principles,³²⁰ yet women, youth and ethnic minorities were not adequately included in UN-led processes seeking a solution to Libya's conflicts. Most notably, while women played a crucial role in the 2011 uprising as well as in political and civil society activities in following years, they have largely been absent from international peace conferences on Libya.³²¹

Raising hopes of better inclusivity, the first Berlin Conference conclusions recognised the importance of the meaningful participation of all Libyans in decisions related to democratic transition and conflict resolution for a successful end to the crisis.³²² The conclusions endorsed the efforts of the then Special Representative of the Secretary-General to facilitate wider engagement and participation of women and youth.³²³ Within this framework, the 75-member-strong LPDF had a better record in including diverse Libyan voices than previous high-level political initiatives. Meetings of the 75 were also preceded by consultations with different societal groups. Youth consultation, for example, highlighted a strong demand for better youth representation in decision-making processes in and about Libya, as well as strong frustrations and distrust towards domestic political bodies and international actors.³²⁴

At the same time, the criteria and process followed by UNSMIL to select the 75 LPDF members remained opaque.³²⁵ Of the 75 LPDF members only 17 were women,³²⁶ and these were reportedly added to an initial men-only group following pressure by UN Women officials and civil society actors.³²⁷ Some regional, ethnic and tribal minorities, including the Amazigh and the Tuareg, also condemned their own

underrepresentation in the forum.³²⁸ Moreover, participation and ownership of the process among the broader Libyan population, including communities directly affected by violence and conflict, remain low. Between January and April 2021, LFJL conducted a targeted population survey among Libyans who have been victims of gross human rights violations, about the LPDF and their aspirations about the peace process.³²⁹ While 75% of respondents indicated that they were aware of the LPDF, fewer than half understood the purposes of the process, and far fewer the types of issues discussed.³³⁰ Such lack of understanding inevitably limits the Libyan people's ability to form informed opinions and participate in the process meaningfully.

Many respondents also believed that politicians do not take their interests into account and highlighted the need for LPDF members to 'put Libya ahead of personal, tribal or regional interests' and to think long-term, taking into consideration the needs of people for security and safety, justice, rule of law and a working economy.³³¹ Asked what changes are needed for the interests of communities affected by the conflict to be considered, a respondent stated:

"Listen to the victims, know what their situation is, and administer justice".³³²

For the transition to peace and democracy in Libya to be sustainable, transparent and legitimate, this call should be adequately answered by the international actors supporting the process. More needs to be done for the Libyan transition to be truly 'Libyan-led' and 'Libyan-owned'³³³ including systematically informing and engaging the many victims who have a key stake in the process and addressing their demands for accountability and reparations. As a senior UN official put it:

320 UN, 'Guidance for Effective Mediation', 25 June 2012, available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/GuidanceEffectiveMediation_UNDPA2012%28english%29_0.pdf; UNSC Resolution 1325 also reaffirms the important role of women in peace efforts, including peace negotiations. See: UNSC, Resolution 1325 (2000), 31 October 2000, available at: <http://unscr.com/en/resolutions/doc/1325>

321 WILPF, 'Libyan Women Break the Silence', 2018, available at: <https://www.wilpf.org/libyan-women-break-the-silence/>

322 The Berlin Conference conclusions, 2020, para 27.

323 'Libyan National Conference Process Final Report', 9 November 2018, available at: <https://unsmil.unmissions.org/libyan-national-conference-process-final-report-0>

324 'Recommendations of the Youth Track of the Libyan Political Dialogue Forum (LPDF)', 18 October 2020, available at: https://unsmil.unmissions.org/sites/default/files/youth_track-_final_recommendations_-_20102020_english.pdf

325 Ranwa El-Kikhia, 'Women and Youth Are Shaping Libya's Political Dialogue—but More Progress Is Needed for Inclusivity', Washington Institute for Near East Policy, 17 December 2020, available at: <https://www.washingtoninstitute.org/ar/policy-analysis/alnsa-walshbab-yrsmw-n-malm-alhwar-alsyasy-fy-lybya-lkn-la-bdw-mn-ahraz-almzyd-mn>

326 Ibid.

327 LFJL, Libya Matters (podcast), 'Special episode! Looking for justice: inside the LPDF', 20 April 2021, available at: <https://www.buzzsprout.com/450046/8363165-special-episode-looking-for-justice-inside-the-lpdf>

328 News 218, 'The Controversy of Names and the representation in the dialogue...a dilemma catching up on UNSMIL', 6 November 2020, available at: <https://bit.ly/3zPVxFj>

329 The survey canvassed the views of 52 Libyan women and men from different locations who have been affected by a range of human rights violations. See: LFJL, 'Victims' Voices: The Libyan Political Dialogue Forum', 2021, available at: <https://www.libyanjustice.org/news/victims-voices-the-libyan-political-dialogue-forum>

330 Ibid.

331 Ibid p. 8.

332 LFJL interview conducted as part of its research for its Victims' Voices series. See: Op. Cit. LFJL, 'Victims' Voices: The Political Dialogue Forum', 2021 and LFJL, 'Victims' Voices: Participation at the International Criminal Court' 2021.

333 This is a formula commonly used by UNSMIL to refer to the LPDF and related processes. See for example: UNSMIL, 'Special envoy mobilizes national and international support to advance the three-track Libyan-led/owned dialogue process', 2 March 2021, available at: <https://unsmil.unmissions.org/special-envoy-mobilizes-national-and-international-support-advance-three-track-libyan-ledowned>

“There is a complete lack of any kind of principled engagement, but rather interest-based interventions that are very transactional and are not about the interest of Libyans. This is why the issue of rights-based reconciliation is of extreme importance – it is an opportunity to address the real grievances of communities and issues of justice and to have a forward-looking process.”³³⁴

PEACE AT THE COST OF ACCOUNTABILITY?

The issue of how to deal with past and present widespread human rights violations and serious international crimes, ensuring that perpetrators are held to account and victims access redress, has not been adequately directed at solving the Libyan crisis. Instead, successive international efforts have largely been focused on political solutions.

Aligning different, and often competing political interests, will be a necessary yet highly challenging element of achieving a successful transition to peace and stability in Libya. However, human rights and accountability cannot be negotiable in the name of reaching a political deal. Firstly, accountability is important in and of itself, and the UN has an obligation to mainstream human rights in all its peace efforts.³³⁵ Secondly, side-lining human rights and accountability enables impunity, which only contributes to further violence and lawlessness. Progress towards human rights and accountability needs to go hand in hand with any peace effort if underlying divisions and grievances are to be dealt with, conflict is to be sustainably brought to an end, and international law standards are to be upheld.

Indeed, in the absence of any meaningful form of accountability, cycles of collective punishment based on identity and real or perceived political affiliation have been taking place since 2011. This was the fate of the people from the city of Tawergha, in northwest Libya, who were displaced *en masse* in August 2011 by Misratan revolutionaries based on their real or perceived loyalty to the Gaddafi regime.³³⁶ The displaced people of Tawergha, 80% of whom are black, have since been persecuted and discriminated against across the country, including through torture,

abduction, enforced disappearance,³³⁷ unlawful killings and protracted displacement. Tarhuna provides a further example. After the al-Kaniyat militia crashed any perceived dissent with impunity for many years, a new revenge cycle occurred when the Turkish-backed GNA forces entered the town in 2020. They committed retaliatory attacks against perceived supporters of the al-Kaniyat who were subjected to killings, violence and looting.³³⁸ Having directly experienced years of violent rule and this disastrous cycle of violence and impunity, a representative of victims in Tarhuna, stated:

“Can you imagine seeing people killed in front of your eyes? You cannot sleep for days. The only solution is to bring those criminals to prison and uphold justice. We are a tribal community. It is a shame to forget the blood of your dead brother. If the law is not applied, only revenge is the answer, and then the blood will reach up to the knees. If there is justice, then peace will prevail and the cycle of revenge will stop.”³³⁹

International peace efforts in Libya, however, have fallen short of following a comprehensive and human-rights-based approach which considers justice and peace as mutually reinforcing imperatives. The rushing of the Skhirat process to produce the LPA meant that complex accountability and transitional justice issues were not adequately addressed. By way of example, the LPA referenced problematic transitional justice laws that do not meet international law and standards.³⁴⁰

The same disregard for accountability emerged in the 2015 UNSMIL-led mediation process between the city of Tawergha and the city of Misrata. This conflict resulted in horrendous human rights abuses, which, according to a 2012 UN investigation, could amount to crimes against humanity against the Tawerghans.³⁴¹ Nevertheless, the agreement resulting from the UNSMIL-led initiative did not set out a

³³⁴ LFJL interview with a senior UN official conducted in May 2021.

³³⁵ Principles of international law and justice underpin the purposes of the UN, which include maintaining peace and security as well as ‘promoting and encouraging respect for human rights and for fundamental freedoms’. See art. 1 of the UN Charter, available at: <https://www.un.org/en/about-us/un-charter/full-text>

³³⁶ UN Doc A/HRC/19/68, 2012.

³³⁷ LFJL, ‘Unforgotten: Enforced Disappearance in Libya’, September 2020, available at: https://uploads-ssl.webflow.com/5a0d8805f2f99e00014b1414/5f69fc2d9c3bd879cb661c86_Unforgotten%20-%20Enforced%20Disappearances%20in%20Libya%20-%20September%202020%20Final%20Arabic.pdf

³³⁸ Amnesty International, ‘Libya: Retaliatory attacks against civilians must be halted and investigated’ 5 June 2020, available at: <https://www.amnesty.org/en/latest/news/2020/06/libya-retaliatory-attacks-against-civilians-must-be-halted-and-investigated/>

³³⁹ LFJL’s Perceptions of Justice Survey.

³⁴⁰ The LPA includes direct reference to law no. 29 of 2013 on transitional justice, which includes a highly problematic definition of transitional justice as applicable only to crimes committed under the Gaddafi regime, differentiated from the ‘simple’ incidents that occurred afterwards, violating the principle of equality and non-discrimination. The endorsement of such problematic law in an internationally recognised peace agreement increased the risk of such problematic provisions being elevated at the constitutional level. For a more detailed discussion on the subject see: Azza Maghur and Salah Al Marghani, ‘Transitional justice: evolutions, challenges, and ways forward in Libya’ February 2021.

³⁴¹ UN Doc A/HRC/19/68, 2012.

concrete pathway to accountability.³⁴² The only provision on justice generally required the Libyan state ‘to prosecute those accused’ of crimes, with no clear steps or mechanisms to monitor progress.³⁴³ Moreover, the agreement was later amended to accommodate demands that prevent Tawergha victims from accessing redress mechanisms for the violations they suffered.³⁴⁴

Recent efforts seemed more promising. In addition to nominal commitments to human rights and international law in its conclusion, the Berlin Conference set a framework for continued dialogue around a set of thematic tracks, including one dedicated to human rights and humanitarian law.³⁴⁵ This was an important sign of recognition that human rights and humanitarian law violations are a key area of concern. However, the organisation of political talks through parallel thematic discussions meant that human rights and accountability issues were largely discussed in isolation and omitted from the security and political tracks.³⁴⁶ Under such an approach, human rights and accountability concerns risk receiving tokenistic inclusion, without being meaningfully mainstreamed. As stated by a senior UN official:

“A lot of these discussions are done in silos. Human rights and accountability are not taken seriously enough. They are seen as something to mention, so it all becomes nice words, but how does it translate into practice? Human rights and accountability issues should be prioritised as a political issue. They should be a political priority.”³⁴⁷

Similarly, the LPDF was successful in establishing a roadmap that included some key human rights demands,³⁴⁸ but failed meaningfully to mainstream human rights and accountability in its approach.³⁴⁹ This is reflected in the perception of some victims towards the LPDF, who expressed concerns that

the process did not do enough to counter the culture of impunity in Libya in search of political concessions.³⁵⁰

The LPDF’s approach to transitional justice provides an example of these shortcomings. The roadmap include the important objective to launch ‘a comprehensive national reconciliation process based on the principles of transitional justice’.³⁵¹ However, it does not provide a clear transitional justice strategy, and uses terms such as ‘reconciliation’ and ‘amnesty’ without clear definitions, raising concerns that they might be misused to ensure further impunity. Libya’s existing legal framework on transitional justice presents several gaps and inadequacies, including the provision of amnesties for gross human rights violations and serious international crimes, contrary to international law and standards.³⁵² The roadmap also mandated the establishment of a High Commission for Reconciliation,⁴² but this might not guarantee effective implementation as shown by the weak results of other state institutions previously established in Libya to tackle human rights and transitional issues.³⁵³ As expressed by a civil society representative from Tawergha:

“It seems that transitional justice has turned into a dream. Victims continue to hear about it, but it has not become a reality in their lives for ten years.”³⁵⁴

The lack of vetting for candidates for nomination to the interim authority provides another example of UNSMIL’s failure to integrate human rights and accountability standards in the LPDF process. Vetting candidates for public office, although not explicitly addressed by international legal instruments, is largely recognised as best practice in transitional contexts.³⁵⁵

342 Human Rights Watch, ‘Libya: Ensure Safe Return of Displaced Tawerghans’, June 2017, available at: <https://www.hrw.org/news/2017/06/20/libya-ensure-safe-return-displaced-tawerghans>

343 Ibid.

344 Ibid.

345 UNSMIL, ‘UNSMIL Operationalization of Berlin Process’, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/2020-01-19-unsmil-operational-paper-final-data.pdf>

346 LFJL, ‘Berlin process must recognise human rights and accountability as a path to sustainable peace’, 21 June 2021, available at: <https://www.libyanjustice.org/news/berlin-process-must-recognise-human-rights-and-accountability-as-path-to-sustainable-peace>; Maghur and Al Marghani, op. cit.

347 LFJL interview with a senior UN official conducted in May 2021.

348 UNSMIL, ‘Roadmap for the preparatory phase of a comprehensive solution’, available at: https://unsmil.unmissions.org/sites/default/files/lpdf_-_roadmap_final_eng_0.pdf

349 For an in-depth analysis of the LPDF see: LFJL, Libya Matters (podcast), ‘Special episode! Looking for justice: inside the LPDF’, 20 April 2021, available at: <https://www.buzzsprout.com/450046/8363165-special-episode-looking-for-justice-inside-the-lpdf>

350 LFJL, ‘Victims’ Voices: The Libyan Political Dialogue Forum’, 2021, available at: <https://www.libyanjustice.org/news/victims-voices-the-libyan-political-dialogue-forum>

351 UNSMIL, ‘Roadmap for the preparatory phase of a comprehensive solution’ Art. 1 (2.9), available at: https://unsmil.unmissions.org/sites/default/files/lpdf_-_roadmap_final_eng_0.pdf

352 International Law Commission, ‘The obligation to extradite or prosecute (aut dedere aut judicare)’, 2014, available at: https://legal.un.org/ilc/texts/instruments/english/reports/7_6_2014.pdf

353 Maghur and Al Marghani, op. cit.

354 CSO participant at LFJL closed roundtable on accountability, 30 June 2021.

355 The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provide that persons who may be involved in extrajudicial, arbitrary, or summary executions, or in acts of torture or mistreatment, shall be ‘removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations’ (principles 15 and 3(b), respectively). The Declaration on the Protection of All Persons from Enforced Disappearance provides that the alleged perpetrators of a forced disappearance must be suspended ‘from any official duties during the investigation’ into that crime (article 16). The Updated Set of principles for the protection and promotion of human rights through action to combat impunity also provide that, as a means of guaranteeing the nonrecurrence of human rights, the state should remove from public institutions those officials and public servants responsible for gross human rights violations.

UNDP's operational guidelines on *Vetting Public Employees in Post-conflict Settings*, for example, provide that 'involvement in gross violations of human rights or serious crimes under international law should always disqualify a person from public employment'.³⁵⁶ Moreover, while it is crucial that vetting procedures follow due process, are non-discriminatory, and do not violate the presumption of innocence of vetted individuals, the standard of proof does not correspond to what would be required for criminal liability. In other words, 'the absence of a judicial decision condemning an official of a crime does not prevent the official from being suspended from certain public functions or from being relieved of all official duties for the duration of the investigation'.³⁵⁷

These standards are not reflected in the eligibility criteria established by the LPDF, which only required candidates not to have been 'convicted in a case of financial corruption or violation of human rights or international humanitarian law', in addition to age and nationality requirements.³⁵⁸ Given the *de facto* suspension of Libya's criminal justice system and limitations in international accountability efforts, the requirement for a 'conviction' makes the criterion meaningless. In practice it permits individuals subjected to investigations for gross human rights violations and serious international crimes, indicted by domestic or international courts (including the ICC) or designated for UN sanctions, to play leading roles in Libya's attempted transition to peace.

This is particularly problematic from the perspective of victims who are asked to put their trust in officials who may be responsible for the violations they have suffered. Respondents to LFJL's Perceptions of Justice Survey often stated that those responsible for Libya's transition to peace should not be 'the same ones who caused [the conflict] to happen'.³⁵⁹ This reflects a wider demand among Libyan communities to remove alleged perpetrators of human rights violations from positions of power.³⁶⁰ As one victim put it:

*"What is the fate of those who have suffered violations, when the criminals take up government positions?"*³⁶¹

Stronger vetting standards, better transparency, and a higher commitment to accountability and due process would also have been beneficial for the integrity of the forum, which faced serious corruption allegations. Following reports of financial bribes allegedly offered to LPDF participants to influence their political choices, a number of CSOs called for UNSMIL to open a transparent investigation, and to exclude LPDF members and candidates for the interim executive – found to be involved in bribery – from the process.³⁶² In March 2021, ahead of the LPDF nomination of the interim executive, similar corruption allegations emerged in a leaked PoE report.³⁶³ Confronted by a challenging situation, UNSMIL failed to follow a transparent process to respond.³⁶⁴ The process thus continued, and the selected Prime Minister of the interim authority, Abdulhamid Debeibah, was nominated despite allegations that LPDF members were bribed to support him.³⁶⁵ This risks undermining the legitimacy of the LPDF, reducing public trust in the process and reinforcing the perception that, even within multilateral frameworks that are supposed to put human rights and due process at their centre, no rules apply in Libya.

SUPPORTING LIBYAN INITIATIVES FOR PEACE AND JUSTICE

A crucial issue that requires better attention from foreign states and multilateral institutions seeking to support a successful transition to peace in Libya is the state of civil society. The work of civil society is vital for peace and justice, and a fundamental component of democracy. CSOs are important on several fronts, from tackling the drivers of violence and

356 UNDP, 'Vetting Public Employees in Post-conflict Settings: Operational guidelines', 2006, p.20, available at: <https://www.ictj.org/sites/default/files/ICTJ-UNDP-Global-Vetting-Operational-Guidelines-2006-English.pdf>

357 Federico Andreu-Guzmán, 'Due process and vetting' in Alexander Mayer-Rieckh and Pablo de Greiff (Eds.) *Justice as Prevention: Vetting public employees in transitional societies*, Advancing Transitional Justice Series, 2007, p.454, available at: <http://sro.sussex.ac.uk/id/eprint/52113/1/Vetting.pdf>

358 UNSMIL, 'Chapter on Eligibility for Candidacy for the Executive Authority', available at: https://unsmil.unmissions.org/sites/default/files/lpdf_-_eligibility_final_eng_0.pdf

359 LFJL, 'Victims' Voices: The Libyan Political Dialogue Forum', 2021, available at: <https://www.libyanjustice.org/news/victims-voices-the-libyan-political-dialogue-forum>

360 LFJL's Perceptions of Justice Survey.

361 LFJL, 'Victims' Voices: The Libyan Political Dialogue Forum', 2021, p.11, available at: <https://www.libyanjustice.org/news/victims-voices-the-libyan-political-dialogue-forum>

362 LFJL, 'Open letter on allegation of bribery at the Libyan Political Dialogue Forum', 22 November 2020, available at: <https://www.libyanjustice.org/news/open-letter-to-the-un-and-unsmil-on-allegations-of-bribery-at-the-libyan-political-dialogue-forum>

363 Samer al-Atrush, 'Bribes offered in election of new Libyan prime minister, leaked UN report claims', 2 March 2021, available at: <https://www.thetimes.co.uk/article/bribes-offered-in-election-of-new-libyan-prime-minister-leaked-un-report-claims-q03xbgnqt>

364 Ibid. UNSMIL issued a statement distancing itself from the PoE's report: UNSMIL, 'UNSMIL statement regarding holding house of representative session in Sirte and allegations of bribery at the LPDF', 2 March 2021, available at: <https://unsmil.unmissions.org/unsmil-statement-regarding-holding-house-representatives-session-sirte-and-allegations-bribery-lpdf>

365 UNSMIL, 'Transcript of introductory remarks by Acting Special Representative Stephanie Williams at a press conference after the vote of the New Executive Authority', 5 February 2021, available at: <https://unsmil.unmissions.org/transcript-introductory-remarks-acting-special-representative-secretary-general-libya-stephanie>

channelling the voices of affected communities in peace initiatives, to ensuring information and participation around elections, and providing support for victims of violence and conflict. CSOs are also instrumental for accountability, as they work to document human rights and humanitarian law violations and preserve evidence that can support future domestic and international criminal proceedings.

In the space that opened during and immediately after the 2011 uprising, civil society and independent media flourished. However, persistent insecurity and repressive measures by Libyan authorities soon reversed the trend. Since 2016, increasingly stringent rules have been introduced to limit the work of civil society, including the GNA's Decree 286 of 2019, which presents major obstacles to freedom of expression and association in Libya, including strict rules for the registration of CSOs, funding restrictions and surveillance of activities.³⁶⁶ Civic space has also been limited by the persistent harassment, attacks, arbitrary arrests, enforced disappearance and killing of human rights defenders and critical voices – all perpetrated with impunity.³⁶⁷ The GNU, whose primary task is to move the country towards elections, has not reversed such restrictions, which would be necessary for elections to be free and fair. Moreover, the abduction in June 2021 of Mansour Atti al-Maghrbi, head of the Libyan Red Crescent Society in Ajdabia and civil society activist, is a reminder of the dangers faced by civil society and human rights defenders.³⁶⁸

Against all odds, Libyan civil society continues to lay the groundwork for peace and justice. Organisations like Together We Build It, for example, have worked to empower women to participate in local level peace initiatives, while campaigning for women's representation in formal peace processes.³⁶⁹ Similarly, the Tamazight Women's Movement works to highlight intersectional gender issues among indigenous communities in Libya and to strengthen the resilience of CSOs working on women, youth, and an inclusive peace and security agenda.³⁷⁰ Other initiatives have also aimed to tackle the negative impacts of conflict in all its forms. The Libyan

Centre for Freedom of Press, for example, has been working to counter the disastrous effects of Libya's 'information war' through the establishment of 'Falso': a digital platform that monitors incidents of fake news and hate speech to better inform the public and promote a culture of accountability and professionalism among the media in Libya.³⁷¹ Local CSOs advocating for victims, such as the Youth Gathering for Tawergha,³⁷² are also playing a crucial role in providing a support network to affected families and documenting human rights violations on the ground.

Such work has partly been enabled by the support and funding provided by international actors that recognise the importance of civil society for a peaceful and stable Libya. More should be done. As explained by a CSO representative from Tawergha, "everyone turns to civil society in Libya, but they are asked to do far more than they have the capacity and resources to do."³⁷³ Donor requirements are at times not aligned with the realities of CSOs on the ground. For example, official CSO registration or permission to operate is often set as a precondition to access funds, while this is often impossible or dangerous to obtain for independent CSOs working on sensitive peace-building, human rights and accountability issues.³⁷⁴ Moreover, the first and second Berlin Conferences failed to address the issue of the ongoing crackdown on civil society, despite its importance for the transition the Conference is meant to support.³⁷⁵ Equally, no mechanism to monitor the situation of civic space and a free civil society has been established.

Supporting Libyan initiatives for peace and justice by ensuring that civil society has the resources and space to function is an area where international actors can make a tangible positive difference for Libya. It is thanks to civil society's tireless efforts that Libyans can hope to have a voice in the future of their country, and to see their demands for peace and justice fulfilled.

366 CIHRS, 'Libya: CSOs must challenge executive authorities' denial of freedom of association', 25 November 2019, available at: <https://cihrs.org/libya-csos-must-challenge-executive-authorities-denial-of-freedom-of-association/?lang=en>

367 See for example: Mayada Elmaki and Tim Molyneux, 'Libya's interim government must end civil society crackdown' 17 September 2021, available at: <https://www.aljazeera.com/opinions/2021/9/17/libya-interim-government-must-end-civil-society-crackdown>; Cordaid, op. cit.

368 Frontline Defenders, 'The kidnapping of a human rights defender raises concerns and threatens the credibility of scheduled elections' 21 June 2021, available at: <https://www.frontlinedefenders.org/en/statement-report/kidnapping-human-rights-defender-raises-concerns-and-threatens-credibility>

369 The website of Together We Build is available at: <https://togetherwebuildit.org/> - <https://togetherwebuildit.org/portfolio/women-inclusion-in-the-peace-process-at-municipalities-level/>

370 Information on the Tamazight Women Movement is available at: <https://www.euromedwomen.foundation/pg/en/profile/ermwf.twm>

371 Falso's website is available at: <https://falso.ly/>

372 Youth Gathering for Tawergha has for example reported violations of the rights of the Tawergha to the Universal Periodic Review, available at: https://www.upr-info.org/sites/default/files/document/libya/session_36_-_may_2020/youth_gathering_for_tawargha_2019_upr_libya_submission.pdf

373 Libyan human rights defender participating in a closed roundtable on accountability held by LFJL in June 2021.

374 CIHRS, 2019, op. cit.

375 LFJL, 'Berlin process must recognise human rights and accountability as paths to sustainable peace', 21 June 2021, available at: <https://www.libyanjustice.org/news-arabic/aal-aamly-brlyn-laatr-bhqwq-lnsn-wlmsl-kkhtw-hdf-l-bn-lslm-lmstdm>

6. CONCLUSION

The last decade of international engagement in Libya, whether through military deployments to push geopolitical agendas, propaganda, or the pursuit of narrow security and economic interests, has exacerbated Libya's conflicts at the expense of the people of Libya. This shift from flawed multilateralism to shameless unilateralism has coincided with the erosion of a shared multilateral framework based on human rights and humanitarian protection. If the *raison d'être* of the current multilateral framework centred around the UN is to maintain international peace and security in conformity with the principles of justice and international law, Libya risks becoming an example of the failure of multilateralism.

Eleven years after the multilateral momentum that led to a rare UNSC referral to the ICC, the many hopes raised risk turning into despair. Accountability, be it for Libyan factions killing, torturing, displacing and disappearing civilians, or for foreign actors intervening as they please, has become an unacknowledged victim of the conflict. While impunity has further fuelled violence and conflict, international attempts to guide Libya towards a transition to peace have been undermined by the very subordination of human rights, accountability and local voices to political expediency. When it comes to Libya, it seems that, with very few exceptions, nobody is ready to prioritise international standards, peace human rights – or the Libyan people.

Against all odds, the people of Libya still have the courage to claim a better future for their country. Whether protesting against degrading living conditions and corruption, organising to support victims, promoting women and youth participation in peace processes, or documenting abuses, people in Libya are tirelessly working to bring their grievances to the fore. Refocusing on the real needs and aspirations of the Libyan people is the only way for international actors to engage in Libya constructively and to help build a lasting peace. This includes recognising that human rights and accountability should go hand in hand with establishing security and stability in Libya.

People's desire for human rights, justice and democracy sparked an uprising 11 years ago; it is time for their demands to be heard. Beyond the geopolitical calculations, security concerns and economic deals that bring foreign actors to the scene, what is at stake is the very survival of a rule-based international framework – and, above all, the lives and rights of all people in Libya.

7. RECOMMENDATIONS

As this report focuses on international actors' engagement in Libya, recommendations for Libyan actors do not fall within its scope. However, Libyan authorities have the primary responsibility to respect and promote human rights, the rule of law, good governance and peace in the country. Detailed recommendations targeted at domestic actors have been made in other reports.³⁷⁶ Third states and multilateral institutions should encourage and support Libyan authorities to implement these recommendations, to comply with their obligations under international law, and to cooperate with international human rights and accountability mechanisms.

Third states and international institutions have a fundamental role to play in supporting Libya to embark on a long-term transition towards sustainable peace rooted in human rights, the rule of law, and good governance. To do so, states and international bodies need to commit to human rights and sustaining peace not only in words but also in practice. The five pillars and related recommendations set out below will help international actors take a different path from the one that has led them to witness, and at times contribute to, a decade of conflict, abuse and rampant impunity.

I. A principled multilateral approach to international engagement in Libya, rooted in international law and standards, human rights and humanitarian law

- All UN member states must stop acting unilaterally in breach of UNSC resolutions on Libya and refrain from any activities that exacerbate the conflict, or that are inconsistent with the UNSC arms embargo imposed under resolution 1970 (2011) or the 23 October Ceasefire. This includes the sale or transfer of weapons and other military capabilities to Libya or third countries and companies reported to be militarily involved in Libya, the deployment of foreign forces, the financing of military capabilities, or the recruitment of foreign fighters and mercenaries.
- UN member states must back multilateral efforts aimed at supporting Libya's transition to sustainable peace by ensuring the implementation of UNSC resolutions on Libya, including Resolution 2570.

³⁷⁶ See for example: LFJL, FIDH, and ECCHR, op. cit.; LFJL, *We will not be silenced: Online Violence Against Women in Libya* 2021; LFJL, July 2021, op. cit.; LFJL September 2020, op. cit.

- UNSC member states should utilise the UNSC mechanisms, such as the arms embargo and the sanctions regime, in an effective and transparent manner to stop the ongoing breaches as stipulated in consecutive UNSC resolutions on Libya.
- UN member states should uphold the implementation of the conclusions of the first and second Berlin Conference and its established roadmap to peace in Libya.
- The EU and its member states should devise a unified and coherent strategy to support UN-led processes and Libya's transition to peace, democracy and the rule of law in line with the EU Action Plan on Human Rights and Democracy 2020–2024,³⁷⁷ the EU Strategic Framework on Human Rights and Democracy,³⁷⁸ and other relevant EU instruments and guidelines.³⁷⁹

II. International standards and human rights obligations rooted in all foreign policies and programmes, including counter-terrorism and migration-related interventions

- Third states involved in counter-terrorism operations in Libya, including the US and France, should ensure that counter-terrorism efforts are compliant with human rights and humanitarian law. In particular:
 - States should conduct independent and transparent evaluations in their counter-terrorism efforts *vis à vis* their impact on affected communities, and;
 - States should cease any counter-terrorism and security cooperation with armed groups, militias and security forces that are allegedly involved in human rights violations.
- The US must end its unilateral programme of lethal strikes outside recognised battlefields, including in Libya, support UN-led processes and mechanisms, and utilise its

³⁷⁷ Council of the European Union, 'EU Action Plan on Human Rights and Democracy 2020–2024', 18 November 2020, available at: <https://www.consilium.europa.eu/media/46838/st12848-en20.pdf>

³⁷⁸ Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy', 25 June 2012, available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

³⁷⁹ In particular, article 21 of the Lisbon treaty requires the EU's external action to be guided by principles of democracy, the rule of law, human rights and fundamental freedoms, human dignity, equality and solidarity, and respect for the principles of the United Nations Charter and international law.

diplomatic leverage to promote peace, democracy, the rule of law and human rights in Libya.

- EU institutions and member states, in particular Italy, should review and reform all policies of cooperation with Libya on migration and border management to ensure human rights-compliant terms. In particular, EU institutions and member states should:³⁸⁰
 - Immediately suspend any existing agreement in relation to migration management policies that impact human rights negatively or exacerbate conflict, and refrain from entering new ones with the Libyan authorities until they provide sufficient guarantees to ensure that the human rights of refugees and migrants are protected in Libya;
 - Take immediate steps to investigate the impact of such agreements and arrangements on vulnerable communities and conflict dynamics in Libya and ensure that all such future agreements and arrangements with Libyan authorities comply with international human rights and humanitarian law;
 - Increase and improve access to safe and legal pathways for migrants and refugees to Europe.

III. Accountability for violations and crimes under international law committed in Libya by non-state actors, the Libyan state, as well as third states and their nationals

- Third states and relevant international and regional institutions should support Libya in rebuilding adequate and accessible domestic mechanisms to deliver accountability and redress to victims, including by:
 - Providing resourcing and expertise for legal and institutional reform in Libya to bring the legal and institutional framework in line with international law and standards;
 - Strengthening the capacity of the Libyan justice system through exchanges of knowledge and practice in line with international human rights law and standards;
 - Providing resourcing and expertise for supporting a victim-centred transitional justice process rooted in human rights and able to provide victims with accountability, truth, and reparations. In particular, the EU and its member states should implement the EU policy framework on support to transitional

justice (2015).³⁸¹ The African Union (AU) and its member states should apply the AU transitional justice policy (2019).³⁸²

- Third states should utilise extraterritorial, including universal, jurisdiction to hold perpetrators of international crimes committed in Libya to account, including by monitoring travel and tracing assets of relevant suspects, and by collecting evidence, including victim and witness statements, to build cases for prosecution.
- The UN and its member states should support the work of international independent investigative mechanisms, including by:
 - Extending the mandate of the FFM and providing the FFM with the necessary resources, including the staff and budget, to conduct effective and meaningful investigations, and;
 - Urging the GNU to fully cooperate and support the FFM and other international independent investigative mechanisms, including by providing unhindered access and support to their investigations throughout all of Libya.
- UN member states and the ICC should ensure that the Court plays a more relevant role in Libya to advance accountability:
 - States should support the ICC with all means possible to carry out its mandate in Libya, including executing arrest warrants, applying collective pressure on Libya and third-party states to surrender those named by ICC warrants, and making sure that the ICC has the resources it requires;
 - The ICC should actively exercise its jurisdiction over Rome Statute crimes committed in Libya, including crimes allegedly committed by nationals of third states within the country, and use the existing evidence to issue further arrest warrants as appropriate;
 - The ICC should improve outreach to victims, affected communities and other stakeholders to better engage Libyan stakeholders and explain its work in Libya and opportunities for victims to participate in ICC proceedings.
- States and international bodies with sanctions regimes such as the US and the UK, the EU and its member states, as well as the Libyan Sanctions Committee in line with

380 For detailed recommendations to the EU and its member states in relation to their migration policy in Libya see: LFJL, FIDH, and ECCHR, op. cit., p. 48.

381 'The EU's Policy Framework on support to transitional justice', 2015, available at: https://eeas.europa.eu/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf

382 African Union, 'Transitional Justice Policy', 2019, available at: https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf

information provided by the Panel of Experts, should apply individual targeted sanctions in a transparent and calculated manner. The application of sanctions should respect due process in line with international human rights standards and be done in coordination with other relevant accountability mechanisms, to contribute to accountability and reparations for victims.

- States should ensure that crimes committed by their nationals during operations in Libya are independently and thoroughly investigated, perpetrators held accountable, and victims provided with adequate redress.
- States and international organisations should review alternative options and opportunities to deliver accountability and reparations to victims of gross human rights violations and serious international crimes committed in Libya, including the potential establishment of a special court for Libya.

IV. Libya's transition to sustainable peace through an inclusive human rights-based approach towards stability, peace, justice and accountability

- The UN and its member states should ensure that human rights and humanitarian law considerations are mainstreamed throughout all tracks of the Berlin Conference. This should include identifying a clear timeline and benchmarks to measure any progress made in relation to the final conclusions put forth in the Berlin Conferences.
- The UN should initiate a transparent internal evaluation of its peace efforts in Libya *vis à vis* human rights standards to assess past efforts and ensure that its continued engagement in Libya is rooted in continuous learning.
- UNSMIL and any other actor supporting Libya's transition should ensure inclusivity and local ownership of political and transitional processes, including effective information, representation and participation of women, youth, ethnic minorities, victims of human rights violations, and any other vulnerable group, in line with UNSC resolution 1325 and the UN mediation guidelines.
- The UN and its member states should support a victim-centred and human rights-based transitional justice process:
 - UNSMIL should support national actors to develop a clear strategy for transitional justice, in respect of human rights law and standards. Such a strategy should include adequate mechanisms to ensure the meaningful engagement of victims and affected communities; and it should be integrated in any military, political, or economic agreement or intervention;
- States and relevant UN actors should support the effective implementation of a victim-centred and human rights-based transitional justice strategy, including through the provision of resources, technical assistance, expertise and training to the Reconciliation Committee and any other relevant mechanisms that may be established.
- UNSMIL, in cooperation with national authorities, should actively encourage the integration of the UN operational guidelines on Vetting Public Employees in Post-conflict Settings in current and future processes for the selection of candidates for public office as well as in future security sector reforms.

V. Promotion and protection of civic space and the work of civil society

- The UN and its members states should work towards the protection of civic space in Libya and the promotion of the work of civil society by:
 - Calling on Libya to reform its legal framework to remove limits on freedom of expression, association and assembly to ensure that Libyan civil society can work effectively and safely;
 - Support the work of independent Libyan CSOs by providing funding, capacity-building, networking and expertise through flexible approaches that are tailored to the specific operating context in Libya;
 - Guarantee that members of civil society and human rights defenders have access to adequate protection mechanisms if they are threatened as a consequence of their work; and
 - Facilitate the integration of a free civil society into the Berlin Conference as one of the areas to be monitored by the process.

Lawyers for Justice in Libya

Lawyers for Justice in Libya is a Libyan and international independent non-governmental organisation and UK-registered charity. LFJL works on and in Libya with a growing network of lawyers, activists and grassroots communities across and outside the country. LFJL seeks justice in Libya through advocacy and outreach, accountability, transitional justice initiatives and capacity building, underpinned by independent research, which includes a particular focus on enforced disappearances, the protection of civic space, the rights of women and the rights of migrants and refugees. LFJL's work is rooted in a rights-based approach: all engagement and policies must be founded on a human rights framework and ensure that individuals and communities can participate fully as a fundamental part of leading dignified lives.

Saferworld

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. We work with people affected by conflict to improve their safety and sense of security and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. Our priority is people – we believe in a world where everyone can lead peaceful, fulfilling lives, free from fear and insecurity. We are a not-for-profit organisation working in Africa, Asia and the Middle East.

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