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Written statement* submitted by World Organisation Against Torture, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 February 2025]

* Issued as received, in the language of submission only.

Newly Enacted Transitional Justice Law in Libya Must Adhere to International Laws and Standards

On 7th January 2025, the Libyan Parliament operating in the eastern part of the country enacted a new transitional justice law[1] following a difficult legislative drafting process, as the two opposing political factions in eastern and western Libya engaged in protracted conflicts over the approval of several drafts since the beginning of 2024.[2]

Several international and local organizations expressed critical views regarding the initial drafts, particularly concerning the vagueness of the accountability provisions. However, the parliament has yet to publicly release the final enacted text of the law. Concerns remain that, based on previous drafts, if enacted, the law will lack effective implementation mechanisms within the new transitional justice prosecution branches, potentially leading to corruption and jeopardizing its overall success.

Political divisions, widespread use of weapons, and a lack of meaningful political dialogue and reconciliation continue to hinder accountability and transitional justice in Libya, but other concerns also exist.

First, the geographical dispersion of judicial institutions, exacerbated by the absence of a centralized national registry system for all courts and prosecutorial offices, presents significant challenges in effectively referring cases to regional branches of the transitional justice committees established within courts and prosecutorial offices. Second, the existing judicial system in Libya is already characterized by jurisdictional conflicts and overlapping mandates between courts in different regions. The establishment of new transitional justice courts and prosecutorial offices is likely to exacerbate these existing challenges, particularly in the absence of clear jurisdictional guidelines and well-defined procedural frameworks for the new transitional justice institutions.

It is worth noting that, due to the failure to achieve political unification, the Libyan judicial system remains fragmented and lacking independence. This lack of independence has resulted in the International Criminal Court retaining its mandate to investigate war crimes in Libya, as authorized by UN Security Council Resolution 1970 (2011). Despite reports from the Libyan Anti-Torture Network showing judicial authorities are vulnerable to attacks from armed groups linked to both the Libyan Arab Armed Forces and the Government of National Unity, the new law fails to address the protection of court personnel.

Transparency and trust in the selection process for members of the Truth Commission according to the law are severely undermined by the lack of clear and objective selection criteria, increasing the risk of corruption and the appointment of unqualified individuals. The law fails to ensure adequate representation of women, and marginalized groups such as the Amazigh, Tuareg, and Tebu within the Commission's composition. These communities, which have been disproportionately affected by the conflict in Libya, deserve meaningful representation on the Commission, particularly given the systematic violence they have endured as minorities.

Current Libyan legislation inadequately defines key crimes, such as torture and enforced disappearance, failing to align with international standards, outlined in the Convention Against Torture. While the transitional justice law acknowledges the need to refer to international legal obligations, it falls short of explicitly incorporating these definitions into domestic law. Moreover, Libyan law lacks any specific legislation defining war crimes and other violations committed within the context of armed conflict. This absence of a comprehensive legal framework for addressing these grave offenses is particularly concerning given the persistent recurrence of armed conflicts in Libya since 2011. The law refers to other Libyan legislations, namely Law 6 of 2015 and Law 4 of 2024, regarding amnesty provisions. However, both laws lack clear and specific mechanisms for implementing amnesty procedures within the current context of political division and ongoing conflict. Additionally, the Libyan Penal Code establishes a statute of limitations of ten years for criminal offenses but fails to explicitly exclude war crimes and other serious human rights violations from this limitation. This gap creates a significant legal loophole that may impede efforts to bring perpetrators of these crimes to justice.

Therefore, it is imperative that the law explicitly excludes war crimes and other serious human rights violations from the application of the statute of limitations.

The Libyan transitional law inadequately addresses reparations and rehabilitation as it lacks specific guidelines for compensation based on the severity of harm. Moreover, its scope of victim protection is limited, primarily focusing on women victims of sexual violence while excluding men and children. Furthermore, the law suffers from a lack of clarity, with no clear definitions for various crimes, especially sexual violence, and no specific procedures for the investigations. The law also neglects critical areas such as the search for missing persons, the identification of bodies, and the rehabilitation of vital public sectors, particularly the judiciary. Notably, there is an absence of mechanisms to prioritize the needs of the most vulnerable groups and a lack of a comprehensive plan for the return and reintegration of displaced persons.

The law delegates the Ministry of Foreign Affairs with the responsibility of coordinating the receipt of information and cases from international organizations. However, since 2018, the Libyan authorities have consistently obstructed international cooperation with Libyan non-governmental organizations working on documenting human rights violations. This situation is further complicated by the ongoing political division within Libya, which has resulted in the fragmentation of ministries and a severe lack of inter-ministerial coordination, particularly between the two foreign affairs cooperation branches in eastern and western Libya. The continued exhaustive procedures demanded by the ministries of both the Libyan Arab Armed Forces and the Government of National Unity, for years now, strongly suggests that these political entities may not be acting in good faith.

The law also fails to recognize the crucial role of Libyan civil society in reporting cases of human rights violations and assisting victims. This omission reflects the ongoing suppression of human rights defenders and the continued erosion of civil liberties within the country. Since 2018, both governments have criminalized civil society and attacked activists through various means, including arrest, detention, torture, and intimidation. This criminalization, compounded by the exclusion of civil society from the complaint process and the prevailing instability, which has instilled fear in victims, reflects the political manipulation of transitional justice. This is evident in the attempts to instrumentalize transitional justice mechanisms to address violations against civilians and activists, which have been documented in thousands of cases since 2011.

The World Organization Against Torture and the Libyan Anti-Torture Network express their concerns regarding the implementation of this law and call upon the international community to support the efforts of Libyan civil society in addressing the law's potential consequences. Both organizations urge international pressure to delay the law's implementation until a unified Libyan government and independent judiciary are in place.

Concerned States are Encouraged to Urge Libyan Parliament to:

- Provide additional regulations annexed to the law, outlining clear and internationally accepted criteria for the selection of Truth Commission members and all judicial staff involved in the prosecution process.
- Include provisions to ensure the safety and protection of lawyers, judges, as well as victims, witnesses, and survivors.
- Allow international and local organizations to submit complaints and reports to the commissions without facing excessive regulations.

Before Implementing the Transitional Justice Law, Libya Law is Called upon to:

- Provide clear definitions of war crimes and ensure that legal guarantees are respected for those arrested.

- Ensure all trials meet international standards and address all violations, regardless of affiliation.
- Ensure that provisions related to torture and enforced disappearance are aligned with the definitions outlined in international human rights treaties.

Libyan State must be Encouraged to:

- Specifically address torture as a systematic crime against civilians.
- Establish a national commission tasked with documenting torture crimes and preventing systematic torture through in-country monitoring of detention facilities.
- This commission should submit its reports and findings to the Truth Commission.
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Libyan Anti-Torture Network (LAN), NGO(s) without consultative status, also share the views expressed in this statement.

[1] Ahmed Elumami, “Libya's Eastern Parliament Approves Transitional Justice Law in Unity Move, MPs Say”, Reuters, 8 Jan. 2025, https://www.reuters.com/world/africa/libyas-eastern-parliament-approves-transitional-justice-law-unity-move-mps-say-2025-01-08/.
[2] “Towards a Comprehensive Draft Law on Transitional Justice and Reconciliation”, UNSMIL, 10 Dec. 2024, https://unsmil.unmissions.org/towards-comprehensive-draft-law-transitional-justice-and-reconciliation.