

Stakeholder Report to the United Nations Human Rights Council Universal Periodic Review - Libya

The Rights to Freedom of Expression, Association and Assembly in Libya

Submitted by Lawyers for Justice in Libya (LFJL)

October 2014

Key Concerns

- Libya's domestic laws fail to safeguard or guarantee the rights to freedom of expression, association, and assembly in compliance with the state's international obligations.
- Transitional governments have adopted new legislation which fails to remove existing arbitrary restrictions to the rights to freedom of expression, association, and assembly and introduces new provisions which further undermine and violate these rights.
- The Libyan state has failed to protect the rights to freedom of expression, association, and assembly in the face of the emerging threat of armed non-state actors.
- The Libyan state has failed to hold alleged perpetrators of violations to freedom of expression, association, and assembly accountable.

Introduction

1. This stakeholder report is an individual submission by Lawyers for Justice in Libya (LFJL), under its *Sawti* Freedom of Expression Programme. LFJL is an independent non-governmental organisation and charity registered in the United Kingdom, incorporated for the public benefit in order to defend and promote human rights in Libya.

2. As part of its work in Libya, LFJL has actively sought to guarantee the enjoyment of fundamental human rights, including freedom of expression, assembly, and association, through engaging with stakeholders and carrying out awareness raising and advocacy activities. LFJL wishes to highlight its concerns surrounding the rights to freedom of expression, assembly and association in Libya before the Human Rights Council for consideration in Libya's upcoming Universal Periodic Review (UPR) in 2015.

3. Following the last UPR session on Libya, the state has failed to adhere to three recommendations concerning freedom of expression which enjoyed the state's support, and one recommendation concerning freedom of association and assembly, which it has failed to examine. This report addresses LFJL's key concerns with regards to each of freedom of expression, freedom of association and freedom of assembly in turn.

Freedom of Expression

4. Despite freedom of expression being considered one of the key demands and motivations for the 2011 Uprising, the Libyan state has failed to implement the three recommendations related to freedom of expression from its last UPR. These were recommendation 93.41 to "comply with international obligations, and ensure full and unhampered enjoyment of

freedom of expression,” 93.42 to “abrogate all provisions criminalizing freedom of expression,” and 93.43 to “provide free, independent media in accordance with the Libyan Arab Jamahiriya’s international obligations.”

5. Libya’s domestic law still contains numerous provisions that restrict freedom of expression, in breach of Libya’s international obligations, the recommendations of the previous UPR report and its own Constitutional Declaration of 3 August 2011.

6. The Libyan Penal Code of 1953 criminalises various acts of expression, often with extremely severe penalties.

7. Articles 178, 205 and 245 of the Libyan Penal Code provide prison terms for insulting public officials, the Libyan nation or the Libyan flag. In addition, Article 439 prescribes a minimum term of six months for “attacks against anyone’s reputation by defamation.” Article 203 imposes the death penalty for “aiming to initiate a civil war in the country, or fragmenting national unity, or seeking to cause discord.” Article 207 also prescribes the death penalty for promoting “any views or principles” that aim to overthrow the political, social or economic order of the state. Article 291 establishes an offence for blasphemy, stating that anyone who publically attacks the state’s religion or blasphemes against God or his Prophet shall be punished by a penalty of detention for a period not exceeding one year or a fine. The vague and widely drafted wording of the offences under these provisions allows for their arbitrary and unjust use by authorities. It also makes it impossible for citizens to ascertain clearly if they are in contravention of the law. This is particularly concerning given the severe and disproportionate punishments that these offences carry. As a result, these measures are not consistent with Libya’s obligations under Article 19 of the International Covenant on Civil and Political Rights (**ICCPR**), which states it must only restrict expression in a manner that is clearly defined, specific, necessary, and proportionate.

8. The Libyan state has continued to bring about prosecutions under these illegitimate provisions. During the General National Congress (**GNC**) elections in 2012, Ali Tekbali and Fathi Sagar were detained for their alleged use of illegal posters during their campaign for the Libyan National Party. The prosecution claimed that a character in the poster depicted the Prophet Muhammad in a satirical fashion. They were charged for offences, including those detailed in Articles 203, 207 and 291 of the Libyan Penal Code and, as a result, faced the possibility of being sentenced to death. The defendants were acquitted in March 2014. In addition to the disproportionate offences put to them, the length of their detention marks a significant and unacceptable delay, in breach also of their right to due process. In addition, as a result of the attempted prosecutions, the headquarters of the Libyan National Party were shut down by order of the general prosecutor, hindering the party’s capacity to continue its election campaign.

9. Libya’s transitional governments have also adopted a number of new provisions which have restricted and curtailed freedom of expression. The National Transitional Council (**NTC**) adopted Law 37 of 2012 which established life sentences for those who carried out acts which “harm the state” such as “praising or glorifying Gaddafi, his regime, his ideas or his sons” or statements that “harm the 17 February Revolution.” This law was later declared unconstitutional by the Libyan Supreme Court. The NTC also adopted Law 15 of 2012 which

prohibited media discussion of religious opinions (*Fatwas*) issued by the National Council of Islamic Jurisprudence (*Dar Al-Ifta*). These laws constitute illegitimate restrictions of freedom of expression and violate Libya's international obligations, notably Article 19 of the ICCPR.

10. Law 5 of 2014 amended Article 195 of the Libyan Penal Code in order to limit free expression in Libya further. It criminalises “any action, which may harm or prejudice the February 17 Revolution, as well as insulting remarks publicly directed at the executive, judiciary, or the legislature or any of their members, or insulting the Nation's flag.”

11. The use of ambiguous language in the provisions described in paragraphs 9 and 10 above allows for their application to a wide variety of situations at the state's discretion. They endanger free discussion of politics, encourage self-censorship, and severely threaten the ability of citizens and civil society to hold state actors accountable. They do not comply with the justifiable criteria for restrictions established by Article 19(3) of the ICCPR.

12. Serious violations to freedom of expression have been perpetrated by armed non-state actors. Many of these groups have responded violently to criticism of their conduct or ideologies and, as a result, have systematically perpetrated human rights violations, including assassinations, kidnappings, and torture. Key freedom of expression stakeholders, including journalists, activists, and lawyers, have been actively targeted, includes Abdulsalam Al-Mesmari, Salwa Bugaighis and Tawfik Bensaud. The Libyan state has failed to protect civilian targets from these attacks or to bring their perpetrators to justice. The Libyan state has supported the existence of these groups, by enabling their impunity, providing some groups with financial support and outsourcing to some groups public functions, including the management of detention facilities and border controls.

Freedom of Association

13. The Libyan state failed to implement recommendation 93.44 concerned with freedom of association, which enjoyed its support. Recommendation 93.44 urged the state to “promote freedom for trade unions to ensure fair treatment in the event of labour disputes, especially when they involve migrant workers, and ensure that all domestic labour laws fully comply with the Covenant on Economic Social and Cultural Rights”. In addition, the state also failed to examine and provide a follow-up response to the need to “enhance freedom of expression, association and assembly” as proposed by recommendation 95.29.

14. The establishment of civil society organisations and political parties has flourished across Libya since the 2011 Uprising, yet the Libyan state has failed to repeal laws on associations which carry the death penalty.

15. Law 19 of 2003 and Law 71 of 1972 regulate the formation and activity of associations in Libya, with law 71 of 1972 making illegal associations engaging in “any activity based on a political ideology contrary to the principles of the 1969 Al-Fateh Revolution.” Violators of the law are subject to the death penalty.

16. Article 206 of the Penal Code, on “unlawful organization and formations,” criminalises providing funds to, managing, benefiting from, or even advocating the establishment of any organisation or formation “that is deemed illegal”. As Article 206 authorises the use of the death penalty for those in breach, the wide wording of the offence poses a real danger that

severe punishments may be issued arbitrarily. This is particularly concerning as what is to be deemed “illegal” under the Penal Code is not clear.

17. Libya has failed to repeal other laws which contravene its international obligations and restrict freedom of association. Article 208 seeks to limit the freedom to join or establish non-political international organizations unless they receive permission from the government, but without establishing the criteria for such permission. The violation of this law even by merely joining such associations carries a harsh penalty of imprisonment of up to three months and a fine not exceeding 300 Libyan Dinars. Under Article 22 (2) of the ICCPR, while a government may require notification of the establishment of an association The Libyan state failed to define 'necessary' criteria for restricting freedom of associations even by the most flexible interpretation of the ICCPR Article 22 (2), illegitimately curbing freedom of association by the ambiguous nature and scope of the criteria included in Article 208. The Libyan state failed to repeal laws which contravene its international obligation under this Article.

18. Article 210 of the Penal Code, which sets out supplementary penalties to those in Articles 206 and 208, calls for dissolving and closing the offices of organizations deemed illegal and does not offer an approach to legalise the status of such organisations. Such vague legal provisions, which continue to be in force, are subject to arbitrary use by the state.

19. In order to ensure freedom of association, members of Libyan civil society presented a draft NGO law to the Ministry of Culture and Civil Society in February 2012. This draft law has yet to be discussed. The state has also failed to adopt any measures to amend the problematic aspects of the Penal Code or support the creation of a protective framework for organisations.

20. In May 2013, the GNC enacted Law 12 of 2013, the Political Isolation Law. This law disqualified individuals from holding public office for a period of 10 years if they were deemed to have an association with the Gaddafi administration, or “took a position against the 17 February Revolution in deed, by incitement or by financial support.” As this law prevents political participation solely on the basis of perceived political ideology, individuals who had not held to be responsible in a courtroom for the crimes of the previous administration were forced to resign from their positions. This law discriminates against individuals for their perceived political association rather than legitimate grounds such as those based on criminal acts. In turn, it poses a serious infringement of the right to freedom of association and is in contradiction with Article 22 (1) and (2) of the ICCPR which state that everyone has the right to freedom of association with others and any restrictions should be based on democratic grounds.

21. The amendment to Libya’s Constitutional Declaration to include a provision that eliminates judicial review of the constitutionality of Law 12 further violates citizens’ rights to freedom of association through restricting their ability to question the justness of this Law at the judicial level.

Freedom of Assembly

22. Libya has failed to take steps to examine recommendation 95.30, which urged the state to “enhance freedom of expression, association and assembly.”

23. Although, since 2011, there has been a marked improvement of citizens' ability to exercise their right to freedom of assembly, as evidenced by the many gatherings and demonstrations that have taken place, Libyan authorities have taken worrying steps to undermine these gains and impose unjustified restrictions to freedom of assembly.

24. Law 65 of 2012 was passed by the GNC in order to control demonstrations and protests. Article 4 of the law requires that a committee of organisers takes responsibility for maintaining order during a demonstration. This is inconsistent with international standards. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27) stated that the state must bear the primary responsibility to maintain public order and safety during demonstrations and protests. Article 5 of the law requires that organisers notify the authorities of any gathering at least 48 hours in advance, with Article 6 providing unlimited discretion to state authorities to adjust arbitrarily the time and place of proposed assemblies. Article 10 imposes criminal sanctions for gatherings in violation of the law. While criminal sanctions may be an appropriate response to certain unlawful acts, such as instigating or perpetrating violence, the right to freedom of assembly is at risk of being arbitrarily restricted by the state through the provisions of the current law. Those who legitimately act consistently with their fundamental human rights should not face penal action.

25. The state has failed to fulfil its obligations to protect the public during peaceful protests on several occasions. During a peaceful demonstration to protest against the destruction of religious and historical sites, held on 26 August 2012, demonstrators were threatened and intimidated with violence and obstructed from participating by armed groups. Over 40 demonstrators were killed during protests on 15 and 16 November 2013 concerning the presence of militia groups in Tripoli. Further peaceful protests of the presence of Benghazi militias resulted in demonstrators once again being attacked by armed groups. In none of the above-mentioned incidents did the state intervene to stop such attacks or to take measures to hold perpetrators accountable.

26. In addition to recommendations Libya has supported and did not implement, Libya has also agreed to examine two recommendations, 95.29 to "repeal laws restricting the formation of a free and independent press, including Law No. 76 of 1972, Law No. 120 of 1972 and Law No. 75 of 1973," and 95.30 to "enhance freedom of expression, association and assembly." There is no clear evidence that Libya has taken steps to examine these recommendations. There are also five important recommendations which have been rejected in relations to freedom of expression, association and assembly. Key among these is recommendation 96.19 to "repeal laws which criminalize expression of the rights of freedom of expression, of association and of assembly, and ensure that individuals detained for the peaceful exercise of these rights are released." These recommendations should be reconsidered in Libya's upcoming UPR.