

“Justice is the only way forward”: Perceptions of justice in Libya ten years on



محامون من أجل العدالة في ليبيا



LJL

LAWYERS FOR JUSTICE IN LIBYA

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1. EXECUTIVE SUMMARY

A decade after the Libyan popular uprising that ended the oppressive 42-year rule of Muammar Gaddafi in 2011, Libyans are still awaiting justice and accountability. Many of the systematic human rights violations committed during the Gaddafi regime have not been addressed, and parties to multiple conflicts since 2011 have continually committed widespread and systematic grave human rights violations, constituting war crimes and crimes against humanity.

Transitional justice and accountability efforts since 2011 have been inconsistent and inadequate. Libyan courts have focused prosecutions on former Gaddafi regime members for violations committed during the 2011 uprising, while other perpetrators have evaded consequences for their actions. Meanwhile, Libyan authorities have adopted expansive amnesty laws, and commanders of state-affiliated militia and armed groups have benefitted from a pervasive culture of impunity. Investigations conducted by the International Criminal Court (ICC) over the past 11 years have not resulted in any convictions, and North Atlantic Treaty Organization (NATO) and foreign states involved in military interventions in Libya, including through mercenaries and mercenary-related actors, have failed to investigate possible violations by forces under their control.

In this context, between October 2020 and January 2022, Lawyers for Justice in Libya (LFJL) conducted research to gather Libyans' views on justice and accountability a decade after the 2011 Libyan uprising. The research is based on a survey of 349 respondents and 39 in-depth key informant interviews, both held with men and women of various ages from diverse communities across 26 locations in the east, west and south of Libya.

The research showed a clear call from Libyans for accountability, truth, reparations and institutional reform to redress past and current violations and ensure non-repetition. Despite the predominant view that criminal prosecutions and accountability processes should prioritise the period since the Libyan uprising in February 2011, citing the gravity and scope of the violations committed, there was still a strong demand for truth and accountability for violations committed during the Gaddafi regime.

The research findings identified the following priorities:

Criminal prosecutions: 96 per cent of survey respondents supported prosecutions for past and ongoing serious crimes and gross violations, and 77 per cent favoured prosecution

of all perpetrators who caused serious harm and suffering regardless of the group of which they are a part or the rank they hold. Respondents strongly objected to amnesties that would prevent prosecutions for gross human rights abuses such as killings, torture, rape and other acts constituting serious international crimes (war crimes and crimes against humanity). Respondents firmly stated that an apology from the perpetrator on its own does not suffice.

Transitional justice: In addition to criminal justice processes, respondents overwhelmingly called for a range of other transitional justice processes focused on the rights of victims.

The majority of respondents called for **truth-seeking** and documentation of serious violations to counter impunity and supplement judicial processes. Respondents expected truth processes to initiate prosecutions and to restore victims' rights, including reparations.

Seventy per cent of respondents believed that all forms of **reparations** – including financial compensation, restoration of citizenship for stateless minorities, the right to the safe and voluntary return of Internally Displaced Persons (IDPs), restoration of property, and psycho-social support for victims – were important and should be enacted according to the abuse suffered and the wishes of victims.

Ninety per cent of respondents supported **vetting** to exclude perpetrators of serious human rights violations, and those implicated in violations, from political or security institutions, to facilitate justice and to prevent further abuses.

Alternative justice mechanisms: 79 per cent of respondents believed that the Libyan criminal courts alone are currently incapable of delivering impartial and independent justice. As a result, 60 per cent favoured trials for serious violations and abuses to be held by Libyan courts with the support of the international community. Special measures were suggested to improve access to justice for minorities, women, and victims of sexual crimes, to overcome discrimination and stigma. Only 38 per cent of respondents said that they trusted existing international mechanisms such as the ICC to provide justice and accountability for serious crimes.

Institutional reform: Respondents called for reforms to strengthen civil institutions and solidify the independence of judicial institutions. They made the case for institutions to be inclusive of minorities and gender sensitive, including at decision-making levels, to ensure accountability and

non-repetition of serious human rights violations against marginalised groups.

Based on the research and recommendations of the study participants, the following recommendations should be taken to provide justice and accountability for violations in Libya.

To the Libyan state:

- Undertake legislative reform to enhance accountability and non-repetition of violations.
- Prioritise the effective investigation of the crimes and violations committed in Libya with the aim to identify perpetrators and bring them to justice.
- Carry out independent prosecutions, resulting in impartial and fair trials.
- Cooperate fully and promptly with external accountability measures seeking to address crimes and violations committed in Libya and seek relevant support and assistance from third parties.
- Repeal laws that are incompatible with international criminal and human rights law, including existing amnesty laws, including but not limited to Law No. 6 of 2015 related to amnesties.
- Develop an impartial and inclusive truth-seeking mechanism.
- Develop an inclusive reparations programme for all victims without discrimination.
- Initiate a vetting process to ensure perpetrators implicated in serious human rights violations are barred from holding public positions and positions within the security sector.

To the UN, the ICC and the international community:

- Strengthen accountability through a hybrid court and build the capacity of the Libyan justice system to effectively prosecute serious crimes.
- Support civil society working in Libya to document serious crimes and violations.
- Improve ICC outreach efforts to victims and affected communities and improve public communication about the ICC's mandate and activities in Libya.
- Increase investigative efforts by the ICC Office of the Prosecutor to ensure the prompt prosecution of those most

responsible for crimes against humanity and war crimes committed in Libya.

- Use extraterritorial, including universal, jurisdiction, to investigate and, where there is sufficient evidence, prosecute suspects of serious crimes committed in Libya.

2. INTRODUCTION

A year after the 2011 Libyan uprising, LFJL undertook an in-depth survey¹ across Libya on the constitutional drafting process, to ensure that Libyans had a voice during a pivotal time in the country and to help foster a sentiment of constitutional ownership among citizens. During this process, Libyans from different communities expressed a strong demand for justice and accountability, particularly with regard to crimes committed by members of armed groups and militias. They called for an independent judiciary, a vetting process to exclude perpetrators of serious human rights violations from office, more protections in law and practice for women, inclusion of minorities in politics, institutional reform, and constitutionalised protections.

A decade later, the Libyan people have since endured a series of violent armed conflicts, fragmented governance, international engagement by at least ten states,² and systemic human rights violations and war crimes.

In November 2020, Libya entered UN-mediated peace talks to reach a ceasefire agreement and political solution to end the conflict.³ The following year in December 2021, presidential elections were scheduled to take place to instil unified and legitimate institutions. The elections were delayed due to mounting challenges and disputes over rules and regulations, and are now postponed indefinitely. Meanwhile, two parallel governments exist in Libya and compete for power.

At this critical point in Libya's road to democracy and peace, LFJL sought to explore if Libyan people's aspirations and perceptions of justice and accountability have changed in the last decade.

Based on a survey and interviews with a total of 388 Libyans conducted between October 2020 and January 2022, this research provided an opportunity for different communities to express their views on how past and ongoing human rights violations should be addressed, and what justice and accountability mechanisms are needed to build trust in Libya's institutions.

The research was centred on a survey of 349 women and men from diverse communities across Libya and supplemented by in-depth interviews with 39 civil society members, political representatives and experts. Of the 349 survey respondents, 202 (58 per cent) stated they had personally been victims of human rights abuses, 175 (50 per cent) stated they were family members of victims, and 139 respondents (40 per cent) stated that their communities had been affected by human rights abuses.

Respondents were affected by a range of serious human rights abuses, which occurred during the periods between 2014 and 2020 (32 per cent); between 2012 and 2013 (18 per cent); during the 2011 uprising and armed conflict (31 per cent); and during the 1969–2011 Gaddafi regime (19 per cent). Grave abuses mentioned by respondents include the 1996 Abu Salim prison massacre and recent killings in Tarhuna that have led to the discovery of mass graves.

Over half of the respondents (58 per cent) said that they had not been involved with or supported any party to the various conflicts, while over a quarter (27 per cent) stated that they had taken part in anti-Gaddafi protests in February 2011. Four respondents said that they had actively participated in the conflict by fighting with or against Gaddafi forces – three participated in the 2011 conflict either against Gaddafi or the revolutionaries, and two respondents had carried out logistics for parties to the conflict since 2012. One respondent was 15 years old when he participated in the conflict but did not wish to disclose further details.⁴

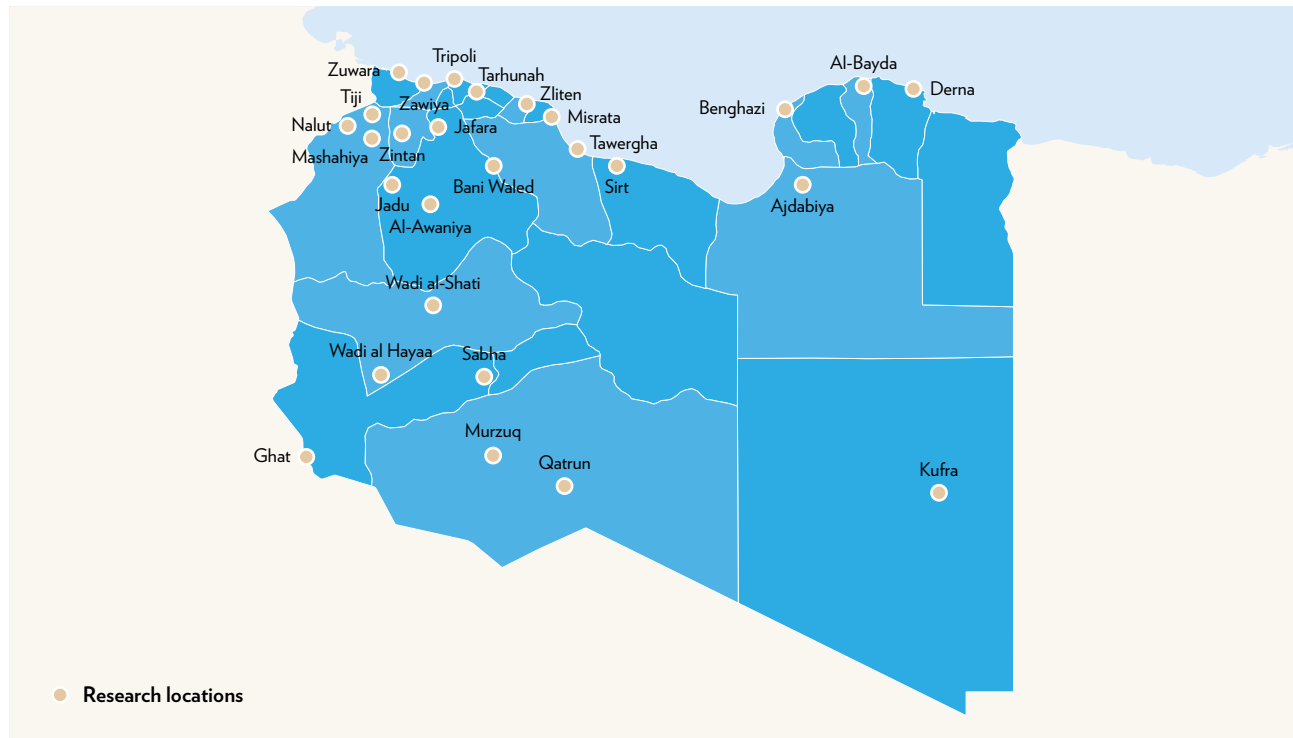
In this cross-section of experiences and perceptions, Libyans' views on justice, accountability, amnesties, apologies, truth and reparations come to light. Respondents and interviewees discuss the links between justice, impunity, revenge, violence and reconciliation, in their own words, and highlight agreements and disparities on specific issues. The report concludes with recommendations for immediate and long-term actions that the Libyan authorities and the international community can take to help build a future for Libya that is centred on human rights and the rule of law.

“Can you imagine seeing people killed in front of your eyes? Then 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 shameful to forget the blood of your dead brother. If the law is not applied, then revenge becomes the only answer, and then blood will reach to our knees. If there is justice, then peace will prevail, and the cycle of revenge will stop.”

– A representative of families of victims discovered in mass graves in Tarhuna.

3. SUMMARY OF METHODOLOGY

Figure 1. Research locations



This report is based on a survey of 349 Libyans inside the country, 39 in-depth interviews of Libyans conducted both inside and outside the country, and desk-based research. The survey and in-depth interviews were designed to capture Libyans' views on justice and accountability and were conducted by local and LFJL researchers between October 2020 and January 2022.

Those who responded to survey questions – referred to for each question as ‘respondents’⁵ – were selected to ensure representation of a broad range of ethnicities, profiles, locations, tribal affiliations and ages, as well as educational, social and professional backgrounds. Respondents included civil servants, civil society activists, human rights defenders, teachers, lawyers, journalists, medical staff, business people, students, housewives and labourers, all from diverse communities.

The in-depth interviews were conducted with Libyan men and women, including experts, community and tribal leaders, victims and victims' families, representatives of victims' groups, grassroots civil society activists including women's rights and minority rights defenders, youth activists, members of transitional justice networks, local government officials, academics, lawyers and politicians. Referred to in this research as ‘interviewees’,

these individuals were selected based on the violations they have faced, and their active work with communities on transitional justice, human rights and reconciliation.

Respondents and interviewees were from communities on different sides of consecutive conflicts, including the Misrata-Tawergha conflict of 2011, inter-tribal/ethnic conflicts such as those involving Tebu, Tuareg and local Arab tribes in Sabha, Kufra and Murzuq, and conflicts between Mashashia and Zintani communities that have taken place since 2011. The sample also included victims of the former Gaddafi regime such as survivors of the Abu Salim prison massacre and communities targeted for being perceived Gaddafi loyalists, such as those in Bani Walid.

To capture views across the political spectrum, in-depth interviews were conducted with supporters of different political factions attending the Libyan Political Dialogue Forum (LPDF) and members of the former regime. The sample includes communities in which victims had also become perpetrators and vice versa.

See Appendix 1 for more detailed information on research demographics, methodology and limitations.

4. BACKGROUND: PAST AND ONGOING GROSS HUMAN RIGHTS ABUSES

1969–2011: GADDAFI REGIME

Thousands of Libyans suffered systematic and widespread gross human rights violations by the state during the Gaddafi regime; such violations at times mounted to war crimes and crimes against humanity. The culture of impunity that permeates Libya today is rooted in Gaddafi's 42-year legacy of human rights violations and the deterioration of Libya's legislative framework and of its judicial and state institutions during that time.⁶

Gaddafi was an absolute ruler who did not tolerate dissent.⁷ He banned political parties⁸ and used a network of intelligence agencies and informants to suppress all opposition at home and abroad. The state security services subjected thousands to prolonged arbitrary and incommunicado detention, enforced disappearances, torture and summary executions.⁹ Among the victims were political dissidents including students and members of religious groups such as the Muslim Brotherhood.¹⁰ The 1985 public hanging of university students in Tripoli and Benghazi¹¹ and the mass extra-judicial killing of 1,272 prisoners in Abu Salim prison in 1996 were vivid illustrations of the regime's brutality.¹² Gaddafi's policy of patronage and the exploitation of tribal conflicts¹³ continues to stoke division and violence today.¹⁴

The obstruction of independent international observers and the crackdown on freedom of expression in the country during the regime also meant that independent documentation of human rights violations during this period was extremely limited, and the full extent of these abuses remains unknown.

In February 2011, a mass uprising erupted in Libya after Gaddafi's forces arrested prominent activist and lawyer Fethi Tarbel in Benghazi. Demonstrators took to the streets calling on Gaddafi to step down. Security forces responded using water cannons and rubber bullets to suppress the protests. As demonstrations in Benghazi intensified and protestors took control of the city, and with unrest starting in Tripoli, Gaddafi regime forces responded with the use of excessive lethal force.¹⁵ The UN Security Council passed Resolution 1970 on 26 February 2011 condemning the escalation of violence and referred the Libya situation to the ICC with an arms embargo imposed on Libya.¹⁶ On 27 February 2011, revolutionary forces in the east formed the National Transitional Council (NTC) to be the "political face of the revolution".¹⁷ France was the first country to recognise the NTC as the legitimate

authority in the country.¹⁸ Anti-government demonstrations erupted in other towns and the situation shortly escalated into an armed conflict between pro-Gaddafi forces and revolutionary (*thawar*) forces. This became known as the 2011 armed conflict. On 17 March 2011, the Security Council passed Resolution 1973 establishing a no-fly zone over Libya to protect civilians.¹⁹ On 19 March, NATO started carrying out air strikes in Libya targeting Gaddafi regime strongholds across the country.²⁰ Fierce fighting continued between pro-Gaddafi forces and revolutionaries supported by NATO air strikes across Libya. In October 2011, the revolutionary forces toppled and killed Gaddafi, drawing the conflict to a close. The revolutionary NTC,²¹ recognised by the UN as Libya's governing authority in September 2011,²² led the country until the election of the General National Congress (GNC) in July 2012.²³

Investigations by the first UN Commission of Inquiry on Libya (COI-2011)²⁴ found that war crimes and crimes against humanity were committed by both sides in the 2011 armed conflict. It concluded that pro-Gaddafi security forces committed widespread and systematic attacks against civilians for their real or perceived political opinions, and for exercising their right to peaceful assembly.²⁵ The security forces subjected civilians to enforced disappearances, torture and persecution and carried out waves of extra-judicial executions.²⁶ Around 500 to 700 people died in February 2011 alone²⁷ as pro-Gaddafi forces used lethal force to suppress protests.²⁸ The COI-2011 also found that pro-Gaddafi forces committed war crimes,²⁹ by carrying out attacks on civilians and civilian objects,³⁰ including through sieges of opposition strongholds such as those in Misrata³¹ and the Nafusa Mountains.³² According to the inquiry, pro-Gaddafi forces committed sexual abuse against male and female detainees.³³ Human rights organisations also issued reports on allegations of rape and sexual violence against women and men, calling on the NTC to investigate these reports.³⁴

The COI-2011 also found that revolutionary forces committed acts constituting war crimes and crimes against humanity, including unlawful killings, abductions and enforced disappearances, indiscriminate attacks against civilian populations and pillage.³⁵ Victims included captured pro-Gaddafi soldiers, security officials, individuals or entire communities perceived to be Gaddafi loyalists, and migrants perceived to be pro-Gaddafi mercenaries.³⁶ The COI-2011 found that Misratan revolutionaries committed crimes

against humanity in Tawergha in August 2011 by forcefully displacing the entire Tawergha population of 40,000 residents as they were perceived to be Gaddafi loyalists who fought alongside pro-Gaddafi forces. Following the displacement, Misratan revolutionaries continued to target displaced Tawerghans across the country and subjected them to heinous crimes including torture, enforced disappearances and unlawful killings.³⁷

While figures vary, some sources estimate that thousands of civilians, including women and children, were also killed or injured by NATO air strikes in 2011.³⁸ Despite finding that NATO “conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties”,³⁹ there were indications of NATO involvement in indiscriminate attacks on civilians. The COL-2011 inquiry stated that the information was not sufficient to draw conclusions and recommended further investigations, as noted in the next section. In one of the most serious incidents in Majer⁴⁰ on 8 August 2011, NATO airstrikes killed 34 civilians and injured 38.⁴¹

2012–2013: TRANSITION PERIOD AND MILITIA HUMAN RIGHTS ABUSES

Following Gaddafi’s murder, militias and armed groups proliferated⁴² and successive authorities were unable to bring them under state control. The GNC, elected on 7 July 2012,⁴³ failed to achieve political stability and was undermined by political infighting and factionalism.⁴⁴ Militias and armed groups continued to commit human rights abuses with impunity and remained in “effective control of territory and state functions, including detention and interrogation facilities”,⁴⁵ with minimal oversight.

Militias and armed groups pressured government institutions to advance political gains,⁴⁶ targeting their critics in addition to perceived Gaddafi loyalists. In 2012 the government and its affiliated militias, mostly from Misrata,⁴⁷ besieged the pro-Gaddafi city of Bani Walid and subjected the population to indiscriminate shelling and arbitrary detentions.⁴⁸

Since 2012, the Libyan authorities have incorporated more than 10,000 revolutionary fighters into different security apparatuses – including the ministries of interior and defence and the intelligence services – without disarming or vetting them to exclude those implicated in the commission of serious human rights violations.⁴⁹

In the following years, a string of political assassinations, allegedly carried out by Islamist militias, targeted Gaddafi-era state security forces, political activists, members of the judiciary, staff of civil society organisations (CSOs) and journalists.⁵⁰ In 2013, 43 people were killed in Tripoli after

Misratan militias used machine guns and heavy weaponry to attack a peaceful protest that called on militias and armed groups to leave the capital.⁵¹ In the south,⁵² regular armed power struggles between the different ethnic groups resulted in deaths, injuries and the displacement of hundreds of citizens.⁵³

2014–2019: RENEWED ARMED CONFLICT AND WIDESPREAD ABUSES AGAINST CIVILIANS

In 2014, tensions erupted into full-scale civil war. In February, protests broke out after the GNC extended its own mandate which had been set to expire that month.⁵⁴ At the same time in oil-rich east Libya, a growing number of violent attacks by militias and Islamist groups targeted Gaddafi-era officials, activists, journalists and members of the judiciary.⁵⁵ The violence laid the groundwork for Field Marshal Khalifa Haftar – a Gaddafi-era officer who spent more than 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.⁵⁶ In May 2014, bringing together Gaddafi-era army units and other armed groups to form the self-proclaimed Libyan National Army (later known as the Libyan Arab Armed Forces or **LAAF**), Haftar launched “Operation Dignity”. This was presented as a counter-terrorism operation against extremist groups, such as Ansar al-Sharia, which had been on the rise in and around an increasingly unstable Benghazi.⁵⁷ However, the operation also targeted other armed groups perceived by Haftar to be opponents, using disproportionate force.⁵⁸ In parallel, on 18 May 2014 pro-Haftar militias stormed the GNC in Tripoli.⁵⁹ Unified by these threats, several political and military factions formed a coalition, later known as “Libya Dawn”, and mobilised against Haftar-allied groups.

In June 2014, the House of Representatives (**HoR**) – a new legislative body set to replace the outgoing GNC after its term expired – was elected with a low turnout at the Libyan parliamentary elections.⁶⁰ The HoR, with significant support for Haftar, relocated to the eastern city of Tobruk, citing security considerations. Aligned with the HoR, an interim government was formed and took a seat in Bayda. Meanwhile, former GNC members – in support of Libya Dawn – formed their own Government of National Salvation (**GNS**) in Tripoli. As a result, Libya found itself with parallel governments and institutions: the GNS in Tripoli and a parallel interim government in the east.⁶¹ This rupture in the governance structure paved the way for further divisions and protracted conflict in the years to come.

In the tribal-dominated south, inter-ethnic and tribal armed conflicts⁶² took place as Arab, Tebu and Tuareg communities in Sabha, Al-Kufra, Awbari and Murzuk fought for control and resources.⁶³ A 2015 UN investigation into human rights violations committed between 2014 and 2015 in Libya (COI-2016)⁶⁴ found that the above conflict parties had committed various violations and abuses with impunity such as extra-judicial executions and unlawful killings, torture, enforced disappearances and kidnappings, sexual violence against women, girls and boys, indiscriminate attacks in densely populated areas, attacks on medical units, and the forced recruitment and use of children by groups pledging allegiance to the Islamic State in Iraq and the Levant (ISIL).⁶⁵ Similar to the east and the west of the country, people in the south were targeted for their real or perceived tribal and political affiliations or for exercising their right to freedom of expression. This included human rights defenders.⁶⁶

In 2015, a UN-brokered political agreement was signed,⁶⁷ which led to the creation of the internationally recognised Government of National Accord (GNA) in 2016, which was located in Tripoli and headed by Fayeze al-Sarraj. The HoR refused to recognise the GNA, and the Bayda interim government led by Abdullah al-Thani continued operating in parallel, supported by Haftar and the LAAF.

From 2016 to 2019, conflict continued across the country between Libya's parallel governments, their affiliated militias and non-state armed groups. In the east, the LAAF continued its fight against Islamist armed groups, targeting of critical voices at the same time. In the west, the GNA-affiliated militias also targeted perceived critical voices and human rights defenders. ISIL and other extremist groups maintained their presence in Libya, primarily in Benghazi, Derna, Sirte, the central desert region, the west coast, and the south west. In this time, all sides to the conflict committed heinous crimes including arbitrary detention, torture and other ill-treatment, enforced disappearances and human trafficking.⁶⁸

APRIL 2019–JUNE 2020: THE BATTLE FOR TRIPOLI

As Haftar established control in the east, imposing strict military rule and clamping down on freedom of expression,⁶⁹ he moved to consolidate his power in the south and west.⁷⁰ In April 2019, the LAAF launched a 14-month offensive to capture Tripoli.⁷¹ Over 100 civilians were killed and nearly 300 injured in the first four months alone as a result of clashes between the LAAF and forces aligned to the GNA.⁷² Foreign states continued to supply heavy weaponry, including drones and other military equipment, to both sides in blatant violation of Resolution 1970.⁷³ Egypt, France, the United Arab Emirates and Russia supported Haftar, while Qatar and Turkey⁷⁴

supported the GNA.⁷⁵ Turkey and Russia deployed troops and mercenaries to support the GNA and the LAAF respectively.⁷⁶

According to the Prosecutor of the ICC, the violations committed by the LAAF during the offensive on Tripoli “repeat a pattern of violence that is consistent with previous attacks carried out [by the LAAF] since 2014”.⁷⁷ This includes indiscriminate airstrikes and shelling, torture, enforced disappearances, extra-judicial executions and other violations during attacks in Benghazi,⁷⁸ Derna,⁷⁹ Ajdabiya⁸⁰, Murzuq⁸¹ and Sirte.⁸² As Haftar's forces pulled back from western Libya in 2020, numerous mass graves containing men, women and children were discovered in one of their former strongholds in Tarhuna.⁸³

GNA-affiliated militias also subjected civilians to indiscriminate attacks and used civilians as human shields by placing military targets near densely populated neighbourhoods and migration detention centres.⁸⁴ They also held thousands of civilians in prolonged arbitrary detention and were implicated in enforced disappearances and torture.⁸⁵

By the end of 2020, 278,177 people in Libya were internally displaced⁸⁶ due to the conflict or were unable to return to their homes for fear of reprisals for their real or perceived political views. At the same time, according to a report issued by the UN Office for the Coordination of Humanitarian Affairs, 1.3 million people were in need of humanitarian assistance.⁸⁷

OCTOBER 2020: PEACE PROCESS

The Berlin Conference on Libya was held in January 2020 in which participants committed to a cessation of hostilities and a permanent ceasefire, the implementation of an arms embargo, security sector reform, a return to the political process, economic reform, and a pledge to uphold international humanitarian law (IHL) and human rights law.⁸⁸ In May 2020, LAAF forces withdrew from Tripoli and a “complete and permanent” ceasefire was signed between the GNA and the LAAF on 23 October 2020, mediated by the UN.⁸⁹

At the same time, a political process under the auspices of the UN was initiated. The Libyan Political Dialogue Forum (LPDF) held its first round of talks in November 2020.⁹⁰ Comprised of 75 Libyan men and women,⁹¹ the LPDF adopted a roadmap to hold presidential elections on 24 December 2021. It also selected⁹² an interim executive authority, the Government of National Unity (GNU), headed by Abdul Hamid Dabaiba, which was tasked with preparing for the December elections.⁹³ A second Berlin Conference on Libya was held on 23 June 2021 to adopt the political roadmap adopted by the LPDF and complete the implementation of the ceasefire agreement reached in October 2020.⁹⁴

However, the elections scheduled for December did not take place partly due to conflicting court rulings relating to the eligibility of three candidates, and a controversial election law that enabled Haftar to participate in the elections, despite the atrocities he had been implicated in.⁹⁵ In February 2022, the HoR stated that the elections should be held within 14 months of the original date and appointed Fathi Bashagha to form a new government, after declaring the GNU to be an invalid government.⁹⁶ Divisions in the HoR between supporters of Fathi Bashagha on one side and Abdul Hamid Dabaiba on the other complicated the HoR's ability to vote on forming the new government. On 1 March 2022, in a controversial voting process, Fathi Bashagha's government was appointed by the HoR.⁹⁷ However, doubts were cast on the quorum during the voting process and some argued that it did not reach the required votes under the internal regulating law of the HoR.⁹⁸

At time of publication of this report, Libya is operating with two parallel governments and national elections are indefinitely postponed.

5. OVERVIEW OF LIBYA'S TRANSITIONAL JUSTICE PROCESSES OVER THE PAST ELEVEN YEARS

Eleven years after the 2011 uprising, victims of past and ongoing gross human rights violations and serious crimes remain deprived of justice, truth, remedy and reparations.

Libya has still not provided accountability for many of the serious violations committed under Gaddafi.⁹⁹ For example, charges against all defendants in the Abu Salim prison massacre were dropped in 2019¹⁰⁰ based on the statute of limitations.¹⁰¹ Despite a recent overturn of this judgement by the Supreme Court in May 2021, and the order of a retrial,¹⁰² the outcome is yet to be seen.

Libyan authorities have also held only a handful of trials for gross human rights violations committed since the 2011 uprising. These have primarily focused on Gaddafi regime officials, while members of government-affiliated militias and armed groups have enjoyed total impunity for the crimes committed since the uprising. For example, on 28 July 2015, 32 out of 37 high-profile Gaddafi regime officials on trial were convicted of charges related to the suppression of the 2011 uprising, including the murder of civilians. Nine were sentenced to death, including Saif al-Islam Gaddafi, former intelligence chief Abdullah al-Senussi and former Prime Minister Al-Baghdadi al-Mahmudi.¹⁰³

Saif al-Islam Gaddafi controversially benefitted from a blanket amnesty under Law No. 6 of 2015 on General Amnesty and was released from detention in April 2016.¹⁰⁴ The amnesty granted to Saif al-Islam Gaddafi was rejected by the ICC, by the internationally recognised Libyan authorities at the time and by international human rights organisations.¹⁰⁵ They stated that under international law, amnesties cannot be granted for torture and killings – the crimes with which Saif al-Islam Gaddafi had been charged with.¹⁰⁶ In addition, the 2015 law grants amnesties on the condition that perpetrators repent and reconcile with their victims. This condition was not met in the Saif al-Islam Gaddafi case.¹⁰⁷

In 2018, at another mass trial related to the killing of protesters in 2011, 99 defendants were convicted in Tripoli, and 45 of them were sentenced to death.¹⁰⁸ Both this trial and the trial against the 37 Gaddafi regime officials fell short of international standards of fair trials, including the right of the defendants to present their defence. The mass trials did not consider the individual criminal responsibility of

each defendant. There were also allegations that confessions extracted under torture were used against the defendants.¹⁰⁹ The imposition of the death sentence following such grossly unfair trials constituted a violation of the right to life.¹¹⁰

Libyan authorities and other states have obstructed international accountability efforts by failing to comply with obligations to cooperate in the arrest and surrender to the ICC of Libyan suspects wanted for international crimes.¹¹¹ Successive Libyan authorities have failed to execute an arrest warrant for Saif al-Islam Gaddafi, wanted by the ICC on charges of crimes against humanity for the murder and persecution of civilians during anti-Gaddafi demonstrations.¹¹² Authorities in the east also failed to execute two arrest warrants for Mahmoud al-Werfalli, a special forces commander under the command of Haftar and the LAAF, wanted by the ICC on war crimes charges in relation to the execution of 43 people during Operation Dignity.¹¹³ Al-Werfalli was killed in Benghazi in March 2021. As a result, the ICC case against him could not proceed. Egypt also failed to execute an arrest warrant against Al-Tuhamy Mohamed Khaled, a former leader of Gaddafi's security apparatus, wanted by the ICC on charges of crimes against humanity and war crimes.¹¹⁴ Al-Tuhamy was believed to be residing in Egypt until his death in Cairo in February 2021 due to illness.¹¹⁵

The serious abuses and crimes committed by militias and armed groups have been well documented by the two UN Commission of Inquiries on Libya and the ICC. Despite this, the Libyan authorities have promoted, empowered and shielded these groups,¹¹⁶ as well as other perpetrators, from prosecution by adopting a string of expansive amnesty laws.¹¹⁷ For example, authorities failed to hold Misrata militias to account for the 2011–2016 atrocities against the Tawerghans. Only crimes attributed to Tawerghans were investigated.¹¹⁸ In the 2017 reconciliation agreement between Misrata and Tawergha, Tawerghans' rights were also sacrificed, including by blocking them from the right of claiming compensation for the abuses they had suffered.¹¹⁹

In the east, the LAAF leadership promoted al-Werfalli,¹²⁰ ignoring two ICC arrest warrants against him. The LAAF leadership also harboured members of the al-Kaniyat forces – a militia group allied to the Libyan National Army allegedly involved in mass crimes in Tarhuna – from prosecution.¹²¹

One of the leaders of the al-Kaniyat forces, Mohamed al-Kani, was sanctioned by the US in response to the discovery of mass graves in Tarhouna. He was killed in July 2021 during an exchange of fire while resisting arrest.¹²²

Justice has been further hampered by intimidation and targeted attacks against judicial personnel, resulting in the near total suspension of the criminal justice system, predominantly in the east and south.¹²³ Such attacks include the assassination of the former Public Prosecutor in Derna in 2014,¹²⁴ and an attack on the judges in Gharyan Court Complex in 2017 by an armed group who removed official court documents and forcibly removed defendants from the court.¹²⁵

In addition, the Libyan criminal legal framework does not define or penalise crimes against humanity or war crimes, despite Libya ratifying the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.¹²⁶ Moreover, existing laws do not fully criminalise torture, enforced disappearances, rape, or sexual and gender-based violence (SGBV).¹²⁷

Similarly, international accountability efforts have been slow and scarce. Since the ICC opened its investigation in Libya in 2011,¹²⁸ it has issued five public arrest warrants – including the three already initiated against Saif al-Islam Gaddafi and al-Werfalli – despite the scale of atrocities across the country. NATO and states involved in the 2011 military intervention have failed to investigate civilian casualties resulting from their aerial strikes, despite the recommendations from the COI-2011 to do so.¹²⁹ In addition, other states involved in subsequent military interventions have failed to carry out investigations into resulting civilian casualties.

The UN Security Council sanctions regime adopted in 2011 has also been selectively implemented.¹³⁰ While sanctions can be imposed on individuals for “planning, directing, or committing” violations of international human rights law or international humanitarian law,¹³¹ including “acts involving sexual and gender-based violence”,¹³² only a few militia leaders have been sanctioned by the US and the UK.¹³³

FAILURE OF ALL TRANSITIONAL JUSTICE MEASURES

Transitional justice measures introduced in Libya since 2011 have been limited in scope, selective in nature, and fall short of international laws and standards.¹³⁴ The framework provided by Law No. 29 of 2013 on Transitional Justice (**Law 29**)¹³⁵ primarily covers crimes committed by members of the Gaddafi regime, yet is ambiguous in its application to revolutionaries and non-state

actors. Among other shortcomings, it fails to include all crimes under international law, and the definitions of some crimes in the Libyan legal framework, as seen in Law No.10 of 2013 on the criminalisation of torture and enforced disappearances, do not meet international legal requirements and standards. Law 29 also fails to guarantee that amnesties will not be granted for serious human rights violations and international crimes.¹³⁶

Law 29 allowed for the establishment of a national Fact-Finding and Reconciliation Commission (FFRC). Its mandate, among other things, was to investigate “severe and systematic human rights violations” and “determine the identity of those involved; draw a complete picture of the nature, causes and scope of the severe human rights violations during the former [Gaddafi] regime; examine and address the situation of IDPs, missing persons, and detainees; and decide on the different forms of reparations for victims”.¹³⁷ The FFRC is required to publish reports, and may refer cases to prosecution and award amnesties as part of “arbitration and reconciliation” procedures. However, no conditions are specified.¹³⁸ The independence, impartiality and competence of the FFRC are not adequately guaranteed, as required by UN basic standards,¹³⁹ and it does not envisage victim participation.¹⁴⁰

While Law 29 provides for “adequate” reparations from the state, it is limited to monetary compensation for material damages and for crimes committed for a “political motive”, potentially excluding victims of other human rights abuses and psychological damage suffered. The envisaged compensation fails to consider other forms of reparation including restitution of liberty and property, restoration of citizenship, the right to safe and voluntary return of IDPs, protection of the rights of asylum seekers and refugees, public apology including acknowledgement of the crimes committed and acceptance of responsibility, and guarantees of non-repetition.

Following the adoption of Law 29, the conflict in Libya has significantly evolved as new perpetrators have emerged, and the scope of the crimes and the needs of victims have expanded.

6. PERCEPTIONS OF JUSTICE: RESEARCH RESULTS

Throughout the survey and interviews, respondents and interviewees voiced consistently strong demands for justice and accountability for human rights abuses and crimes committed both since the 2011 uprising and under the former Gaddafi regime.

Most participants said that justice meant accountability and application of the law (including criminal prosecution), alongside the provision of reparations, including compensation to victims, their families and their communities, improved safety and security, and knowing the truth (see Fig. 2 on the following page).

Respondents stressed that enforcing the law to hold those responsible for human rights violations to account will then pave the way for peace, state-building and reconciliation.

For some families of victims of enforced disappearances, justice meant knowing the truth by revealing the fate and whereabouts of their loved ones and holding those responsible to account.

“What keeps us a country at war is the absence of truth...so many crimes have been committed and people don't know the truth so we keep going around in circles.”

– Chair of an NGO and a women's, youth and minority rights activist in the south.

Justice for those affected by forced displacement meant the freedom to return to their homes safely and to be compensated for the years of abuse and for property destruction. Tawerghans emphasised the need to clear the reputation of their community over allegations of involvement in violations against Misratans in 2011. They also stressed their right to return to their homes in Tawergha and the state's duty to ensure that the city's infrastructure is adequate for living.

“[Justice means] Returning home and explaining the truth to my neighbours.”

– Displaced Tawerghan man in Benghazi.

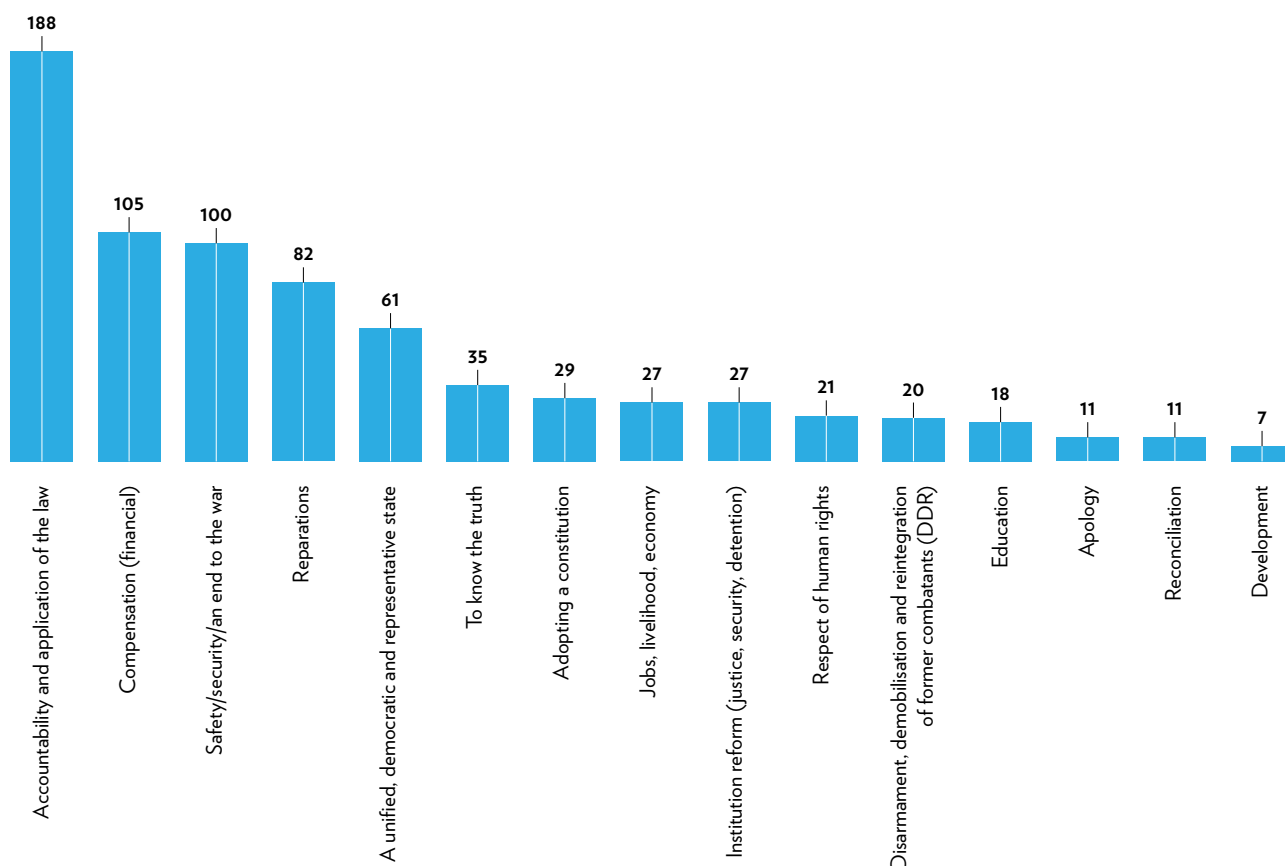
“[Justice means] Rebuilding our house and clearing our reputation.”

– Displaced Tawerghan man in Benghazi.

Justice for marginalised groups, such as ethnic minorities and women, meant equality, political and social inclusion, legal protection, recognition of their rights in law and in practice, and equal access to remedy. Ethnic groups such as the Amazigh, Tebu and Tuareg and other marginalised communities emphasised the need for recognition of their full rights, including non-discrimination and equality, and their right to citizenship and documentation proving their status as Libyans.



Figure 2. What constitutes justice for the harm and loss you've suffered?
Respondents were able to choose more than one option.



Respondents also stated that justice meant political stability following fair elections, the adoption of a constitution that guarantees equal rights and freedoms, the rule of law and human rights, the fair distribution of wealth, national reconciliation, and the strengthening of the role of women and marginalised groups in national and local reconciliation initiatives. Respondents stressed that justice meant the provision of services such as education, healthcare and security.

"[Justice means] Bringing security so that I can live without fear."

– Male Tuareg student from Sabha.

"Reunification, I mean when Libya unites from east to west and from north to south, only then can justice be achieved."

– Women from Benghazi.

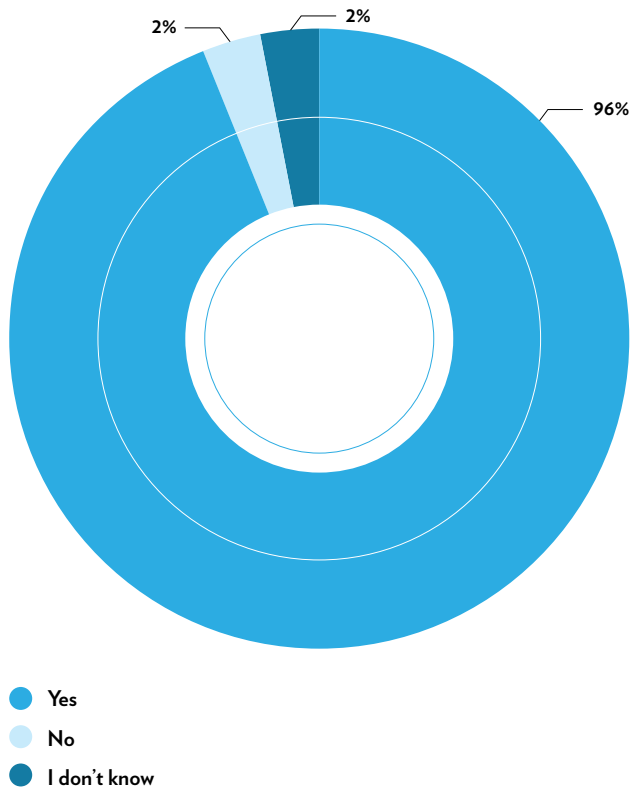
The following sections explore various routes to justice that encompass criminal prosecution and application of the law, and transitional justice measures.

6.1 CRIMINAL PROSECUTIONS FOR SERIOUS CRIMES

Almost all survey respondents called for criminal prosecutions of perpetrators responsible for serious crimes.

Almost unanimously, 331 respondents (96 per cent) demanded accountability in the form of criminal prosecutions of perpetrators for the harm, suffering and loss inflicted on civilians. This demand was consistent across representatives of civil society, community representatives and supporters of different political factions. Respondents across different ethnic and tribal groups stressed the need for criminal prosecutions to serve as a deterrent for such crimes in the future, as well as to help build a unified and stable state, to enable reconciliation among affected communities and for Libya to move away from the conflicts and abuses of the past.

Figure 3. Should perpetrators responsible for serious crimes be held accountable through criminal prosecutions?



Six respondents (two per cent)¹⁴¹ did not fully support criminal prosecutions in the current context, stating that the lack of a stable and functioning state indicated that trials may not be fair and therefore may obstruct the peace process. The remaining seven respondents (two per cent) did not know whether criminal prosecutions would be effective (see Fig. 3).

One participant mentioned applying Sharia Law as a means for holding perpetrators responsible for serious crimes.

Some respondents urged that statutes of limitations must not apply to serious crimes and that such crimes should be prosecuted whenever it became possible to do so.

A small number of respondents, including relatives of victims of serious crimes, favoured the death penalty for the most serious crimes such as murder. Civil society experts who were interviewed said that it is important to explain to communities the value of accountability using the various transitional justice options that would benefit the whole community, without the use of the death penalty. They added that psycho-social support for affected communities would help them to overcome anger and the desire for revenge.¹⁴²

“The Tebu community was forcibly displaced. Holding those who committed such crimes accountable will bring [a] sense of relief and satisfaction to the victims. It will also make people feel safe and then they will be able to return to their homes.”

– Tebu rights activist from Sabha.

“Accountability is important because it will lead to peace. It is also important for victims to stop the cycle of crimes. When justice is served, no party will hold grievances against the other. Deterrence is most important, both to stop individuals from committing crimes because they know there will be consequences, and to serve as a public deterrence for the whole community so they will also be warned that there will be accountability for those who commit crimes.”

– Legal representative for the eastern government.

“First, we need to establish strong state institutions and raise awareness on accountability. It is vital to stop people from hiding behind their tribes and escaping accountability. And the punishment should be decided according to the act.”

– An academic living in exile in Egypt since 2011.

“Accountability should apply to everyone. No one should be above the law. Neither serious nor non-serious crime should be forgiven. Everyone should be held accountable for their acts.”

– Representative of the former NTC.

Interviewees from the Tawergha community, who have experienced revenge attacks, said that public or televised trials would be important to counter malicious allegations that have fostered hatred towards certain groups, and which have often led to human rights abuses against entire communities.

For those who regarded themselves as falsely accused, criminal prosecutions were also seen as an important opportunity to defend themselves and clear their reputations against harmful allegations.

“Personally, I am willing to be held accountable. I handed myself into the security agencies and asked them to bring me to court if there is an allegation against me, but they did not provide any evidence. Instead, they ordered that I leave my home town. I do not know why mere rumours were enough to cause our displacement.”

– Displaced Tawergha man in Benghazi.

A family member of an Abu Salim survivor also stressed that accountability through criminal prosecution is an important path to provide psychological rehabilitation to victims by

publicly acknowledging their suffering, noting that the failure to do so leads to speculation, manipulation of the truth and further re-victimisation.

“For the Abu Salim case, we wanted the whole world to know the reality, but this was not what happened. There must be a remedy, especially for the ones who lost their loved ones”. Reflecting on speculation by some Libyans disputing the Abu Salim massacre, he said: “My dad was there and I know...it is too hard to argue anymore...”.

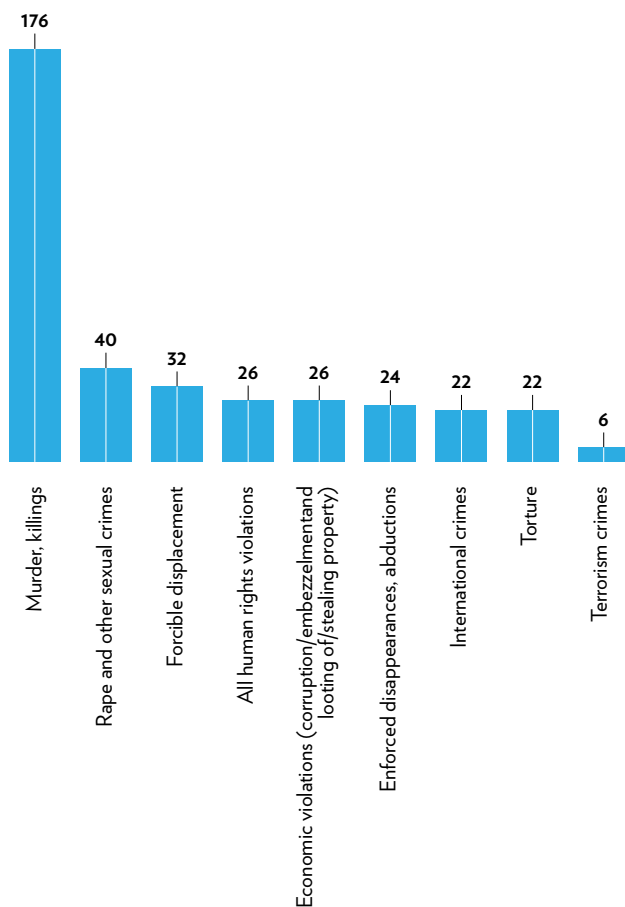
– Family member of an Abu Salim survivor.

I) PRIORITIES FOR PROSECUTION

Respondents demanded accountability for serious human rights abuses, crimes against humanity and war crimes.

Figure 4. What crimes should be prioritised for prosecution and excluded from amnesties?

Respondents were able to choose more than one option.



Respondents across different demographic sectors identified the following acts as serious crimes that must be prosecuted and excluded from amnesty: unlawful killings and indiscriminate or disproportionate killing of civilians; rape and other SGBV; torture and other ill-treatment; enforced disappearances and abductions; secret detentions; kidnappings; forced displacement; the extermination of certain groups; targeting of groups based on ethnic or other identities; extra-judicial executions; and terrorism (see Fig. 4).

Some respondents demanded prosecution for crimes against the media, the use of foreign mercenaries, theft of property and looting, corruption and embezzlement of public money.

“When the law is applied to the perpetrators and the courts are held in the public squares, only here will peace and comprehensive reconciliation of the Libyan people be achieved.”

– Amazigh woman from Tripoli.

II) APPLYING ACCOUNTABILITY

Regardless of respondents’ political views and affiliations, there was a high degree of consensus on the key perpetrators responsible for human rights abuses.

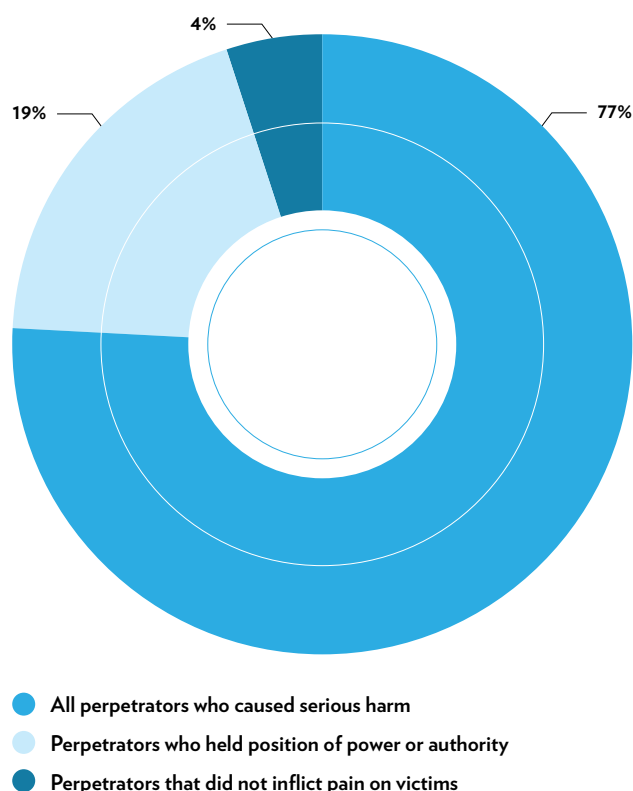
“Every group should be prosecuted, and punishment should be based on the gravity of the crimes committed. Within every entity, we need to find out who committed crimes and establish their individual responsibility.”

– Woman from Benghazi.

Two hundred and sixty-four respondents (77 per cent) believed that all perpetrators who had caused serious harm and suffering – regardless of which group they belonged to or the rank they held – should be criminally prosecuted (see Fig. 5 on the following page). This view was supported equally by women and men across many demographics and locations. It was also supported by some minority groups in Libya that had suffered during different conflicts, such as the Tebu, Tuareg, Tawergha and Amazigh.¹⁴³

Some respondents also suggested that perpetrators who incited, assisted, facilitated or “tolerated” the commission of crimes should be held to account, “whether through their action or inaction”. This included foreign states. Respondents also argued that those who had “caused tribal, religious or political” conflicts that led to human rights abuses, allowed the “terrorists [ISIL] to enter the country”, “misused power”, “contributed to chaos and instability” or “supported the conflict for self-gain” should also be brought to justice.

Figure 5. Who should be criminally prosecuted?



“If all perpetrators are held accountable, regardless of their status or affiliation, justice will prevail and the citizens’ confidence in the judiciary will increase.”

– Male Tuareg civil servant from Sabha.

Respondents believed that holding leaders accountable would serve as a lesson and deterrence to others.

In comparison, 66 respondents (19 per cent) believed that criminal prosecution should apply only to individuals who either hold positions of authority as leaders and commanders in state or non-state armed groups, or those who did so in the past. They argued that they were chiefly responsible for ordering the commission of such crimes or refraining from giving orders to stop these crimes. This view was supported equally by men and women. Respondents who supported this position cited the involvement of many perpetrators and the massive number of crimes committed, arguing that many commanders had exploited the conflict for “their own benefit”.

Only 12 respondents (four per cent) thought that some perpetrators should be excluded from criminal prosecution. They did not make concrete suggestions as to who should be excluded from prosecution, but rather offered a more general criterion of those who had committed “lesser” violations

which did not inflict pain or result in the killing of people – for example, bribery or theft.

“Not everyone can be held accountable, as most people participated in these violations in one way or another. These violations were facilitated by the lack of law enforcement and weak state institutions, which resulted in the spread of impunity. I believe that holding commanders and leaders to account in front of the people and the law will have a great effect on non-repetition of these tragedies. This will eventually lead to social reconciliation.”

– Man from Benghazi.

Some added that accountability should exempt those in low-level positions from criminal prosecution, because many young people, mostly young men, joined militias and armed groups due to the lack of livelihood alternatives. One respondent said that young people who joined militias and armed groups can even be regarded as victims of the political, economic and security failures of the state.¹⁴⁴

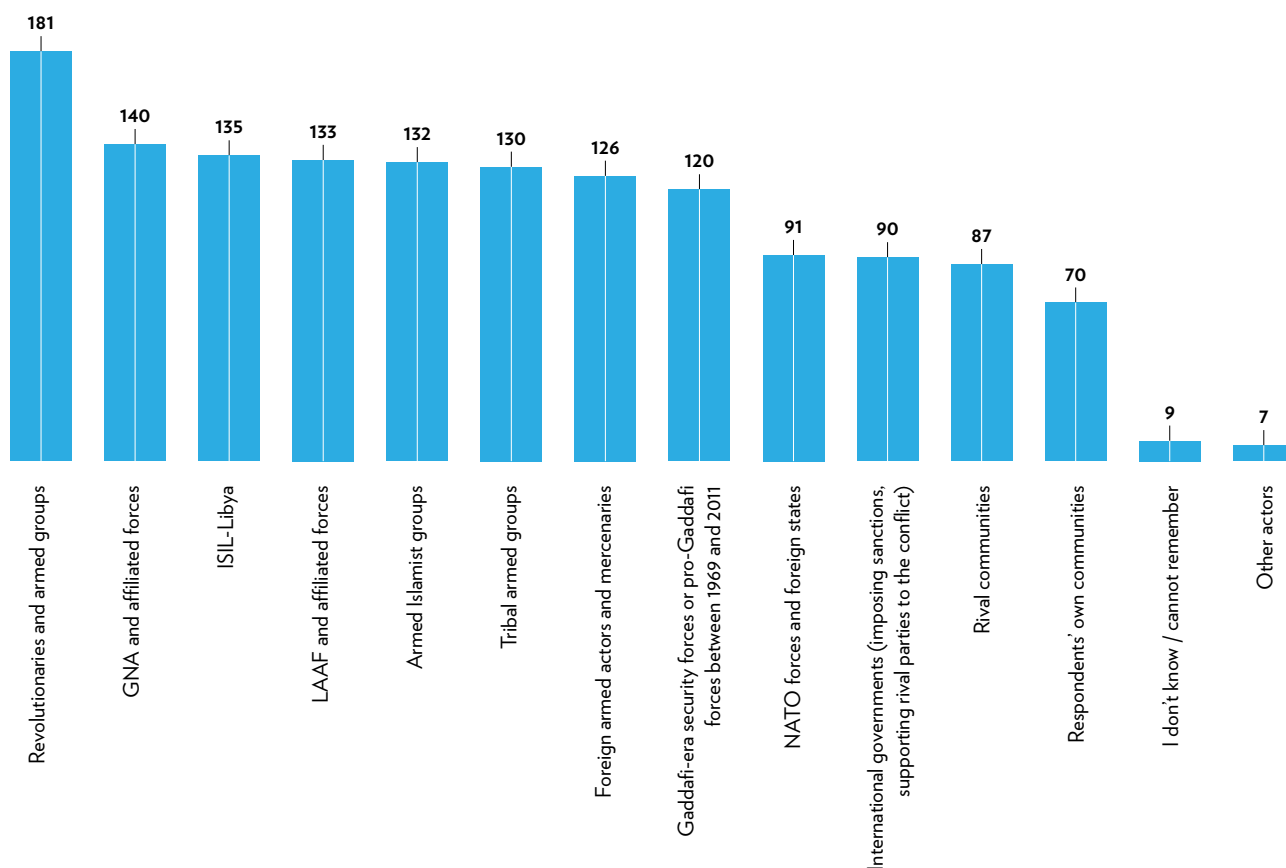
III) IDENTIFYING RESPONSIBLE ACTORS

Respondents identified a range of perpetrator actor groups to a similar degree, indicating that all parties to the various conflicts have committed serious abuses.

Revolutionaries and armed groups were identified as the main perpetrators of human rights abuses by 181 respondents (52 per cent). Other actors, including forces associated with the GNA, ISIL, the LAAF, armed Islamist groups, tribal armed groups, and foreign actors or mercenaries were all identified to a similar degree by respondents (see Fig. 6 on the following page, and see Appendix 2, Fig. 1 for aggregated data by ethnic group). There was a high degree of consensus on this regardless of the geographical location or ethnicity of respondents. On the role of international forces, some respondents stated that NATO’s intervention led to the protracted violence that followed the 2011 conflict and which killed hundreds of civilians. Other respondents said that NATO forces should have bombed all military and weapons depots because these weapons were later used by militias and armed groups to kill civilians following the fall of Gaddafi. They also stated that foreign countries that provided arms to parties to the Libyan conflict bore responsibility for how those weapons were used after the uprising.

Respondents from Tarhuna held the UN Security Council responsible for not adequately acting to stop the conflict and atrocities such as the mass killings in Tarhuna, which took place between 2019 and June 2020.

Figure 6. Who are the actors responsible for serious abuses?
Respondents were able to choose more than one actor category.



"If there is someone responsible, then the first one will be NATO forces, and militias would come second...I visited Gaddafi weapons depots across the country in 2011 that were bombed by NATO...I cannot even describe the scene...there were thousands of weapons on the floor, they were unsecured, and anyone could pick up weapons and go freely. This is the number one reason for the chaos in Libya."

– Libyan journalist who worked with human rights organisations in Tripoli during the 2011 uprising.

"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. We need to restore the sovereignty of the country, no more political and military foreign interventions, these only serve the foreign countries' own political agendas. Foreign states must cease the support they provide to the Libyan conflicting parties, this will dry up their sources of income and the conflicting parties will automatically become less powerful. This will bring some security to Libya and justice can then happen."

– Youth activist and son of an Abu Salim survivor from Tripoli.

"The UN Security Council is responsible because it didn't protect people as promised in 2011...We thought Gaddafi was the problem and now, because of the international interventions, we are left without a powerful state."

– A representative of the Tarhuna Victims Association.

Some political and civil society interviewees were concerned that justice and accountability could be undermined by the tendency of local communities, tribes and groups to protect their own members from prosecution. They explained that as the protracted conflicts in Libya have deepened political and tribal divisions in the absence of state protection, communities have turned to their tribes, ethnic groups and political leaders for protection. In a few instances, while some political and tribal activists demanded accountability for perpetrators from rival groups, they were inclined to justify alleged abuses committed by allied groups as less grave or as acts of self-defence. In contrast, other respondents stressed the need to raise awareness among local communities about the importance of accountability and justice for all, to end the culture of revenge.

“There is always a competition and comparison. Why do we speak about this issue or crime, but not about the crimes committed by the other side. There is a competition of who is worse; they would say ‘I am bad, but they are worse than me’...”

– Family member of Abu Salim survivor.

IV) TIME PERIODS OF ACCOUNTABILITY

Respondents had divergent views on the time period that accountability processes should focus on, indicating that abuses have been rampant across various decades.

Forty-five per cent of respondents said that accountability should focus on violations committed since the 2011 uprising, while 36 per cent stated that the focus should be on violations committed since the Gaddafi regime began in 1969. Sixteen per cent said violations committed since the start of the 2014 conflict should be prioritised. The remaining three per cent said that the focus should be on the severity of the crime, regardless of when or by whom it was committed. Respondents often selected the time periods in which they or their communities had suffered the most abuses.¹⁴⁵

Gaddafi-era abuses

Those who said that an accountability process should include violations committed during the Gaddafi regime elaborated that these violations had not yet been fully addressed, and identified lack of accountability as one of the causes of the ongoing conflicts. They also stated that accountability and justice go hand-in-hand, that justice “does not have an expiry date”, and that no victim should be left behind. Overall, 52 per cent of respondents, including those who stated that an accountability process should cover violations committed since 2011 or since 2014, mentioned the importance of criminal prosecutions and trials for Gaddafi-era perpetrators as well.

“What is happening today is caused by the former regime, including the lack of state.”

– Female Arab civil servant from Sirte.

Respondents gave examples of the violations committed during the Gaddafi regime that still needed to be resolved: enforced disappearances, torture, summary executions, abuses related to discrimination and persecution of certain groups such as minority groups, the confiscation of property (including under Law No. 4 of 1978), and confiscation of land (which was used as a tool to weaken opposing tribes and ethnic groups during the former regime).¹⁴⁶

Post-2011 abuses

Those who said that accountability should focus on the post-2011 period argued that there had been some accountability and compensation provided for abuses and crimes committed during the Gaddafi regime, and that the post-2011 period had been more destructive. They said that graver crimes had been committed on a larger scale, and that due to the lack of adequate institutions and a functioning criminal justice system there had been no recourse for violations committed since 2011.

“All of the periods are important as justice does not have a deadline or an expiry date, but right now it is very important to implement transitional justice, especially for the period since 2011. What happened during and post 2011 is still affecting us now. Certain groups [such as those perceived as former Gaddafi supporters] are still excluded from the political process and displaced.”

– Civil society activist and victim of enforced disappearance.

“[The period since 2011] was a catastrophic period in which all human rights were violated. During this period the state collapsed completely, and perpetrators took official and decision-making positions, and covered up for the crimes they committed.”

– Male teacher from Sirte.

Post-2014 abuses

Similarly, respondents who prioritised the period since 2014 argued that this had been “the peak of gross human rights violations”, widely affecting large portions of society and deepening political, tribal and inter-city divisions. The respondents highlighted that during this period, armed conflict intensified and there was an increased presence of groups such as ISIL due to the total breakdown of the rule of law, and of judicial and state institutions.

“In the past it was known who the culprit was, but now we do not know, and this period [since 2014] is one of the periods in which people were most affected and lost everything.”

– Female civil servant from Benghazi.

Divergent opinions

The views of ethnic minority groups on how far back justice and accountability should go also varied depending on the respective communities’ specific experiences of abuse and violations during the Gaddafi period and since 2011. Amazigh respondents called for a justice process that includes all periods since the beginning of the Gaddafi regime, due



to the persecution and discrimination they faced under the former regime.

“42 years of silencing, we know of the big cases but we do not yet know the full picture of injustice...As an Amazigh I was not allowed to exist, so I lived with this identity at home in secret. People still have not processed what [Gaddafi’s] dictatorship has done to us.”

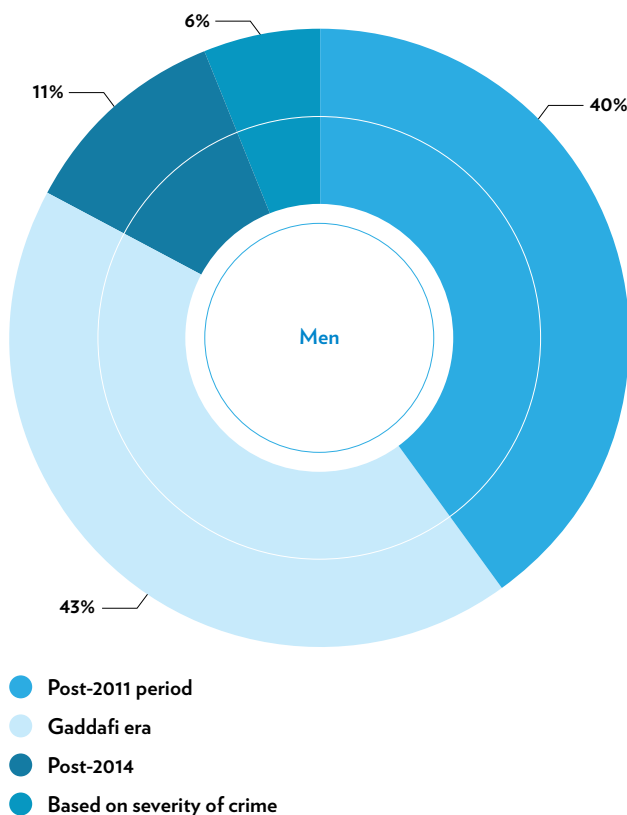
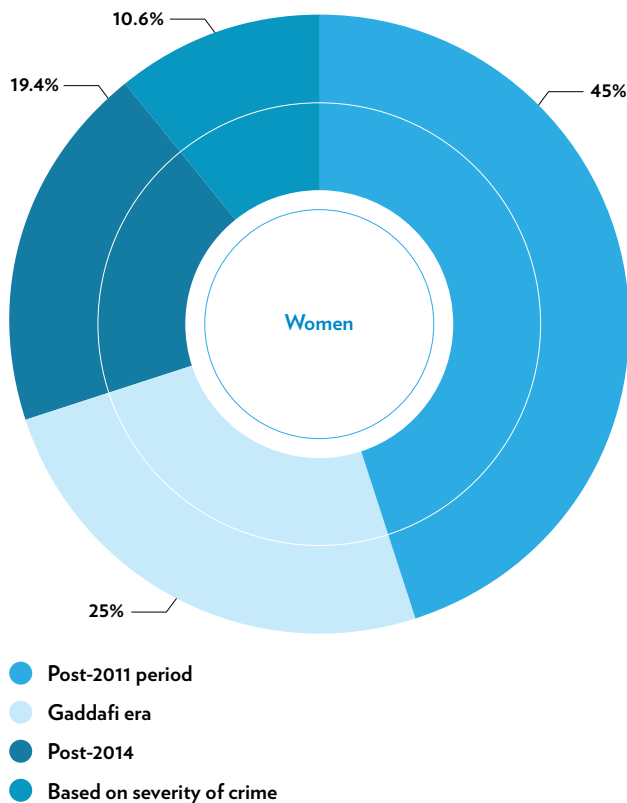
– Amazigh female civil society activist.

Other ethnic groups that suffered violent reprisals following the 2011 uprising for being perceived to be Gaddafi supporters, such as the Tawerghans, Tebu and Tuareg, prioritised the period since 2011. Although Mashashians have also suffered such attacks, the Mashashian representative interviewed said that an accountability process should include the Gaddafi period¹⁴⁷ as the regime had committed “wrongdoings”, and that many human rights violations needed to be addressed to prevent further conflicts.

Analysis of survey data by location shows similarly divided opinions. For example, in the main cities of the different regions – Tripoli, Benghazi, Misrata and Sabha – a majority called for an accountability process to cover the period since 2011. In Derna, however, which experienced severe destruction and escalation of abuses by ISIL and the LAAF after 2014, respondents prioritised the post-2014 period.

A greater proportion of women prioritised the post-2011 period, whereas male respondents prioritised accountability for the Gaddafi era (See Fig. 7 on the following page). Women’s prioritisation of the post-2011 and 2014 periods may be explained by the disproportionate impact of the insecurity and conflict on women and widespread allegations of conflict-related SGBV during that time. For example, 172 women respondents stated that they had faced violence since 2011 – the majority of which was reported since 2014 – compared to 36 women who reported that they faced violence during the Gaddafi era.

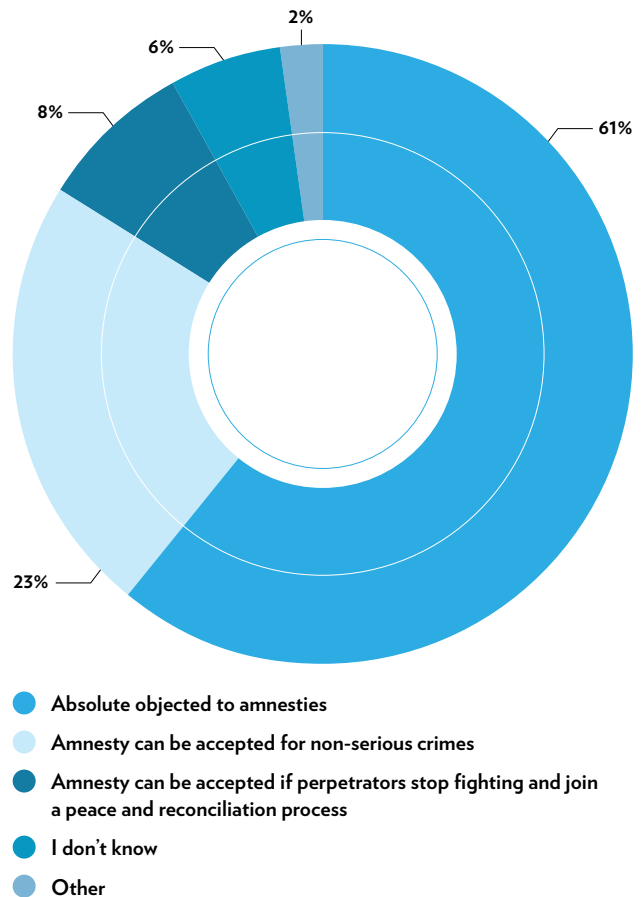
Figure 7. What time period should accountability efforts focus on?



V) AMNESTIES

Overall, respondents opposed amnesties for serious human rights violations and especially for perpetrators in positions of authority.

Figure 8. Under what conditions are amnesties acceptable?



Most respondents (84 per cent) objected to amnesties for serious human rights abuses, including crimes against humanity and war crimes (see Fig. 8).

Respondents who said that they could accept amnesties added some conditions such as perpetrators acknowledging the suffering of victims, apologising, confessing, and assuming responsibility. Some respondents clarified that amnesties could be accepted for “minor crimes that could be addressed through compensation to the victim”, or crimes which “did not lead to loss of life, or physical or psychological disability”.

Eighty-seven respondents (25 per cent) said that amnesties should exclude commanders and those found responsible for ordering and allowing the commission of serious crimes.

“In some cases [amnesty] can be acceptable, if the price is peace and stability, and if people agree to it and accept it. But any serious human rights crimes should not be forgiven. Commanders who gave orders to kill, rape and commit other atrocities must be punished.”

– Male victim of enforced disappearance in Tripoli in 2016.

Rejection of amnesties was expressed equally by women and men, and across different ethnic groups and locations.¹⁴⁸

Respondents supporting different political factions expressed consensus on amnesties, in particular stating that the rights of victims should be respected when amnesties are considered and should only be granted with their consent. Community representatives and CSOs condemned efforts by the authorities to grant amnesties through legislation, asserting that amnesties should not be unilaterally granted by the state and that victims should decide whether and under what conditions they would accept amnesties. They also said that granting amnesties without considering the victims could lead to demands for revenge and renewed conflict.

Victims of gross human rights abuses and victims of more recent crimes, such as those committed in Tarhuna, strongly opposed amnesties for serious crimes. They added that amnesties should be considered on a case-by-case basis and not granted as a blanket policy by the state.

“Each case is different, depending on the extent of the violations involved.”

– Male teacher from Ajdabiya.

“If we want reform, there should be no amnesties for any crimes [regardless of when they were committed].”

– Female teacher from Zawiya.

“Amnesties are important, but you cannot apply them at the expense of the victims. In certain circumstances they can be applied...the state can grant amnesty for crimes that affect the state itself, but it cannot take away from the victims’ right to seek redress through the courts.”

– Abu Salim survivor.

“I have no problem with an amnesty if there is a truth commission and an apology, but it is a disgrace if you do not talk about the past...Even from a religious perspective amnesty is possible – it can be a way forward, but without re-victimising the victim.”

– Woman human rights defender.

Amnesty laws

A string of laws and provisions adopted by successive Libyan authorities since 2011 have granted wide sweeping amnesties. These include amnesties for “acts carried out by revolutionaries to save or protect the revolution” under Law No. 38 of 2012.¹⁴⁹ More recently, Law No. 6 of 2015, which provides a blanket amnesty, stipulates a number of conditions with which the beneficiary of the amnesty must comply in order to benefit from the amnesty. These include a written pledge of repentance,¹⁵⁰ no reoffending within five years,¹⁵¹ and reconciliation with the victims.¹⁵² In practice this was not observed, for example, Saif al-Islam Gaddafi benefited from the amnesty without fulfilling any of these conditions.¹⁵³

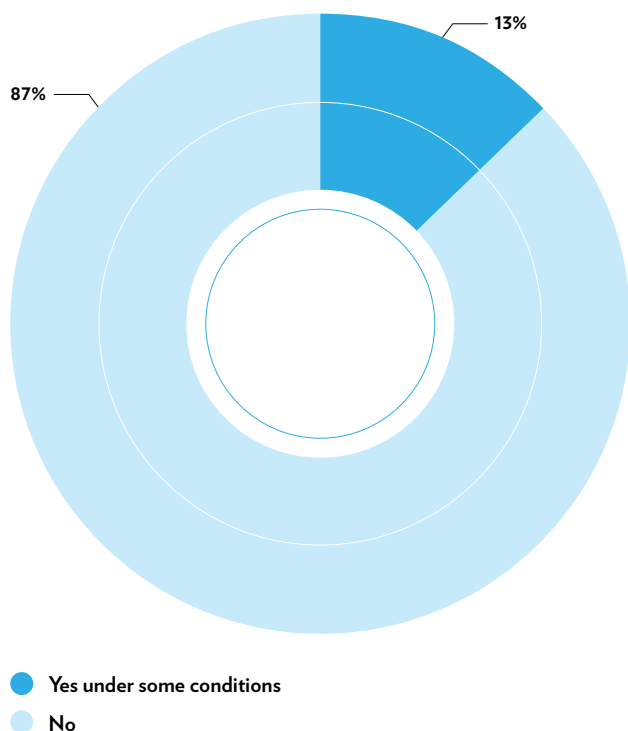
While certain amnesties are accepted under international law as part of a transitional justice process, amnesties are impermissible if they prevent prosecution of those criminally responsible for war crimes, genocide, crimes against humanity or gross violations of human rights, if they obstruct victims’ right to an effective remedy, or if they restrict victims’ or society’s right to know the truth about violations of international human rights law and IHL.¹⁵⁴ The UN also rejects the use of amnesties in peace agreements for international crimes or gross human rights violations.¹⁵⁵

VI) APOLOGIES

Most respondents agreed that “saying ‘sorry’ is not enough” and would not accept apologies for serious crimes.

Respondents and interviewees stated that an apology on its own would not constitute accountability and justice. Three hundred and three respondents (87 per cent) agreed that apologies cannot absolve perpetrators of serious crimes – such as inflicting physical or psychological harm – from criminal liability. The remaining 46 respondents (13 per cent) accepted that in some cases apologies could be used to exempt low-level perpetrators of criminal liability (see Fig. 9 on the following page). However, apologies were not accepted as an alternative to prosecutions for perpetrators in positions of authority. The respondents said that for apologies to be accepted, in addition to disclosing the full facts of the crimes and the perpetrators, accepting responsibility, reparations and guarantees of non-recurrence should be provided to victims, and the perpetrators should be barred from holding public positions as they could use their positions to continue perpetrating crimes.

Figure 9. Is a public apology enough to absolve a perpetrator of serious crimes from criminal responsibility?



Respondents said that apologies should be made publicly, in front of the media by all perpetrators of serious crimes, and should be accompanied by an official apology from the group associated with the perpetrator (for example the state, a political party or a militia group). Respondents believed that in the case of large-scale crimes, in addition to apologising directly to the victims and victims' families, perpetrators should apologise to the community as a whole.

"Apologies should come with conditions such as a fair trial and compensation. An apology is not satisfactory without knowing who is responsible and determining their criminal responsibility."

– Lawyer and human rights defender from Sabha.

"I lost my father and an apology will not bring him back to life, but at the very least it will respect his memory. We were robbed of a lifetime with my father when he was killed, and this cannot be compensated for by an apology. The apology must be public but should not reduce the punishment...it is a basic condition, but it is not an exemption, rather it is an affirmation of the responsibility of the perpetrators for committing the most atrocious crime in humanity, that of robbing a person's life."

– Male civil servant from Derna.

"I have children and grandchildren, I think a public apology is enough for me until the war stops and peace prevails. The warlords, the perpetrators, have to apologise to the people and the families of the victims."

– Woman from Tripoli who suffered property destruction and displacement due to conflict between 2014 and 2020.

Respondents and interviewees widely agreed that it should be up to victims and their families to decide whether to accept an apology, and that apologies should not be used by the state to exempt perpetrators from criminal prosecution.

"The victims and their families are the only ones who have the right to give a pardon. If a state does this, then we cannot say there is justice. The state cannot force victims to forgive."

– Family member of a woman who was assassinated in Benghazi.

"You cannot ask [Tuareg] people just to forget as they feel invisible and angry. They want to feel they have dignity and that they are respected as Libyan citizens."

– Tuareg civil society activist from Ghadames.

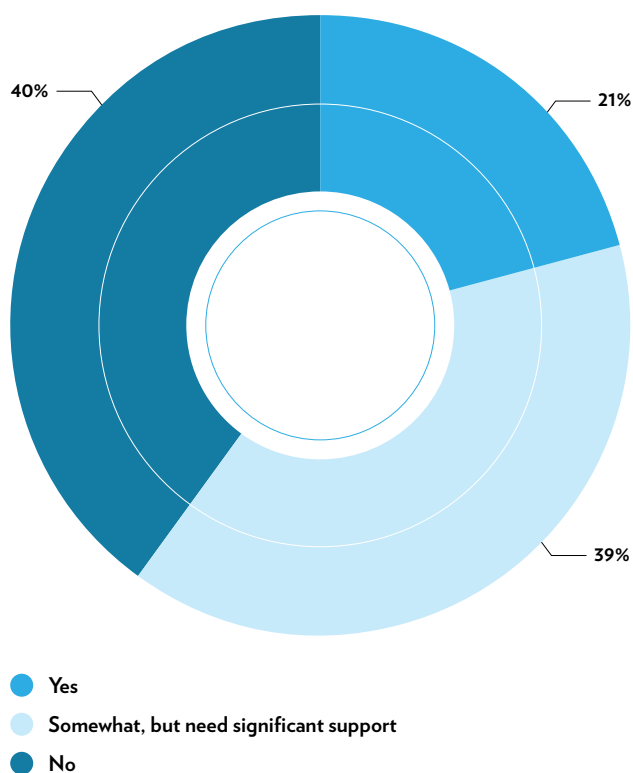
VII) CRIMINAL JUSTICE SYSTEM AND VICTIMS' INCLUSION

Respondents viewed the domestic criminal justice system as unable to deliver justice for serious violations and favoured international support to strengthen local courts.

Under half of the respondents (40 per cent) said that Libyan criminal courts are totally incapable of delivering justice. The next highest number of respondents (39 per cent) said that Libyan criminal courts were partially capable of delivering justice but need significant support from the Libyan state and the international community. Finally, 69 respondents (21 per cent) said that Libyan criminal courts may be capable of delivering justice, but did not provide an explanation of how this can be achieved (see Fig. 10 on the following page).

Low trust in Libyan criminal courts was expressed by respondents across different locations, including urban centres and more remote areas. Trust was especially low among ethnic minorities and women. While 43 per cent of women said that they did not trust the Libyan criminal justice system at all, 42 per cent of men said that they somewhat trusted it, but emphasised the need for state and international support.

Figure 10. Are Libyan criminal courts capable of delivering justice?



“In political cases, Libyan courts are not capable of delivering justice and guaranteeing a fair trial. The main problem is the pressure and influence of powerful perpetrators and militias. But I also do not support any parallel body such as tribal trials.”

– Woman from an anonymous location.

Respondents especially viewed Libyan courts as unable to deliver justice for human rights abuses and “political cases” related to the conflict, including assassinations of women activists and politicians in the east. They cited the collapse of state institutions and weak law enforcement, and were highly concerned about the courts’ inability to deliver fair trials. Many saw the Libyan criminal justice system as opaque, politicised and under the control of – or subject to interference by – unaccountable powerful militias and armed groups. Respondents said that attacks and threats against judicial personnel had undermined the courts’ ability to carry out its work and hold perpetrators to account. They also added that sometimes the judiciary lacks independence in cases of serious violations committed by powerful and political figures.

“We have seen in the past many rulings of acquittal and pardons of alleged perpetrators...There is no transparency and publicly available information on what is going on inside the courts”.

– Woman from Tripoli whose family suffered human rights abuses.

“The criminals [who escaped from Tarhuna] are living in the east and they are known, but no one can bring them to justice. I don’t know what is going on in the east or why they don’t bring these criminals to trial. It makes us feel they [authorities in the east] are supporting them.”

– Local council representative from Tarhuna.

Minorities perceived Libyan courts as biased and said the lack of representation in the justice sector and state institutions impeded their access to justice. Members of marginalised communities, such as the Tuareg in Ghadames, also said they had been forgotten and could not raise their concerns as local courts and law enforcement are dominated by politically stronger communities. The Amazigh community also presented their concerns regarding Libya’s criminal justice system and how it had failed to hold perpetrators to account under the former regime and since 2011.

“Judges do not even recognise that the violations committed against the Amazigh were crimes.”

– Amazigh women’s rights activist.

“I have seen people killed in front of me. No protection for us. We have seen grave violations and no one to whom we can complain. No one came to help us. I want you to send my voice.”

– Tuareg woman victim and witness of abuse.

Experiences of women

Women interviewees, including victims of abuses, stressed that gender discrimination and social stigma – especially around sexual violence – and fear of reprisals posed additional obstacles to reporting and accessing redress for such cases. Women activists also said that the lack of remedy for sexual crimes against women was due to the lack of adequate legislation, which does not define the crime of rape in line with international law. They stated that victims are being discouraged from seeking remedy as they risk being accused of having “consensual sex” with their rapist and punished or forced to marry their rapist. Women said that this results in the revictimisation of survivors and impunity for the perpetrators.

Libyan Penal Code

The Libyan Penal Code criminalises “sexual intercourse by force” (Art. 407)¹⁵⁶ but the definition is not consistent with international law and standards for the crime of rape. In addition, the distinction between forced and consensual sex is blurred as Art. 407 also provides for punishments for consensual sexual intercourse outside marriage (Art. 407 (4)). The Penal Code also provides that a penalty shall be extinguished if the “offender” marries the victim.¹⁵⁷

“Victims are unable to express their grievances and demands, especially with regard to some crimes such as sexual assault and rape. This is true for both women and men. Victims of such crimes feel dishonoured and ashamed and unable to claim their rights because of the stigma that these crimes attach to their lives”.

– Female civil servant from Benghazi.

“Women are constrained by society’s unfair views of them. Women are ashamed to go to the police or courts and this is a societal problem. Communities should raise awareness about this and the authorities should provide support.”

– Lecturer of criminal law at a Libyan university.

To enable the criminal justice system to provide accountability, respondents and interviewees recommended targeted assistance, including from the international community. Such support could include: ensuring the safety of judges, victims, survivors and the accused; institutional reform to ensure judicial independence and integrity, including by creating an oversight mechanism to ensure transparency and integrity and to address systematic corruption; and international technical support and expertise to assist with investigations and prosecutions in line with international fair trial standards.

Some recommended that the UN provide independent trial monitoring to ensure compliance with international fair trial standards. To facilitate access to justice for all groups, respondents called for laws guaranteeing equality for minorities and women, and to ensure that the legal framework provides for the prosecution of international crimes, including sexual crimes.

Victim participation

Respondents identified several challenges to victim participation in justice processes and trials, such as fear of reprisals, lack of protection and lack of legal representation. They also stated that victims are often traumatised by the harm they have suffered, and in many instances, they lack an understanding of relevant legal provisions and may find

it difficult to identify the violations they have suffered or to adequately express their needs. Civil society actors and lawyers also raised concerns about threats and acts of reprisals when bringing cases to courts on behalf of victims. Respondents who work in the security sector also raised safety concerns around testifying or bringing cases to the authorities.

“CSOs should raise victims’ voices but even we cannot talk about cases without fear for our own safety.”

– Human rights defender from Sabha.

“There should be the opportunity to communicate with human rights organisations without being pursued or monitored by the security forces...the local government use security as an excuse to silence us.”

– Government soldier from Benghazi.

To encourage victim participation and the submission of cases, respondents called for better protection measures, including special considerations for victims of gender-based violence, rape and other SGBV. Respondents suggested that mobile teams of “hearing committees” be set up to reach out to victims who may not otherwise have access to the justice system or may be reluctant to testify.

Some respondents said that victim participation can be enhanced by transparent and public trials where victims can witness the process of accountability. Around half of respondents (48 per cent) favoured live broadcasting of proceedings on various platforms. A smaller percentage of respondents (40 per cent), who identified as victims or family members of victims, asked for direct participation in trials. Some noted a preference for online participation rather than in person.

Victims expressed a desire to be regularly informed about the progress of investigations, prosecutions and trials by relevant state institutions through reports and other accessible communications. This way, respondents felt they could ensure trials were conducted fairly, and were not politicised or used for revenge. In cases involving large numbers of victims, respondents suggested that a local legal representative be appointed to represent them as a class and regularly update them.

Victims also requested proactive awareness-raising programmes in relation to upcoming trials to ensure that victims have adequate access to proceedings.

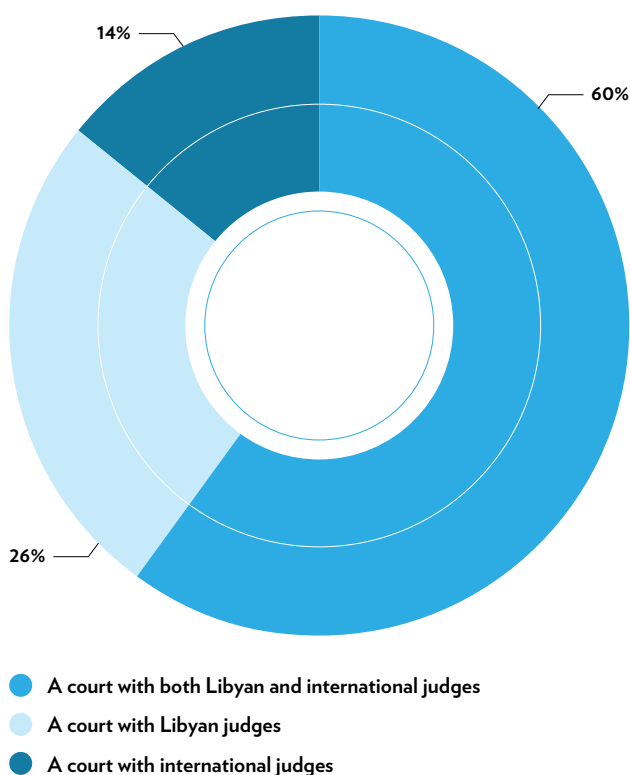
“The public should be aware of the progress of the trials, for example, the trial of Saif al-Islam Gaddafi was unclear for the public.”

– Displaced female Amazigh teacher in Tripoli.

VIII) ADDRESSING THE ACCOUNTABILITY GAP

More than half of the respondents wanted trials for serious crimes to take place in Libya, in courts consisting of both Libyan and international judges.

Figure 11. What court composition should conduct criminal prosecutions?



More than half of the respondents (60 per cent) were in favour of trials for serious violations and abuses being held by Libyan courts with the support of the international community (see Fig. 11). Some civil society interviewees supported special hybrid courts with both Libyan and international judges, and suggested that they should base their rulings on both Libyan and international law. They stressed that a special hybrid court approach was necessary to help Libya address the sheer number of crimes in the current political environment.

A different view from other interviewees emphasised that a special hybrid court approach or courts comprised exclusively of international judges may be perceived as interfering with Libyan sovereignty and as undermining the Libyan judiciary.

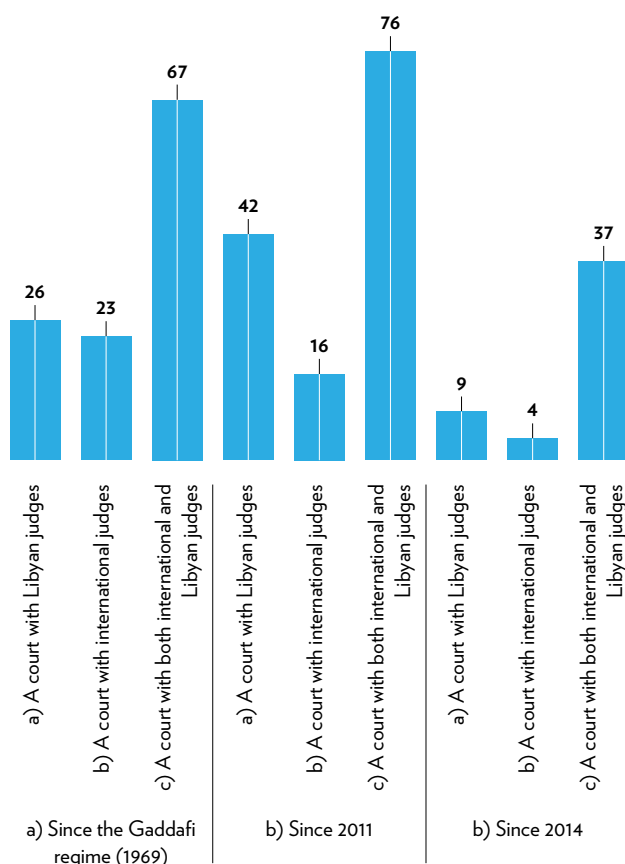
The survey results show that 230 respondents (66 per cent) and most interviewees said that to be considered legitimate,

trials should be conducted in Libya. This was important for Libyans to feel they “own the process” and to build the capacity of the domestic justice system. Community representatives also stressed that it was important for communities to see and feel that “justice has been done on Libyan soil”. However, both respondents and interviews also suggested that high-profile and influential suspects could be tried outside Libya to ensure that they do not interfere with the investigation.

A smaller number – around a quarter of respondents (24 per cent) – preferred the location of the court to be outside Libya, regardless of the type of case, due to the likelihood of armed groups and militias obstructing the process or tampering with evidence.

Respondents highlighted the importance of selecting a non-partisan location for any such court, raising concerns over the number of countries involved in Libya’s conflicts. In this context, some preferred European countries, while a few chose Morocco or Tunisia, stating that these countries had relatively successful transitional justice processes by regional standards. The remaining 34 respondents (10 per cent) did not know which location would be better or chose not to answer.

Figure 12. What court composition should conduct criminal prosecutions on abuses from different periods of violence?



Respondents also stated their preferred composition of courts for their prioritised time period. The view that hybrid courts with trials held inside Libya would be best placed to deliver justice was consistent across all periods of violence – during the Gaddafi era, post-2011 and post-2014 (see Fig. 12 on the previous page).

“Libyan judges are simply not fit for the judicial system because their minds are still on the Gaddafi law school. International courts must be involved so that the new generation learns the basic principles of law.”

– Young Amazigh woman from Tripoli.

Hybrid courts

When states are unable or unwilling to conduct effective investigations and prosecutions, international and hybrid¹⁵⁸ criminal tribunals or courts may exercise concurrent jurisdiction.¹⁵⁹ In other situations, specialised judicial mechanisms have been created within states’ territories, including tribunals based on agreements between the UN and host governments¹⁶⁰ and hybrid courts, composed of national and international judges, integrated into the domestic legal system.¹⁶¹ Regional approaches have also been adopted, such as the African Union Commission Hybrid Court for South Sudan, composed of South Sudanese and other African national judges.¹⁶² The UN recommends that hybrid courts should incorporate a strategy of legacy by “conducting effective trials to contribute to ending impunity” to strengthen domestic capacity, therefore enabling local courts to address such crimes in the future.¹⁶³

International accountability mechanisms

To address the current accountability gap, 132 respondents (38 per cent) said that they also trusted existing international mechanisms such as the ICC to provide justice and accountability for serious crimes. Just 38 respondents (11 per cent) said they would trust courts in foreign countries to try Libyan cases under extraterritorial, including universal, jurisdiction.

Civil society actors seemed to prefer universal jurisdiction to the ICC; some criticised the ICC for being political and slow in pursuing justice and accountability for Libya. Other respondents and interviewees stated that the ICC can exert pressure and supplement local accountability processes by prosecuting the most powerful and culpable perpetrators whose prosecution could not be held locally due to political and security pressures.

Some respondents thought the role of the ICC should be to provide judicial expertise, support impartial investigations and provide legal support to prosecute complex crimes.

Considerably fewer women than men supported trying serious crimes at the ICC (30 per cent of women as opposed to 47 per cent of men) or under universal jurisdiction (8 per cent of women versus 14 per cent of men).

The low level of support for pursuing justice internationally may be also due to respondents’ limited knowledge of these mechanisms. Most respondents (90 per cent) said they knew nothing or very little about the ICC. Similarly, respondents expressed limited knowledge of the possibility of pursuing justice through foreign courts under universal jurisdiction.

6.2 TRANSITIONAL JUSTICE MECHANISMS

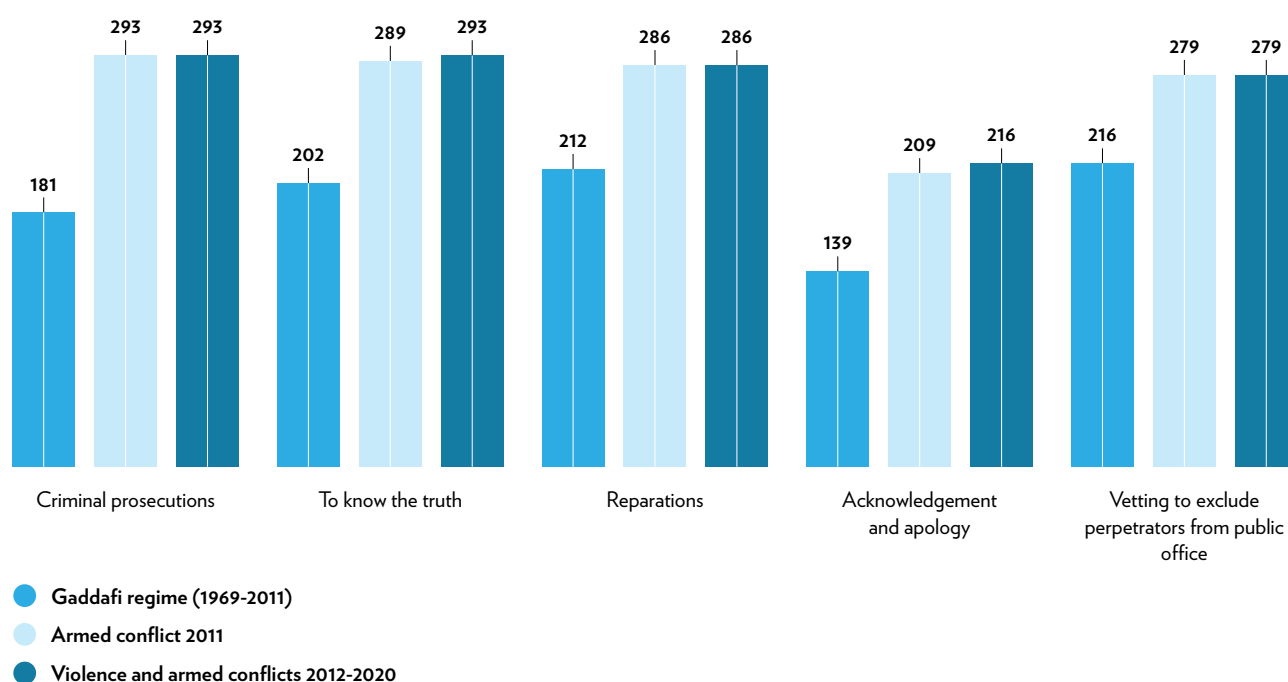
Respondents backed comprehensive and inclusive transitional justice measures in addition to prosecution.

In addition to criminal justice processes, respondents overwhelmingly called for a range of other transitional justice processes focused on the rights of victims. Respondents highlighted truth-seeking, reparations and other measures to address abuses committed during the Gaddafi era, post-2011 and post-2014. Respondents identified multiple processes of transitional justice, indicating that these processes should be complementary to one another, rather than exclusive options (see Fig. 13 on the following page).

Over 90 per cent of respondents and interviewees agreed that establishing the truth about past and current atrocities and vetting perpetrators of human rights abuses to exclude them from public office should be the priority for the transitional justice process.

It is worth noting that 223 respondents (64 per cent) said that they had not heard of the specific term of transitional justice. Although most respondents were able to clearly state their preferences for prosecutions, truth-seeking, reparations and amnesties, they often mixed transitional justice processes with reconciliation processes such as seeking forgiveness. This reflects the lack of implementation of Law 29 and the frequent use of reconciliation practices, including with UN mediation, to settle conflicts as opposed to implementing effective transitional justice processes focused on providing remedies to victims.¹⁶⁴

Figure 13. What transitional justice measures should be used to address abuses from different periods of violence?
Respondents were able to choose more than one mechanism of transitional justice.



I) TRUTH-SEEKING

Respondents stressed that a truth process should serve as a basis for initiating prosecutions, to help restore victims' rights and to facilitate reparations through acknowledging the harm done to victims.

Many respondents (70 per cent) expected truth-seeking processes to identify individual perpetrators, and to document and provide a record of past human rights violations (67 per cent) (see Fig. 14).

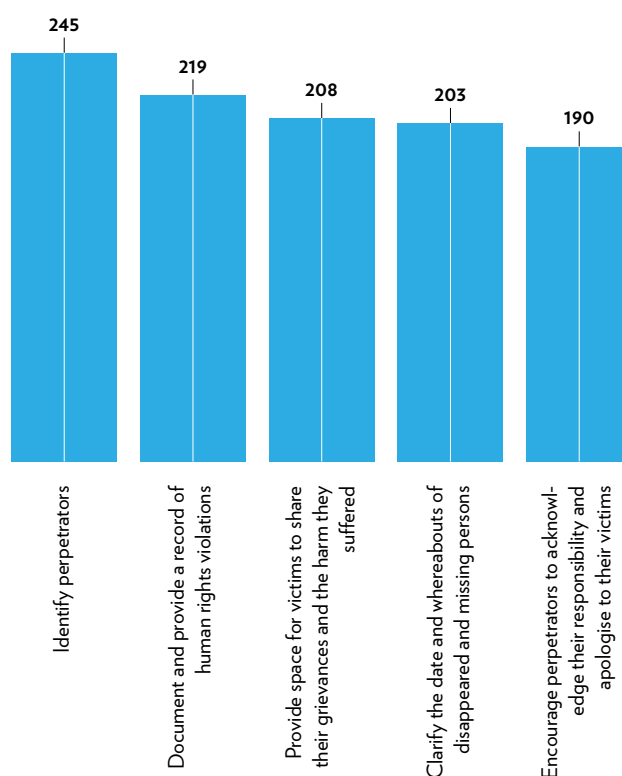
Respondents also expected truth processes to reveal the root causes, reasons and motives behind conflicts and violence, including identity-based motives such as tribal, religious, ethnic and cultural biases, and economic and social factors.

"We must respect everyone's right to know who harmed them. I don't know yet who fabricated the allegations that led to my unjust imprisonment for two years and for the torture I suffered."

– Young male torture survivor from Benghazi.

Figure 14. What are the expected outcomes of a truth-seeking process?

Respondents were able to choose more than one outcome of a truth-seeking process.



“Most people do not know the truth and want to know it, we need to disclose it with all transparency so that we can move on, to develop tolerance and forgiveness and forget the past.”

– Older man from Benghazi.

“The truth must be uncovered in each place: by town and region. The crimes need to be investigated and studied, revealing as much proof and evidence as possible, with the names [of all those involved and affected] published in a book so that each place and community may know the truth, and no one can wipe it away. It will exist forever.”

– Civil society activist.

Respondents affected by enforced disappearances demanded the truth regarding the whereabouts of those missing. Those impacted by widespread and systematic human rights abuses in detention since 2011 demanded the abolition of secret prisons and the protection of the rights of detainees.

Respondents from ethnic and cultural minorities said that truth processes were important to uncover the impact of the systematic discrimination, marginalisation and exclusion they had experienced. CSOs working on women’s rights and minority rights also said that assessing ethnic and gender dynamics of conflict and repression would help identify not only the specific impact on these groups, but also provide the necessary knowledge to guarantee the non-recurrence of such abuses.

“Special attention should be paid to violations that occurred because of gender and identity. And [we should] not assume that all crimes are committed just because of the war.”

– Amazigh women’s rights activist.

Respondents wanted truth processes to identify not only the direct perpetrators but also those who ordered, facilitated, instigated, aided and abetted crimes. They expected truth processes to reveal the “hidden hands and faces” involved, including foreign actors, and to show how state institutions – by action or inaction – may have allowed the commission of crimes and contributed to the armed conflicts.

“It is important to uncover the truth so that the violations do not reoccur and to let people today, and the next generation, know the reasons for the violations and why they happened.”

– Older Misratan man from the Gharyani tribe.

“The truth must reveal how the orders were given and who was responsible for the killings and executions. The documents must be revealed to people.”

– Young female Misratan human rights activist.

CSOs and community representatives said that victims “should not be left alone to seek ways to pursue justice for the harm they suffered”. Instead, truth mechanisms should be accompanied by campaigns for proactively collecting and gathering information on human rights violations and assessing the harm suffered by various communities across Libya.

“Documentation or writing history is a kind of accountability as well and it would bring justice in the future.”

– An academic living in exile in Egypt since 2011.

Civil society actors and community representatives criticised the current approach to transitional justice, including truth-seeking processes implemented since 2011, for being unfair and failing to fulfil victims’ rights to redress and reparations. They particularly criticised Law 29 for being “biased in favour of the winning side [of the 2011 uprising]” and because it did not address the needs of all communities affected. In this regard, a Tuareg human rights defender said: “The transitional justice law [Law 29] was talking only about what Gaddafi did, but it did not open a window for others to go and ask about their rights.” This sentiment was echoed by community representatives across Libya who called for Law 29 to be repealed and for fairer legislation to be adopted to address its shortcomings.

Civil society actors and community representatives stressed the importance of developing bespoke transitional justice mechanisms suitable for the Libyan context, following national public consultations focused on victims and drawing on international good practice. They argued, for transitional justice processes to gain widespread legitimacy and provide a sense of justice, they should be designed around the diverse needs of victims and all affected communities from different periods of when abuses were committed.

“Transitional justice mechanisms should work in parallel: they should work locally to address our divisions and to unite us as a people, and they should work to guarantee the unity of institutions that facilitate victims’ ability to reach justice.”

– Lecturer of criminal law at a Libyan university and adviser to human rights and women’s rights organisations.

Some activists, mostly from the western region, believed that transitional justice mechanisms should be placed under the authority of the judiciary, rather than the executive, to prevent politicisation and ensure that cases involving serious crimes are prosecuted. Community representative interviewees stressed that staff of transitional justice mechanisms should not be affiliated with any political faction or group, and should include experts in local conflict dynamics, respected community representatives and members of different ethnic

groups and tribes. Equal gender representation was stated as being essential. Woman human rights defenders stressed that women from different segments of society across social, ethnic and age groups should be appointed as investigators and other key staff members.

“[Transitional justice mechanisms should include] those who are respected in the community, who have a say in their tribes, and who have clean hands. Moderate religious leaders should be also involved.”

– Tribal elder from Derna.

Some community representatives suggested that bringing in “outsiders” to hold transitional justice processes would be counterproductive. Others, especially those belonging to marginalised groups, said that they would not trust local tribal and community leaders and would prefer external experts.

II) REPARATIONS

Despite strong support for many forms of reparation, respondents stressed that these must not be used to “buy” people’s right to truth, justice and accountability.

Seventy per cent of respondents said that reparations, when combined with prosecutions and truth processes, are very important for delivering accountability and justice to victims, their families and communities. Regarding the types of reparations, respondents supported a range of options. They stated that reparations should be considered on a case-by-case basis, depending on the harm suffered and the victim’s needs and wishes (see Fig. 15).

Respondents stressed that reparations must not be used to “buy” people’s right to truth, justice and accountability.

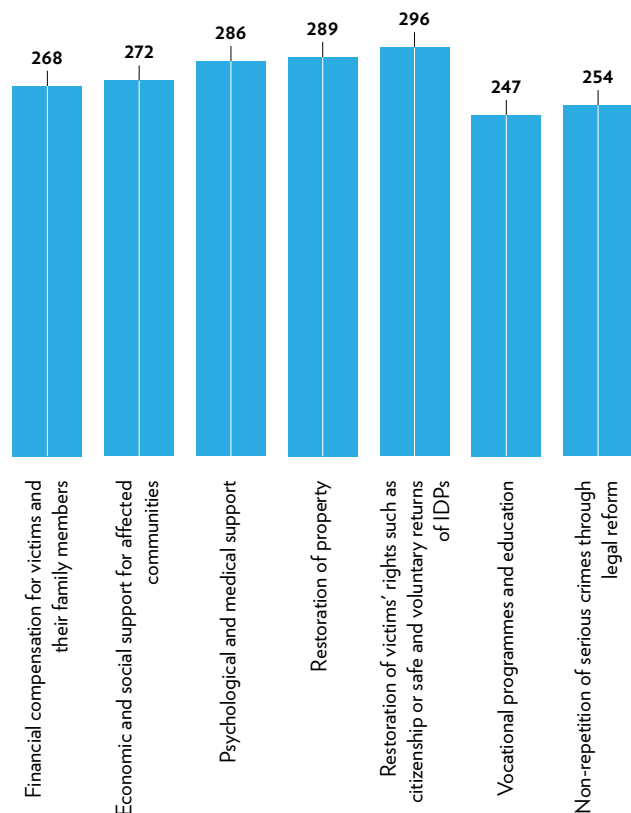
“Reparations for material and moral losses are what makes me feel that justice has been achieved, and psychological support is necessary as I personally still suffer from the psychological effects of repeated detention and torture [during the Gaddafi regime].”

– Older man from Benghazi.

Respondents also believed that reparations were vital for addressing long-term harm to victims and enhancing reconciliation within communities. Psycho-social support and rehabilitation were highlighted by the community representatives and CSOs interviewed as being two of the most urgent forms of reparation, to help people affected by serious crimes to heal. A Tuareg civil society activist from Ghadames stated psycho-social support would help “prepare

Figure 15. What type of reparations can deliver accountability and justice?

Respondents were able to choose more than one form of reparation.



[victims] for their real lives as now they live in their anger”. A representative of one of the CSOs said that almost everyone in Libya was traumatised by the sustained systematic and widespread violence and abuse.

Respondents said that reparations should be provided not only to victims, but also to their families, and that reparations programmes must consider equitable, community-oriented development. This includes the development of infrastructure and the provision or restoration of basic services, such as electricity and water supplies. Women called for a programme to support war widows and orphans. Young people demanded that reparations address access to education, which has been seriously undermined by the conflict.

Some experts interviewed stressed the importance of restoring land and property confiscated under the Gaddafi regime (under Law 123 of 1979 and Law 4 of 1978), and after 2011, as part of a transitional justice process. An Amazigh civil society representative suggested that for “old agricultural lands,” recognition of Amazigh indigenous territories could suffice. Another expert mentioned the difficult scope and feasibility of restoring confiscated property.

“It is important to note that compensation for the large number of properties confiscated under Law 4 would require huge resources and might not be feasible, and that in situations when the properties have been destroyed, it may lead to competing claims between the more recent and former owners. Hence, alternatives such as compensation might be more suitable”.

– Director of the Centre for Law and Society Studies in Benghazi

Addressing women’s specific reparations needs

Women said that additional reparations would be required to address their specific needs, both as direct and indirect victims.

“Women’s needs are greater because they become sole carers for families after violations happen to men such as forced displacement, enforced disappearances, extra-judicial killings and torture.”

– Tawerghan woman human rights defender.

Woman human rights defenders pointed out that women who lose their spouses to unlawful killings, disappearances or other violations suffer not only from psychological trauma but also the large social and economic impact of losing the family breadwinner. CSO interviewees said that women have few opportunities to find jobs due to severe movement restrictions imposed by armed groups and militias, as well as the rise of conservative and violent extremist ideologies, which lead to the suppression of women’s rights, including the right to work. These factors have hampered women’s access to basic services.¹⁶⁵

“Women struggle financially because of a lack of work and skills. Women need education and financial help so they can work.”

– Woman human rights defender from Sabha.

“[Conflict-related sexual crimes] damage women psychologically and socially, and the family will ignore her due to the shame attached to the crime.”

– Woman political activist.

Reparations

As with other transitional justice measures implemented since 2011, reparations programmes have been insufficient and discriminatory.¹⁶⁶ Article 23 of Law 29 provides for provision of “adequate reparation from the state”, however it limits monetary compensation to material damages only and is restricted to “misdeeds” committed for a “political motive”, excluding victims of abuses that might not be politically motivated. It further fails to provide for other economically assessable damages as a result of gross human rights and serious IHL violations, such as physical and mental harm and “lost opportunities, including employment, education and social benefits”, moral damage, and medical and legal costs.¹⁶⁷ While Article 23 covers memorialisation, treatment, rehabilitation and the provision of social services, it does not expressly provide for reparation, restitution of liberty and property, restoration of citizenship, the right to safe and voluntary return of IDPs, public apology including acknowledgement of the facts and acceptance of responsibility, or guarantees of non-repetition.¹⁶⁸

Victims of violations of international human rights and IHL have the right to full and effective reparations,¹⁶⁹ in proportion to the gravity of the violation and the circumstances of each case. Reparations do not relieve states of their obligation to ensure the prosecution of war crimes and gross violations of human rights. Victims, CSOs, women and minority groups should play a meaningful role in the design and implementation of reparations programmes.¹⁷⁰

III) VETTING

Many respondents saw the exclusion of alleged human rights perpetrators from public positions as an important step in the justice process.

With regards to vetting as an important aspect of the transitional justice process, 314 respondents (90 per cent) supported this mechanism in order to exclude perpetrators of serious human rights violations from political or security institutions, to facilitate justice and prevent further abuses.

A vetting process was also widely supported by CSOs and community representative interviewees who said there should be eligibility criteria for future elections to exclude those who have committed serious human rights violations.

“Since the prosecution of perpetrators may be currently difficult, they can at least be prevented from holding public positions so that they do not continue committing crimes.”

– Displaced Tawerghan man in Tripoli.



“It is not meaningful to wait to hold powerful perpetrators to account at a later stage, as when they get positions in government, they will spoil everything [including trial proceedings against them].”

– Legal academic from a Libyan university.

Civil society members said that vetting should be based on a case-by-case assessment of the seriousness of the crime, and the role and level of responsibility of the alleged perpetrator. Interviewees also emphasised that vetting of alleged perpetrators should be concretely based on evidence and a “proven record and history” of their involvement in crimes, and not on random accusations.

It was emphasised, however, that vetting and removal from a public position alone was insufficient to achieve accountability and should be followed by a judicial process.

“I am against the vetting procedure. There should be trials, then criminals should be held accountable and if people have criminal records, they won’t come back to work in certain jobs so the vetting will happen automatically.”

– Woman human rights defender and lawyer.

Vetting

On 5 May 2013, the GNC passed Law No. 13 of 2013 on Political and Administrative Isolation,¹⁷¹ after strong pressure was applied on the GNC by different armed militias who forcefully surrounded various ministries in Tripoli.¹⁷² The law, targeting Gaddafi-era officials to exclude them from holding public office, was enacted without consideration of due process of law or fair trial, and included former prime ministers, ministers, individuals who previously worked in the diplomatic cord, university staff, student unions leaders, and anyone connected to any security apparatus. The law further stated that anyone who held views critical to the 17 February uprising should also be excluded from public office.

The law was widely criticised by Libyan activists, organisations, politicians, and the general public, on the basis that it was not in line with international law and standards of vetting processes. Law No. 13 was abolished by the HoR in 2015.¹⁷³

The UN High Commissioner for Human Rights provides guidelines on vetting processes in the context of institutional reform and transitional justice. It notes that there is no “one-size-fits-all” approach to vetting in a transitioning context but it is nonetheless essential when moving from authoritarianism to democracy. The guidelines emphasise a need to pragmatically assess the situation and consider the public’s needs; to define the personnel reform objectives; and to design a feasible personnel reform process that respects fundamental rule-of-law standards.¹⁷⁴

6.3 ROLE OF LOCAL, NON-JUDICIAL RECONCILIATION MECHANISMS

Most respondents (93 per cent) and interviewees were critical of the local reconciliation processes. They stated that in the absence of state institutions, Libyan authorities, the UN Support Mission in Libya (UNSMIL) and local communities have relied on local, traditional conflict mediation mechanisms, instead of using an inclusive transitional justice approach that represents all sections of society.¹⁷⁵ However, both respondents and interviewees stressed that these processes were politicised, were subject to pressure from armed groups, compromised victims' rights to justice, criminal prosecutions and reparations, and promoted impunity. They added that these traditional conflict mediation mechanisms cannot deal with complex human rights violations, war crimes or crimes against humanity cases.

“These mechanisms are not good and this has been proven since 2011. They may stop the fire but they don’t ensure that the cause or roots are addressed so the same fire does not return after a short time.”

– Tawerghan activist.

Respondents and interviewees also criticised traditional conflict mediation mechanisms for excluding women, youth and victims' groups. They said that although women have played a crucial role in reconciling rival communities, this has taken place outside of traditional conflict mediation mechanisms.¹⁷⁶

Respondents lamented that when it comes to making decisions, it exclusively becomes “a man’s job”, and women are excluded. This leaves women unable to address their specific needs within local reconciliation agreements. Men participating in traditional conflict mediation mechanisms admitted that while the “community takes care” of women victims and family members, women do not have a say in these mechanisms because they have been “culturally designed for men only”.

Overall, respondents largely distrusted these mechanisms because they have been susceptible to the influence of the more powerful tribes – often when tribal leaders themselves are involved in, or are responsible for, abuses.

“They [tribal leaders] tried [to solve the conflict between Tuareg and Ghadames tribes] but made things worse. It is based on tribal views, not recognising human rights, and without conflict analysis, it made people shake hands and take pictures but the fighting continued.”

– Tuareg human rights activist from Ghadames.

“I am against [local reconciliations] as they are based on pardons, not on real accountability for those who committed crimes.”

– Woman human rights defender from Sirte.

Nonetheless, some respondents seemed to agree that these mechanisms, if reformed and made more inclusive of civil and religious organisations, women, youth and people with disabilities, could make a positive contribution to restorative justice and to advancing reconciliation. Some community representatives said that local reconciliation mechanisms had played a somewhat positive role in assisting with negotiations for the release of detainees and the return of IDPs and in solving smaller social disputes, but not in delivering accountability for serious crimes.

7. LIBYA'S OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

Libya is a State Party to key international human rights treaties including the International Covenant on Civil and Political Rights, and its Optional Protocol; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child. Libya is also a party to the African Charter on Human and Peoples' Rights and has ratified the Protocol establishing the African Court for Human and Peoples' Rights. Libya is also a party to the four Geneva Conventions of 12 August 1949 and Additional Protocol II to the Geneva Conventions of 12 August 1949.

Based on the positive duties derived from the above treaties and customary international law, Libya is obliged to investigate, prosecute and punish gross human rights violations and abuses, and serious IHL violations. These include¹⁷⁷ torture and other serious forms of cruel, inhuman or degrading treatment or punishment (ill-treatment), enforced disappearances, arbitrary deprivation of life, rape and other forms of SGBV, slavery, war crimes¹⁷⁸ and crimes against humanity.¹⁷⁹ States are obliged to undertake prompt, thorough, independent and impartial investigations of violations of international human rights law and IHL,¹⁸⁰ and have the primary responsibility to tackle impunity.¹⁸¹

The right to the truth about gross human rights violations and serious violations of human rights law is a non-derogable right and it is an "autonomous right, linked to the duty and obligation of the State to protect and guarantee human rights, to conduct effective investigations and to guarantee effective remedy and reparations".¹⁸² The right to the truth involves "knowing the full and complete truth" of the events and violations, their specific circumstances, and who participated in them, as well as the reasons for them.¹⁸³ In the case of enforced disappearance, the family of the direct victim has the right to be informed of the fate and/or whereabouts of the disappeared person.¹⁸⁴

A victim-centred approach to transitional justice

The UN Secretary General's guiding principles on transitional justice stress that transitional justice programmes should recognise the centrality of victims and their special status in the design and implementation of such processes.¹⁸⁵ National consultations should be conducted with the explicit

inclusion of victims and other traditionally excluded groups, to ensure that victims' rights and views are fully respected in the implementation of transitional justice processes. Victim-sensitive procedures should be developed to guarantee victims' safety and dignity, as well as specific measures to assist, support and protect victims and witnesses.

UN guiding principles require that transitional justice mechanisms provide for special measures to ensure that women receive adequate redress for conflict-related violations, and that women can fully participate in these processes and their rights and perspectives are adequately addressed.¹⁸⁶

Transitional justice processes and mechanisms should also investigate and prosecute grave violations against children and offer effective remedies to children that address the specific needs of boys and girls.¹⁸⁷ Children associated with armed forces or armed groups should be considered victims, including those who may have been involved in the commission of serious crimes, and should not be prosecuted or punished or threatened with prosecution or punishment solely for their membership of those forces or groups.¹⁸⁸ The UN further recommends that child-friendly policies and procedures are put in place to protect the rights of child victims and witnesses.¹⁸⁹

8. CONCLUSIONS AND RECOMMENDATIONS

The research indicates that, regardless of political affiliation, gender, ethnicity or location, Libyans strongly support impartial accountability through prosecutions for serious crimes and violations committed by all parties involved in Libya's conflicts. This includes state, state-affiliated and non-state armed actors as well as international actors, including NATO and foreign states.

There was consensus that the cycle of violence, armed conflicts and victimisation in Libya will only cease by ending the current pervasive culture of impunity. Respondents and interviewees emphasised the view that any national or local peace and reconciliation process should be developed and implemented on the basis of transitional justice principles.

To ensure the rights of victims, and to meet their comprehensive needs, there must be a holistic transitional justice process. This would ensure criminal accountability, truth-seeking, full reparations, and legal and institutional reform to promote and guarantee non-repetition, safety, the rule of law and equality. The research confirmed that to gain legitimacy, transitional justice mechanisms should be implemented without discrimination. They should be applied to all types of serious crimes and violations committed during, and since, the 2011 uprising, as well as those committed during the Gaddafi regime.

The research highlighted that transitional justice processes should address all serious crimes and violations including killings, rape and other sexual violence, enforced disappearances, torture, forced displacement, violations against minorities including in relation to their cultural rights and their right to citizenship and representation, property confiscations, and corruption and embezzlement. Respondents and interviewees stressed that reforming and enforcing the law to hold those responsible to account will pave the way for peace, state-building and reconciliation.

Based on the survey, interviews and recommendations made by participants, LFJL recommends the following measures to address serious crimes and violations in Libya, which have been identified as vital steps to advance peace and justice:

To the Libyan state:

- *Prioritise as a matter of urgency the effective investigation of the international crimes and serious violations committed in Libya with the aim to identify perpetrators and bring them to justice*

The research showed an overwhelming and pressing need for justice and accountability. Libyan authorities should urgently carry out investigations into violations and crimes committed in Libya in line with international law and standards of independence, impartiality, transparency and thoroughness. Investigations must be gender sensitive, including by taking account of all gendered harms and reflecting these in the scope of investigations and the selection of charges. To this end, the Libyan state should ensure that relevant authorities – including law enforcement, prosecution services and others – have the necessary resources and capacity to carry out such investigations. Victims, their families and other affected stakeholders should be informed about the progress of investigations and be able to participate in them as much as they wish, in line with their rights under international law.

- *Undertake legislative reform to enhance accountability and non-repetition of violations*

To ensure accountability for gross human rights violations and international crimes, the Libyan state should develop a legislative framework consistent with international law and standards. The framework should criminalise international crimes and ensure that definitions of human rights violations, provided in domestic legislation, are in line with International Law and Standards, including explicitly criminalising rape. The Libyan state should thoroughly revise Law No. 29 of 2013 on transitional justice to satisfy the rights of all victims without discrimination, based on inclusive consultations. Finally, the state should adopt a fair constitution that guarantees and protects human rights and freedoms without discrimination, including the full rights of minorities and women.

- *Carry out independent prosecutions, resulting in impartial and fair trials*

In line with the research's clear call for criminal prosecution, the competent Libyan authorities should take immediate steps to prosecute and try, through fair trials, all alleged perpetrators where there is credible evidence that they have committed or otherwise been involved in serious crimes and violations. Trials should be impartial and independent, as well as transparent and public, so that the outcome also contributes to other transitional justice processes such as establishing the truth.

- *Cooperate fully and promptly with external accountability measures seeking to address crimes and violations committed in Libya*

The state should support external accountability measures through providing swift and unhindered cooperation to relevant UN and ICC processes, as well as to authorities of third countries exercising extraterritorial jurisdiction over serious crimes committed in Libya. This includes providing access to relevant sites, allowing for opportunities to take testimonies, and responding promptly to cooperation requests.

- *Repeal amnesty laws that are not in line with International Human Rights Law, IHL, International Criminal Law and their standards*

Respondents expressed strong opposition to amnesties for serious crimes. In line with Libya's obligation to investigate and prosecute serious crimes, and to provide an effective remedy to victims, the state should abolish existing amnesty laws, including but not limited to Law No. 6 of 2015. It should ensure amnesties precluding perpetrators of serious crimes from prosecutions are not part of any transitional justice process nor any peace, reconciliation, or disarmament agreements. As stressed in the research, amnesties consistent with international law and standards should only be granted following victims' consent, and should not restrict victims' rights to remedy, to know the truth and to access reparations. Amnesties for less serious crimes could be considered following a criminal justice or truth-seeking process.

- *Develop an impartial and inclusive truth-seeking mechanism*

The research identified that establishing the truth – by revealing facts and evidence of past and ongoing serious crimes and violations – is a crucial, immediate step to pave the way to accountability. To meet this need, the Libyan state should develop a national truth-seeking mechanism to establish the truth about violations, their circumstances, and those who participated in and instigated them. Investigations should look into the root causes and seek to reveal the impact of entrenched discrimination against women and minorities. This mechanism should also provide and facilitate space for victims to discuss their grievances and should be comprised of independent experts and diverse communities with ethnic, tribal group and gender representation. It should have a wide reach to benefit all affected communities and victims.

- *Support community-led transitional justice mechanisms to compliment to state-led efforts*

Research findings show that current community-led transitional justice mechanisms, such as local, traditional conflict mediation mechanisms, have not proven effective.

Issues highlighted by the research include the exclusion of minorities, women and youth from these mechanisms and the unequal balance of power between conflicting parties in mediation mechanisms. Respondents further agreed that these mechanisms can supplement state-led transitional justice efforts, including negotiating the return of displaced people, solving local disputes, as well as encouraging reconciliation. The Libyan government should support local authorities to ensure that these mechanisms include all the demographics affected by the relevant situation, are victim-centred, and create a genuine equality of participation between the parties in such mechanisms.

- *Develop an inclusive and comprehensive reparations programme for all victims without discrimination*

Research findings showed a clear need for a broad range of reparation measures for victims that are proportional to the gravity of the violation and the harm suffered. Relevant laws and reparations schemes must be amended in line with international law and in coordination with victims and affected communities to create a comprehensive reparations programme that provides reparation without exception, regardless of affiliations of victims or perpetrators. A unified state fund should be set up to provide reparation for all victims, including when the perpetrators cannot be identified or are unable or unwilling to meet their obligations. Reparations should be gender-sensitive and barriers to accessing reparations for SGBV victims must be addressed, including those arising out of stigma, fear of retribution, and the unavailability of information or support. Reparations should be provided to victims, survivors, their immediate families including widows and orphans, and affected communities.

In addition to compensation for physical or mental harm or other damages, reparation measures should include: the safe and voluntary return of IDPs to their homes; reparations for damaged or confiscated properties, including for land and property confiscated by the Gaddafi regime under Law No.123 of 1970 and Law No. 4 of 1978; restoration of human rights including recognition of cultural identity rights and citizenship rights; the immediate release of those arbitrarily detained; revealing the whereabouts of missing persons and, where applicable, the return of the bodies of those killed; and access to psycho-social support to rehabilitate victims and traumatised communities.

- *Initiate an effective vetting process to ensure perpetrators implicated in serious human rights violations are barred from holding positions in public office*

Most respondents stated support for a mechanism to exclude perpetrators of serious human rights violations from political or security institutions. To advance accountability

and prevent the repetition of serious crimes and violations, Libyan authorities should immediately initiate a process of vetting individuals who are seeking to hold positions within the public, judicial and security sector, and against whom there are credible allegations of involvement in such crimes or violations. Vetting processes should be impartial and involve all alleged perpetrators irrespective of their affiliation. The Libyan State must seek international guidance and advice on vetting processes that are in line with international law and standards. The process must not replicate the blanket political isolation law (Law No. 13 of 2013) and the process that followed against the former Gaddafi regime.

- *Ensure victim-centred transitional justice*

There was strong demand for a victim-centered transitional justice process throughout the research. To encourage and support victim participation and the submission of cases, respondents and interviewees suggested the following:

- Prioritise witness and victim protection and provide a safe space for victims to file cases and discuss grievances without fear.
- Put in place special measures for victims of rape and other sexual crimes, to accommodate sensitivities and needs and provide support to overcome stigma and intimidation.
- Raise legal and human rights awareness among victims, to help victims better understand their rights and better formulate and communicate their demands.
- Raise awareness about transitional justice and victims' rights by setting up accessible bodies across Libya to advise and guide victims on claiming their rights and to advise them on available justice options and processes.
- Enable and support CSOs to increase awareness of legal and human rights among victims and facilitate the establishment of victim support groups for guidance and information sharing, and to enable groups of victims to pursue their rights or to use representatives collectively.
- Provide psycho-social support to victims throughout the justice process.

To the UN, the ICC, and the international community:

- *Strengthen accountability through a hybrid court and build the capacity of the Libyan justice system to prosecute serious crimes effectively*

Respondents showed strong support for a special court or a hybrid tribunal, comprised of both Libyan and international judges and staff and based in Libya, to help progress investigations and prosecutions, ensure an impartial judicial process and fair trials, and strengthen the capacity of the domestic justice system. To ensure the impartiality and legitimacy of mixed trials, respondents indicated that

international involvement should consist of independent judicial staff and should not be linked to countries involved in the Libyan conflicts to avoid political bias and interferences.

Respondents called on the international community to support local courts by enhancing protection to judges, investigators, prosecutors, lawyers and detainees; setting up a victim and witness protection programme; supporting the arrest of suspected offenders; and contributing to reforming the criminal justice sector to ensure its independence from the interference of tribes, militias and political actors.

- *Support civil society working in Libya to document serious crimes and violations, and support victims to play a key role in advancing accountability and justice for victims*

The international community must work to protect freedom of association in Libya, and support Libyan CSOs to carry out their work in advancing justice, accountability, protection of women and minority groups, and freedoms for all people in Libya. This support includes calling on Libya to reform its legal framework and to lift any repressive measures imposed on CSOs that restrict freedom of expression and association. 'Individuals must be able to establish CSOs, and those CSOs must be able to obtain funding, in either case, without the need to obtain prior permission. They must be able to attend capacity building workshops inside and outside of Libya without being targeted; carry out investigative research, surveys, and other research without prior permission from the government or its agencies; and have access to protection mechanisms if organisations or individuals are threatened and targeted as a result of their work.

- *Initiate prosecutions and carry out positive outreach campaign within the different communities inside Libya*

As recognised in the research, the ICC should play a more active role in the Libyan situation by exercising its jurisdiction and complementing local accountability efforts to bring powerful perpetrators to justice through prompt investigations and prosecutions. It should also advance charges that might be challenging at the local level. Similarly, third-party states can also play a vital role in closing the accountability gap by surrendering those named by ICC warrants and handing them over to the court.

To overcome limited understanding and support for international justice mechanisms, as shown in the research, the ICC should conduct a positive outreach campaign among Libyans to improve participation of victims and affected communities. The ICC should explain its work in Libya and opportunities for meaningful involvement in prosecuting strategies, and processes undertaken by the court to bring those responsible to justice.

- *Use universal jurisdiction that complements domestic accountability efforts to hold those responsible to account*

Third states should use universal jurisdiction to investigate, and, if there is sufficient evidence, prosecute suspects of serious crimes before their own courts. A consistent use of universal jurisdiction by third states will help narrow the existing accountability gap and provide a measure of justice to victims. Relevant authorities exercising universal jurisdiction should ensure to carry out effective outreach and communication activities to ensure that proceedings outside Libya are meaningful to victims and have a positive impact on broader society inside Libya.

APPENDIX 1: SURVEY DEMOGRAPHICS, METHODOLOGY AND LIMITATIONS

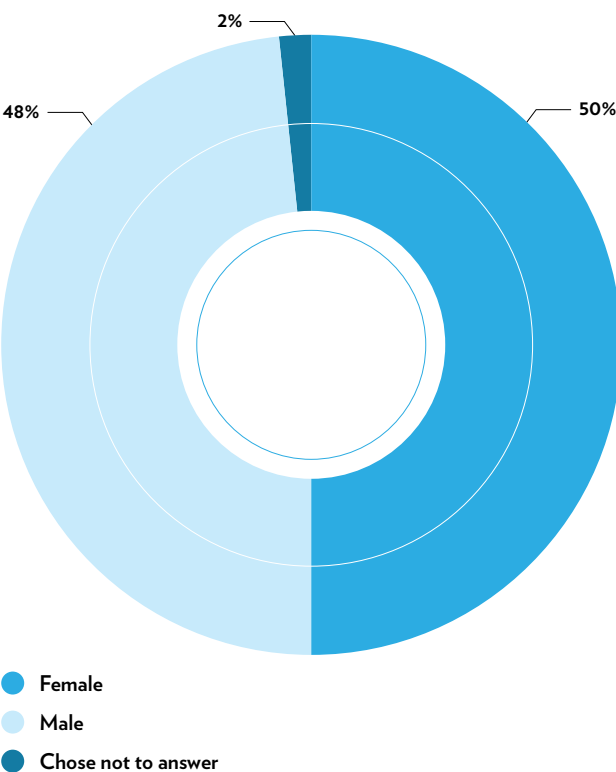
Demographics

To ensure an even gender balance that is broadly representative of Libyan national demographics, 175 women and 169 men were surveyed.¹⁹⁰ The majority of respondents were 18–39 years old, close to the national median age of 25.8 years.¹⁹¹

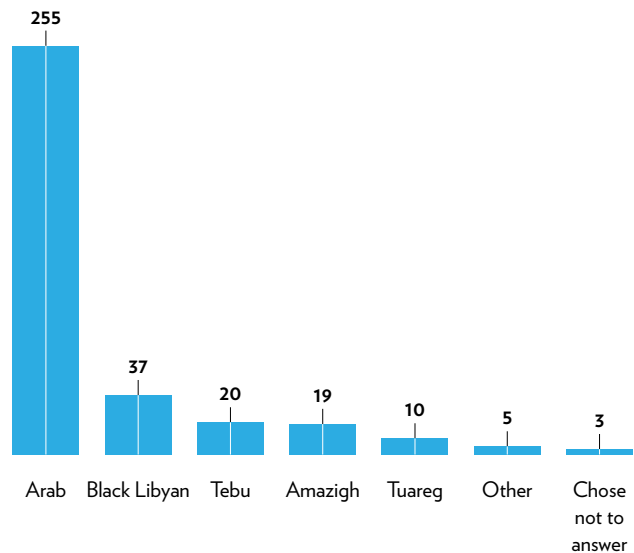
Respondents were selected from 26 locations across Libya – 159 participants based in the west, 96 in the east and 94 in the south.¹⁹² Locations and communities were selected following an assessment of national and local conflict dynamics since the 2011 uprising, the profiles of alleged perpetrators, and the types of human rights violations and their victims.

Respondents included members of Libya’s main ethnic and tribal groups, reflecting the following breakdown: 73 per cent Arab, 11 per cent Black Libyans including Tawergha, 6 per cent Tebu, 5 per cent Amazigh, 3 per cent Tuareg and 1 per cent Other including Mashashians.¹⁹³ A wide spectrum of over 80 tribal groups was represented, including the Qadhadhfa, Warfalla and Warshifana tribes, which are politically marginalised.

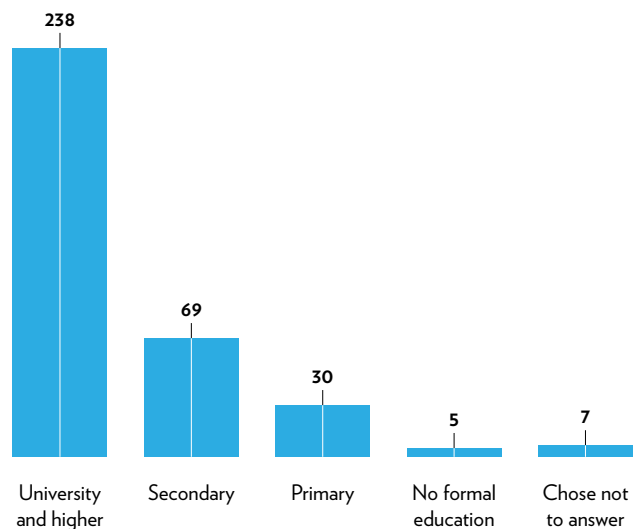
Gender



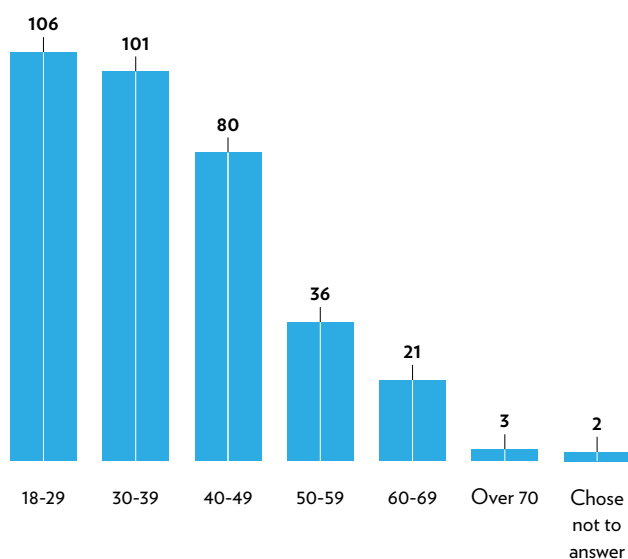
Ethnic group



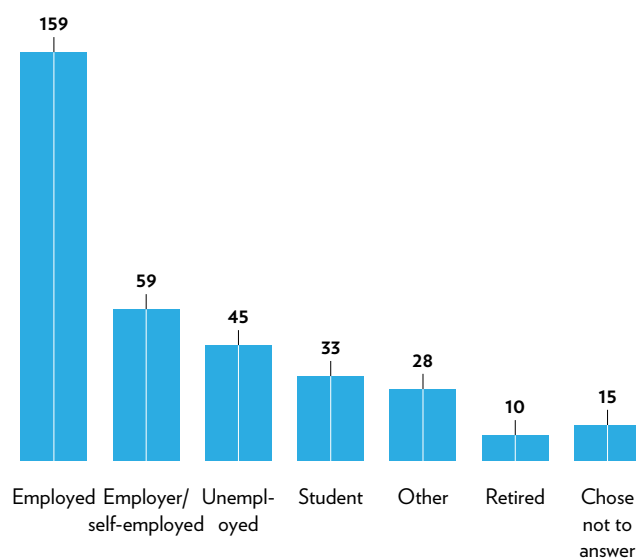
Level of education



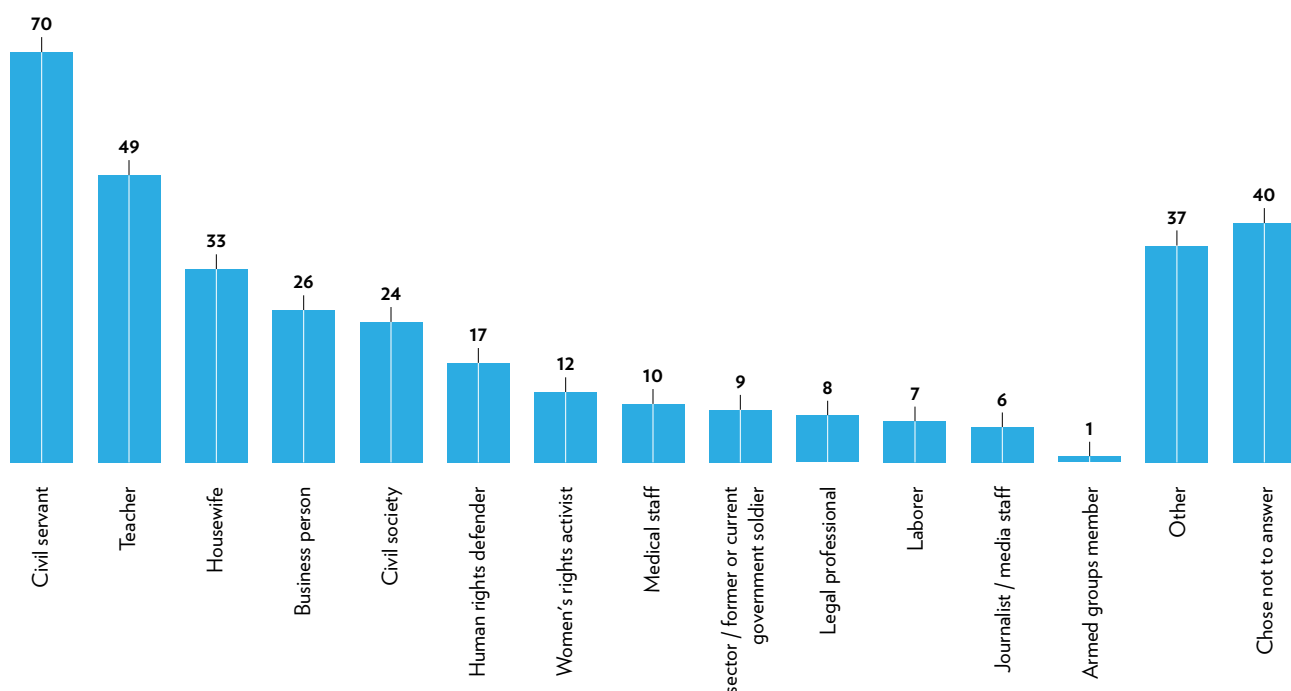
Age



Employment status



Occupation



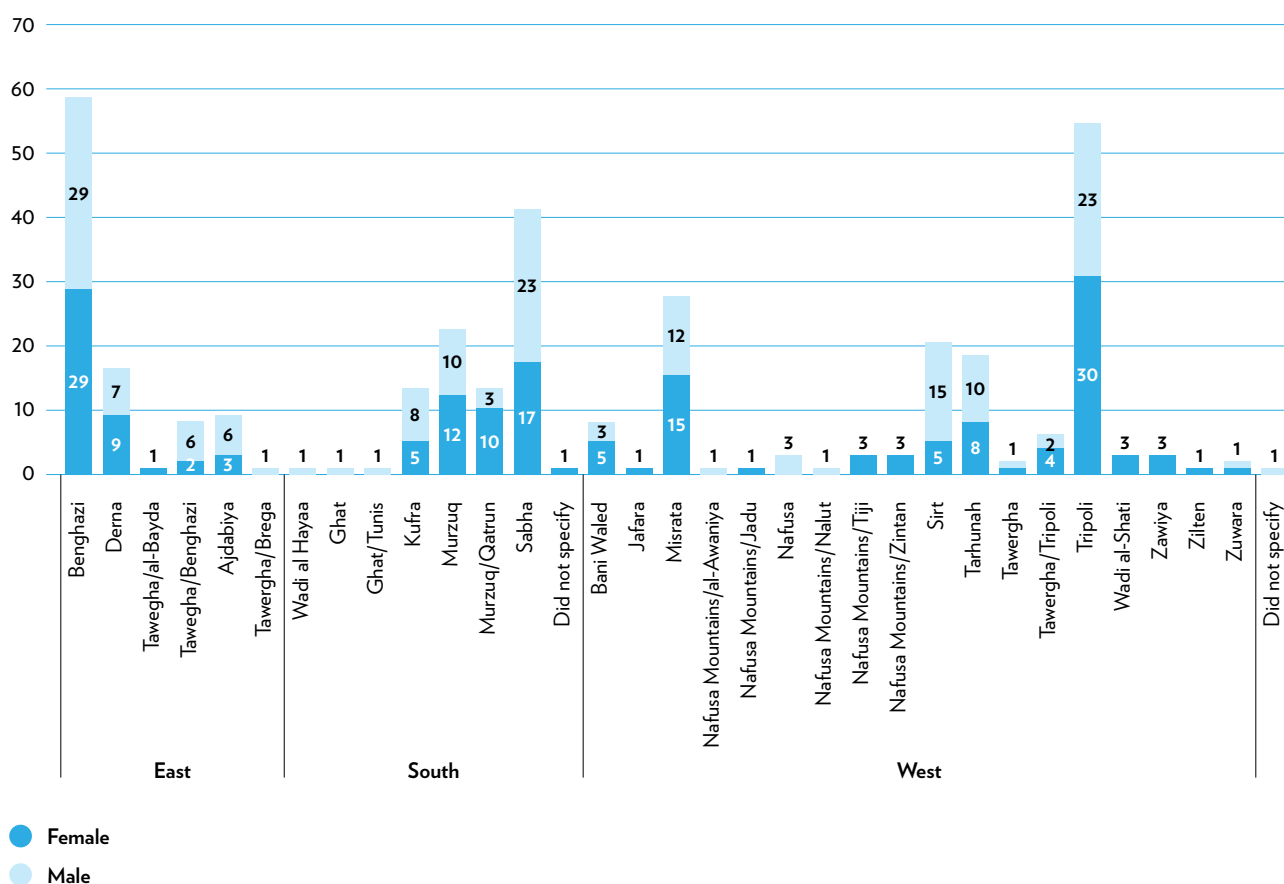
Geographical representation

The survey was conducted in the western, southern and eastern regions of Libya. The number of respondents per location was influenced by the complexity of conflicts affecting the location and the diversity of the perpetrators involved.

West region (159 respondents): Tripoli –54 respondents (30 women, 24 men); Misrata – 27 respondents (15 women, 12 men); Sirte – 20 respondents (5 women, 15 men); Bani

Walid – 8 respondents (5 women, 3 men); Tarhunah – 19 respondents (8 women, 10 men, 1 gender undisclosed); Tawergha displaced to Tripoli – 7 respondents (5 women, 2 men); Tawergha city – 1 man; Nafusa Mountains – 12 respondents (al-Awaniya and Mashashian territories – 4 men; Tiji – 3 women; Nalut – 1 man; Jadu – 1 female ; Zintan – 3 women respondents); Zawiya – 4 (3 women; 1 gender undisclosed) ; Zliten – 1 woman respondent; Wadi al-Shati – 3 women respondents; Jafara – 1 woman respondent, Zuwara 2 (1man, 1 woman).

Gender demographics of respondents by location



East region (96 respondents): Benghazi – 58 respondents (28 women, 29 men, 1 gender undisclosed); Derna – 19 respondents (12 women, 7 men); Ajdabiya – 9 respondents (3 women, 6 men); Tawergha displaced to Benghazi – 8 respondents (2 women, 6 men); Tawergha displaced to al-Bayda – 1 woman respondent, Tawergha displaced to Bergha – 1 men respondent.

South region (94 respondents): Sabha – 42 respondents (17 women, 23 men, 2 gender undisclosed); Murzuq – 22 respondents (12 women, 10 men); Qatrun – 13 respondents (10 women, 3 men); Kufra – 13 respondents (5 women, 8 men); Ghat – 2 men respondent, Wadi al Hayaa – 1 men respondent, and 1 woman respondent did not specify the town.

Survey and interview methods

A team of around 20 male and female local civil society members of the LFJL network were carefully selected as researchers from a range of communities, based on their access to communities, professionalism, understanding of transitional justice and knowledge of local conflict dynamics.

Prior to conducting the large-scale survey, a smaller pilot survey with ten respondents from different communities was conducted. The questionnaire was discussed with a number of grassroots civil society representatives which allowed them to verify the questionnaires, discuss their relevance and ensure clarity of the questions and translations.

Researchers were briefed and provided with a detailed guide on the selection criteria, information on the “do no harm” principle and other ethical considerations, and interviewing techniques.

Respondents’ views were gathered through a questionnaire in Arabic, comprising of open and closed questions. Each question also provided a space to express details or alternative views. Surveys were conducted over the phone (55 per cent) and face-to-face (31 per cent), with a few surveys conducted via email or other online communication tools (14 per cent) to overcome communication restrictions and to respect safety and confidentiality requests. The responses were collected by researchers through the application KoBo Toolbox.

Surveys were conducted in a qualitative manner for the duration of one hour, and included in-depth discussions with respondents. Respondents also appreciated brainstorming with the researchers, as it gave them a rare opportunity to explore options of justice and accountability that they may not have previously been aware of.

In-depth interviews, conducted over periods of one to two hours, openly discussed issues around justice, truth, reparations and possible justice mechanisms that may be most suited to the Libyan context. A semi-structured questionnaire was developed to guide interviewees. Both male and female interviewees from each community, including woman human rights defenders, were interviewed to gather gender-specific views and recommendations. In-depth interviews provided a deeper understanding of different issues that are important for each community and gave interviewees the opportunity to discuss local needs, as well as contested issues.

The survey and in-depth interviews aimed to assess respondents' perceptions on the following topics:

- Understandings of justice and accountability, and what concrete actions and outcomes are expected.
- Levels of interest and trust in the ability of particular bodies to deliver justice, including local courts, the ICC and hybrid mechanisms.
- The role, if any, of customary mechanisms to contribute to justice.
- Priority periods that a justice process should cover (post-2011 and/or crimes during the Gaddafi regime).
- Prosecutorial priorities and strategies.
- Amnesties and the conditions with which they should be imposed.
- Vetting of perpetrators of human rights violations from political and security services.
- Importance of truth, and for which period this should be investigated.
- What can be done for victims and their families in the context of reparations, compensation, restitution, satisfaction, rehabilitation and guarantees of non-repetition.
- Role of justice for peace and reconciliations.

All data was analysed using qualitative and quantitative methods to reveal common trends and consensus points among different social groups, but also to highlight differences of opinion. The data has been disaggregated and analysed according to gender, ethnicity, whether individuals were direct or indirect victims, and geographical location.

All survey results and quotes are anonymous to protect the identity of survey respondents and interviewees.

LFJL researchers also carried out desk-based research including open-source research of audio-visual evidence, social media platforms, government statements, court documents, UN and Fact-Finding Mission reports, international and local organisations' reports and statements, local legislation and government decrees.

Research challenges and limitations

A series of challenges impacted the research for this report, including the 2019–2020 armed conflict,¹⁹⁴ related insecurity and widespread mistrust by communities due to ongoing violence, suppression of civic space and fear of retribution against critical voices and dissidents. Because of the highly polarised and repressive environment in Libya, respondents were extremely cautious and reluctant to show support or criticism for particular actors.

To overcome these challenges, LFJL researchers collaborated with CSOs that were able to reach diverse communities safely and elicit detailed responses to questions on a range of sensitive issues.¹⁹⁵ However, LFJL has respected the decision of some respondents not to disclose their individual views on certain perpetrators.

The research primarily focused on people inside Libya. Due to time and resource limitations, the survey did not cover exiled communities such as members of the former Gaddafi regime in Egypt, or Libyans who had sought protection in other countries due to consecutive armed conflicts.

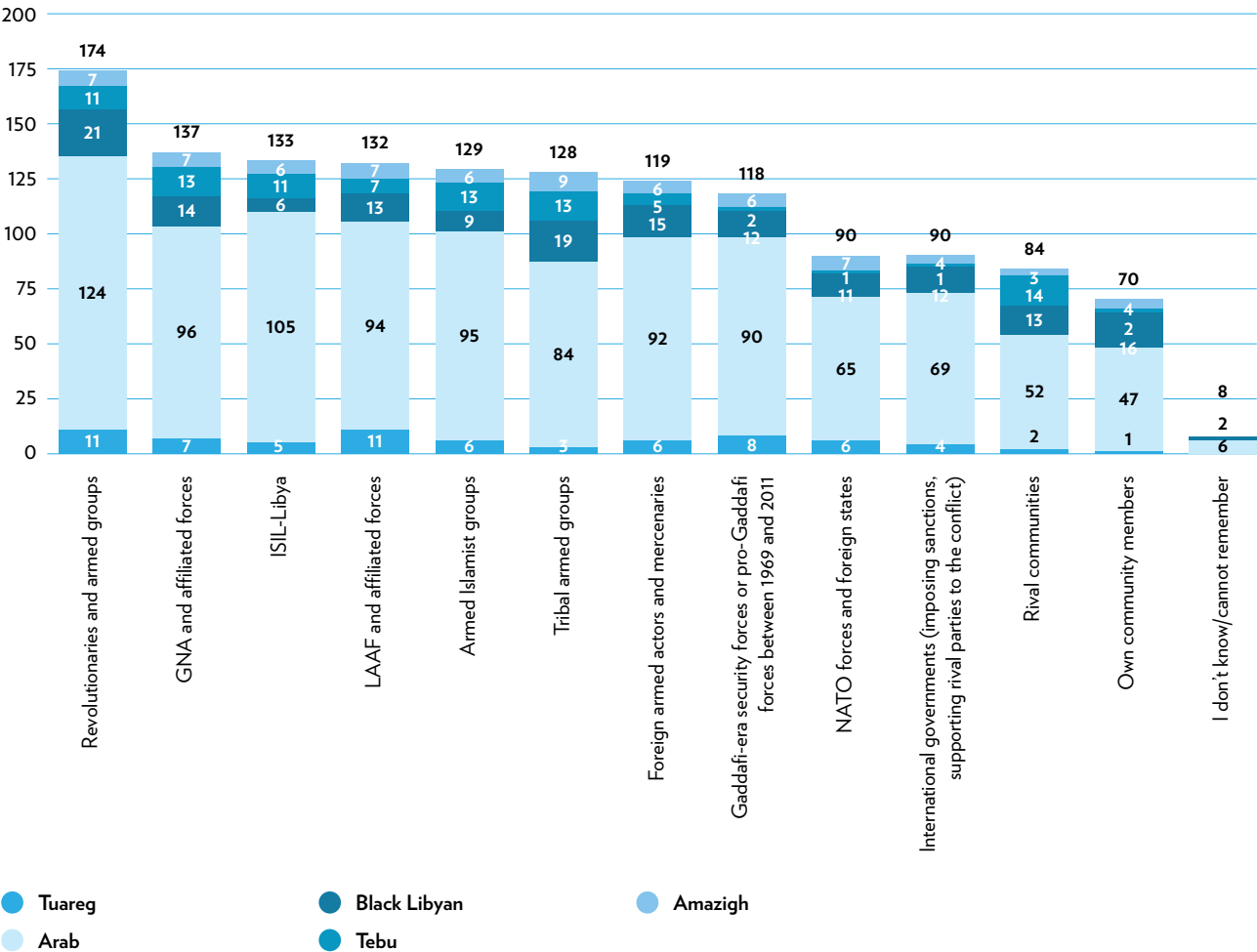
Despite the strong presence of women respondents and questions crafted to capture the gender aspects of transitional justice, LFJL acknowledges there is a strong need for a separate study on the following: discrimination against women, how to improve women's access to transitional justice, and how to meet the specific needs of male and female victims of SGBV.

The research also focused on adults over 18 years of age and hence the specific justice needs of children have not been reflected.

Finally, the Covid-19 pandemic presented a series of challenges which hindered the researchers' ability to move freely and to meet with participants physically.

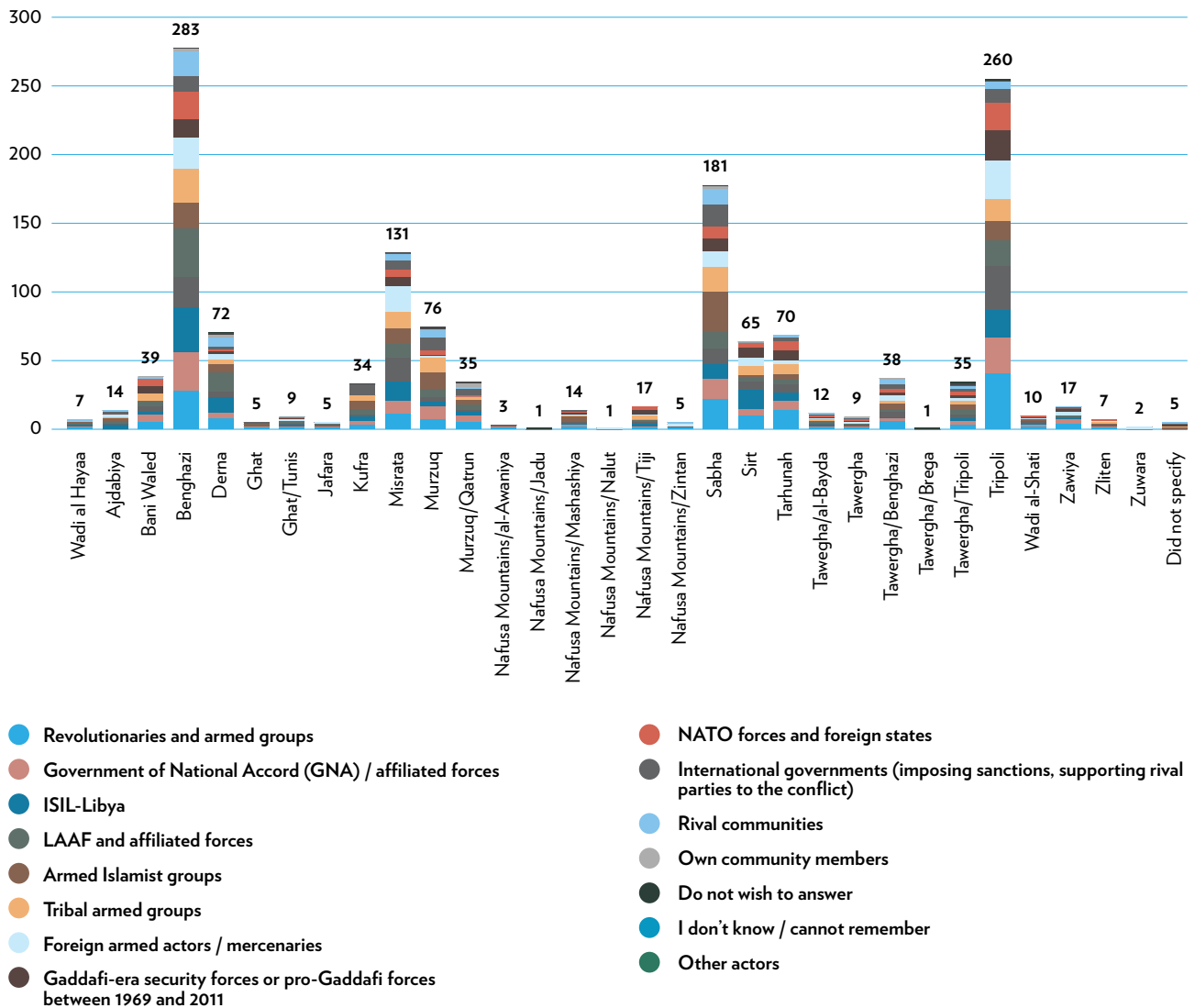
APPENDIX 2: GRAPHS

Figure 1. Actors responsible for serious abuses, according to respondents' ethnic groups



Respondents who answered 'Other actors' did not disclose their ethnic group.

Figure 2. Perpetrators responsible for past and ongoing human rights abuses and harm, according to communities in different locations



ENDNOTES

- 1 Lawyers for Justice in Libya (LFJL), “LFJL Publishes its Final Destoori Report of Findings and Recommendations for Libya’s New Constitution, to be Delivered to the Constitutional Drafting Assembly”, 21 June 2014, available at: <https://www.libyanjustice.org/news/140-lfjl-publishes-its-final-destoori-report-of-findings-and-recommendations-for-libyas-new-constitution-to-be-delivered-to-the-constitutional-drafting-assembly>.
- 2 LFJL and Saferworld, *Enshrining Impunity: A decade of international engagement in Libya*, 17 February 2022, available at: <https://www.libyanjustice.org/news/enshrining-impunity-a-decade-of-international-engagement-in-libya-lfjl>
- 3 Federal Foreign Office, Federal Foreign Office on progress in the UN mediated intra-Libyan talks, 21 October, 2020, <https://www.auswaertiges-amt.de/en/newsroom/news/-/2408830>.
- 4 The four respondents who participated in the conflict are from Misrata, Tripoli, Zuwara and Benghazi. Two are Arab and two are Amazigh. Some of them said that they have suffered personal harm and loss because of their participation in the conflict; for example as a result of enforced disappearance or abuse during detention.
- 5 Respondents had the option to answer or not answer each question. As a result, not all questions were answered by 349 respondents.
- 6 United Nations (UN) Human Rights Council, *Report of the International Commission of Inquiry on Libya*, A/HRC/19/68, 2 March 2012, p. 2, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_19_68_en%20_1_.pdf.
- 7 Illuminated by the Declaration on the Establishment of the Authority of the People, a Constitutional text adopted by Gaddafi on 2 March 1977. For the full text, please see *Libya: Declaration on the Establishment of the Authority of the People*, 2 March 1977, available at: <https://www.refworld.org/docid/3ae6b4ec14.html>.
- 8 Human Rights Watch (HRW), *Libya: Words to Deeds: The Urgent Need for Human Rights Reform*, 24 January 2006, available at: <https://www.hrw.org/report/2006/01/24/libya-words-deeds/urgent-need-human-rights-reform>.
- 9 Ibid; Amnesty International (AI), *Libyan Arab Jamahiriya: Amnesty International submission to the UN Universal Periodic Review*, 2010, available at: https://lib.ohchr.org/HRBodies/UPR/Documents/Session9/LY/AI_AmnestyInternational.pdf.
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103 Eight were handed life sentences; while 15 others were given prison sentences from five to 12 years, four were acquitted, and one was referred to a mental health institution. This judgment is subject to appeal before the Court of Cassation. The Ministry of Justice in al-Bayda (the then internationally recognised government) declared the verdict null and void, criticising the defendants’ conditions of detention and insufficient access to lawyers. See UNSMIL and OHCHR, *Report on the trial of 37 former members of the Qadhafi regime* (CASE 630/2012), 21 February 2017, available at: <https://unsmil.unmissions.org/sites/default/files/regime-trial-report-english.pdf>; ICC Pre-Trial Chamber, Decision on the ‘Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute’, 5 April 2019, available at: https://www.icc-cpi.int/CourtRecords/CR2019_01904.PDF; Statement 5/2015, dated 28 July 2015, published on the Facebook page of the Ministry of Justice, available at: <https://www.facebook.com/918143241537221/photos/pcb.1010614705623407/1010613928956818/?type=3&theater>. At the time of the statement, the government led by Abdullah al-Thinni, prime minister of the House of Representatives, was considered to be the internationally recognised government of Libya.

104 The ICC, as well as the representatives of the victims to the ICC (the Victims Council), and human rights organisations, including LFJL, rejected the amnesty for Mr Gaddafi. See ICC Pre-Trial Chamber I, The Prosecutor v. Saif Al-Islam Gaddafi, *Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute*, 5 June 2018, ICC-01/11-01/11-640, para. 44, available at: https://www.icc-cpi.int/CourtRecords/CR2019_02875.PDF. LFJL and the Redress Trust, *Observations by Lawyers for Justice in Libya and the Redress Trust pursuant to Rule 103 of the Rules of Procedure and Evidence*, 28 September 2018, paras. 40–42, available at: <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/11-01/11-654>. The Victims Council further questioned the validity of the amnesty being granted to Mr Gaddafi as ‘Al-Bayda government’ was not the legitimate government of Libya at the time. See Office of Public Counsel for Victims, *Response on Behalf of Victims to the Defence Appeal Brief on the Decision on the Admissibility of the Case*, ICC-01/11-01/11, 11 June 2019, paras. 35 and 44, available at: <https://www.legal-tools.org/doc/5fe207/pdf/>.

105 ICC-01/11-01/11-640, para. 44; ICC Appeals Chamber, Judgment on the appeal of Mr Saif Al-Islam Gaddafi against the decision of Pre-Trial Chamber I entitled ‘Decision on the “Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute”’ of 5 April 2019, ICC-01/11-01/11, 9 March 2020, paras. 93–97, available at: <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/11-01/11-695>; LFJL and the Redress Trust, *ibid.* The Victims Council further questioned the validity of the amnesty being granted to Mr Gaddafi as ‘Al-Bayda government’ was not the legitimate government of Libya at the time. See Office of Public Counsel for Victims, *Response on Behalf of Victims to the Defence Appeal Brief on the Decision on the Admissibility of the Case*, ICC-01/11-01/11, 11 June 2019, paras. 35 and 44, available at: <https://www.legal-tools.org/doc/5fe207/pdf/>.

106 LFJL, “Victims’ Voices: Participation at the ICC”, 10 January 2022, available at: <https://www.libyanjustice.org/news/victims-voices-participation-at-the-international-criminal-court>.

107 For more information on this please refer to *Lawyers for Justice in Libya and REDRESS’ amici curiae observations pursuant to Rule 103 of the Rules of Procedure and Evidence*, ICC-01/11-01/11-678, 28 October

2019, available at: https://www.icc-cpi.int/CourtRecords/CR2019_06284.PDF.

108 The case concerns the August 2011 “Abu Saleem Highway Massacre”, when Gaddafi’s security forces and sympathisers allegedly ambushed and killed 146 anti-Gaddafi protesters in Tripoli <https://www.facebook.com/libyashannel/posts/1019024701610729>.

109 Victims Organization for Human Rights, Facebook post, 18 January 2017, available at: https://m.facebook.com/victimsohr/photos/a.505705042811072/1202644099783826/?type=3&locale2=hi_IN.

110 UN Human Rights Committee, *Article 14: Right to equality before courts and tribunals and to a fair trial*, CCPR/C/GC/32, 23 August 2007, para. 59, available at: <https://undocs.org/CCPR/C/GC/32>. Libya has maintained a de-facto moratorium on implementation of the death penalty since 2010; however the Libyan Penal Code provides for the death penalty for various crimes.

111 The ICC Prosecutor said that because of Libya and other states’ failure to cooperate and ensure the suspects’ timely arrests, and as two of them have subsequently died, states have denied victims and their families justice and accountability. See 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>.

112 On 27 June 2011, Pre-Trial Chamber I issued three warrants of arrest respectively for Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi, for crimes against humanity (murder and persecution) allegedly committed across Libya between 15 and 28 February 2011, through the State apparatus and security forces. On 22 November 2011, Pre-Trial Chamber I formally terminated the case against Muammar Gaddafi due to his death. The case against Abdullah Al-Senussi was declared inadmissible on 11 October 2013. The case against Saif Al-Islam Gaddafi remains in the pre-trial stage, pending Saif Al-Islam Gaddafi’s transfer to the ICC. For more information see ICC News, “Saif Al-Islam Gaddafi case: ICC Appeals Chamber confirms case is admissible before the ICC”, 9 March 2020, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=pr1518>.

113 The two warrants of arrest for Mahmoud Mustafa Busayf Al-Werfalli issued by the Court on 15 August 2017 and 4 July 2018 remain unexecuted. The first arrest warrant was issued on 15 August 2017 (available at: https://www.icc-cpi.int/CourtRecords/CR2017_05031.PDF) and the second arrest warrant was issued on 4 July 2018 (available at: https://www.icc-cpi.int/CourtRecords/CR2018_03552.PDF).

114 According to the ICC Office of the Prosecutor, Al-Tuhamy Mohamed Khaled is the “alleged former Lieutenant General of the Libyan army and former head of the Libyan Internal Security Agency (ISA)”. The ICC issued his warrant of arrest on 18 April 2013; the warrant of arrest was unsealed on 24 April 2017. See *The Prosecutor v. Al-Tuhamy Mohamed Khaled*, ICC-01/11-01/13, April 2018, available at: <https://www.icc-cpi.int/CaseInformationSheets/KhaledEng.pdf>.

115 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.

116 See for example OHCHR, *Abuse Behind Bars: Arbitrary and unlawful detention in Libya*, April 2018, available at: https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf; AI, “Libya: Ten years after uprising abusive militias evade justice and instead reap rewards”, 17 February 2021, available at: <https://www.amnesty.org/en/latest/news/2021/02/libya-ten-years-after-uprising-abusive-militias-evade-justice-and-instead-reap-rewards/>.

117 See Law No. 38 of 2012, Law No. 35 of 2012 on the Amnesty of Particular Crimes and Law No. 6 of 2015 on General Amnesty. Since 2011, successive Libyan governments have adopted expansive amnesty laws. Initially these were aimed at excluding anti-Gaddafi forces from prosecution for acts committed during the 2011 uprising; then, in 2015, a general amnesty law was adopted, Law No. 6, extending “general amnesty to all Libyans” for crimes committed between 15 February 2011 and 7 September 2015.

118 HRW, “Libya: Ensure Safe Return of Displaced Tawerghans”, 20 June 2017, available at: <https://www.hrw.org/news/2017/06/20/libya-ensure-safe-return-displaced-tawerghans>.

119 Ibid; HRW, “Libya: Displaced Population Can’t Go Home”, 24 January 2019, available at: <https://www.hrw.org/news/2019/01/24/libya-displaced-population-cant-go-home>. For further information on the 2017 Misrata-Tawergha reconciliation agreement please see the OHCHR UPR report submitted by the Youth Gathering for Tawergha Association, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRLYStakeholdersInfoS36.aspx>.

120 Al-Werfalli has been charged with involvement in the war crime of murder of a total of 43 people in and around Benghazi, between 2016 and 2018, during the Haftar-led military operation “Operation Dignity”. The two warrants of arrest for Mahmoud Mustafa Busayf Al-Werfalli issued by the Court on 15 August 2017 and 4 July 2018 remain unimplemented. A first arrest warrant was issued on 15 August 2017 (available at: https://www.icc-cpi.int/CourtRecords/CR2017_05031.PDF) and a second arrest warrant was issued on 4 July 2018 (available at: https://www.icc-cpi.int/CourtRecords/CR2018_03552.PDF).

121 AI, “Libya: Ten years after uprising abusive militias evade justice and instead reap rewards”, 17 February 2021.

122 Samy Magdy, “Officials: US-sanctioned militia leader killed in east Libya”, AP News, 27 July 2021, available at: <https://apnews.com/article/middle-east-africa-shootings-libya-13a98c8ccac6def7c4ebd381e7e32fbc>.

123 OHCHR, *Abuse Behind Bars: Arbitrary and unlawful detention in Libya*; LFJL, “Lawyers for Justice in Libya concerned by attacks on judges and lawyers in Libya”, 19 June 2013, available at: <https://www.libyanjustice.org/news/92-lawyers-for-justice-in-libya-concerned-of-attacks-on-judges-and-lawyers-in-libya>; OHCHR, *Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya*, A/HRC/31/47, 15 February 2016, available at: <https://undocs.org/A/HRC/31/47>.

124 Alarabya News, “Libyan former prosecutor general shot dead”, 9 February 2014, available at: <https://english.alarabiya.net/News/middle-east/2014/02/09/Libyan-former-prosecutor-general-shot-dead>.

125 OHCHR, *Abuse Behind Bars: Arbitrary and unlawful detention in Libya*, p. 10.

126 See Law No. 7 of 1989 related to ratifying some conventions, available at: <https://security-legislation.ly/law/34733>.

127 International Commission of Jurists (ICJ), *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>.

128 On 26 February 2011, the UNSC unanimously adopted Resolution 1970 (2011), referring the situation in Libya to the ICC. For more information, please see ICC, Libya, accessed 14 February 2022, available at: <https://www.icc-cpi.int/libya>.

129 NATO insisted the responsibility lies with respective contributing states, while individual states have hidden behind the anonymity of “collective responsibility”, refusing to acknowledge and provide information about air strikes that killed civilians. See Joe Dyke, “NATO killed civilians in Libya. It’s time to admit it”, *Foreign Policy*, 20 March 2021, available at: <https://foreignpolicy.com/2021/03/20/nato-killed-civilians-in-libya-its-time-to-admit-it/>.

130 UNSC Resolution, S/RES/1970 in 2011 adopted sanctions against Libya in response to the use of violence against civilians and the “gross and systematic violation of human rights, including the repression of peaceful demonstrators” by the former Gaddafi regime. Several subsequent UNSC resolutions have amended and renewed the sanctions and expanded the listing criteria addressing the evolving security challenges. See UNSC Resolutions related to sanctions against Libya, available at: <https://www.un.org/securitycouncil/sanctions/1970/resolutions>.

131 UNSC, Resolution 2174 (2014), S/RES/2174 (2014), 27 August 2014, para. 4 (a), available at: <https://www.un.org/securitycouncil/s/res/2174-%282014%29>; UNSC, Resolution 2213 (2015), S/RES/2213 (2015), 27 March 2015, para. 11 (a), available at: <https://digitallibrary.un.org/record/790703?ln=en>.

132 UNSC, Resolution 2441 (2018), S/RES/2441 (2018), 5 November 2018, para. 11, available at: <https://www.un.org/securitycouncil/content/sres24412018>.

133 Reuters, “UK sanctions Libyan al-Kaniyat militia and its leaders - statement”, 13 May 2021.

134 See ICJ, *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>.

135 Law No. 29 of 2013 on transitional justice abrogated Law No. 17 of 2012 on national reconciliation and transitional justice. Published in the Official Gazette on 15 December 2013, accessed 15 February 2022, available at: http://www.aladel.gov.ly/main/uploads/sections/458_Transitional_Justice_Law.pdf. An unofficial translation by UNSMIL is available at: https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=E965634D2A728B0EC1257C60004D-719B&action=openDocument&xp_countrySelected=LY&xp_topicSelected=GVAL-992BU6&from=state.

136 Law No. 29 of 2013, art. 1.

137 Law No. 29 of 2013, art. 7.

138 Law No. 29 of 2013, art. 17 and 20.

139 UN Economic and Social Council (ECOSOC), *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, 8 February 2005, Principle 7 and 11, available at: <https://undocs.org/E/CN.4/2005/102/Add.1>.

140 ICJ, *Impunity No More: A Roadmap to Strengthening Transitional Justice in Libya*, July 2020.

141 Six respondents did not proactively support accountability: four women and two men from Sirte, Nafusa Mountains, Tripoli and Kufra, including some minority representatives.

142 LFJL opposes the death penalty, as it amounts to inhumane treatment and torture and there is no proof that it serves as a deterrent for crime. OHCHR, *Death Penalty*, accessed 15 February 2022, available at: <https://www.ohchr.org/EN/Issues/DeathPenalty/Pages/DPIIndex.aspx>. Please also see AI, “Death penalty has no proven deterrent effect on crime and is the ultimate cruel, inhuman and degrading punishment”, 23 February 2021, available at: <https://www.amnesty.org/en/documents/ior40/3737/2021/en/#:~:text=Death%20penalty%20has%20no%20proven,and%20degrading%20punishment%20%2D%20Amnesty%20International>.

143 Less than half of Tebu respondents supported this view, as did a quarter of Amazigh, only one of the black Libyans from Murzuq and none of the ten Tuareg respondents. Among the Arabs, this view was held largely among the respondents from the eastern and western parts of Libya.

144 While LFJL acknowledges this context and the recruitment of child soldiers in Libya, this should not give people under the age of 18 a free pass to evade disciplinary measures for the serious crimes they have committed. This should be dealt with on a case-by-case basis and the authorities and courts legislative bodies must follow international law, standards and guidance and the course of action must be guided by the best interest determination for the child.

145 For example, those who supported justice focusing on the Gaddafi regime more commonly believed that the main perpetrators were first the pro-Gaddafi forces and secondly the revolutionary forces (followed by the range of other perpetrators active since 2011); and those who supported or prioritised justice since 2011 believed that revolutionary forces were most responsible for human rights violations. Respondents who supported justice since 2014 listed armed groups, Islamic groups,

ISIL, the LAAF, forces affiliated with the GNA, tribal armed groups and foreign armed groups among the actors most responsible.

146 During the 1970s, laws introduced in the name of realising Gaddafi's regime policy of social justice resulted in large-scale expropriation and redistribution of private property and land. These include Law No. 123 of 1970 on the Disposal of State-Owned Agricultural and Reclaimed Lands, Law No. 142 of 1970 on Tribal Lands and Wells (Law 142), and Law No. 4 of 1978 on Special Regulations on Real Property Ownership (Law 4). Through Law 142 the state expropriated tribal land, and then reclaimed and distributed it according to Law 123, used to weaken powerful tribes that were thought to support the preceding monarchic system. According to a study conducted jointly by Benghazi University and Leiden University that was published in 2017, Law 4 is estimated to have resulted in the expropriation of 56,000 to 75,000 properties. Since 2011, this has caused widespread property disputes, with some resorting to violence. The study found that there has been no adequate response to the grievances of those affected by Law 4 and Law 123. See Suliman Ibrahim and Jan Michiel Otto, *Resolving real property disputes in post-Gaddafi Libya, in the context of transitional justice: Final report of a Libyan-Dutch collaborative research project*, September 2017, available at: <https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-metajuridica/resolving-real-property-disputes-in-post-ghadafi-libya.pdf>.

147 Although the number of Mashashian respondents is too low to be considered representative, it is still important to note this, given that Mashashia suffered retributions in 2011 for allegations of supporting Gaddafi's regime.

148 Respondent residents from the following locations overwhelmingly rejected amnesties: Tripoli, Sirte, Misrata, displaced respondents from Tawergha town, Tarhuna, Zawiya, Nafusa Mountains, Bani Walid, Benghazi, Derna, Sabha, Murzuq and Kufra.

149 The crimes excluded from amnesty under Law No. 6 of 2015 include: terrorism; drug trafficking; sexual assault; “identity-based murder, abduction, forced disappearance and torture”; hudud crimes; and all corruption-related crimes. See Law No. 6 of 2015 on General Amnesty, art. 3.

150 Law No. 6 of 2015 on General Amnesty, art. 2.

151 Ibid, art. 7.

152 Ibid, art. 6.

153 ICC Appeals Chamber, *Judgment on the appeal of Mr Saif Al-Islam Gaddafi against the decision of Pre-Trial Chamber I entitled ‘Decision on the ‘Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute’ of 5 April 2019*, 9 March 2020, available at: https://www.icc-cpi.int/CourtRecords/CR2020_00904.PDF.

154 According to customary IHL, those “suspected, accused or sentenced for war crimes should be excluded from amnesty”. See ICRC, “Amnesties and IHL: Purpose and Scope”, 4 October 2017, available at: <https://www.icrc.org/en/document/amnesties-and-ihl-purpose-and-scope>. The ICC, when rejecting the admissibility challenge of Saif Al-Islam Gaddafi, stated that “there is a strong, growing, universal tendency that grave and systematic human rights violations – which may amount to crimes against humanity by their very nature – are not subject to amnesties or pardons under international law”. See ICC, *Prosecutor v. Saif Al-Islam Gaddafi*, Case No. ICC-01/11-01/11, Pre-Trial Chamber I, *Decision on the ‘Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute’*, 5 April 2019, paras. 61 and 77, available at: https://www.icc-cpi.int/CourtRecords/CR2019_01904.PDF.

155 OHCHR, *Rule-of-law tools for post-conflict states: Amnesties*, HR/PUB/09/1, 2009, available at: https://www.ohchr.org/Documents/Publications/Amnesties_en.pdf.

156 Libya Penal Code, *Article (407) Sexual Intercourse by Force*, available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRON-IC/97659/134630/F-1373419708/LBY97659%20Eng.pdf>.

157 Libya Penal Code, art. 424.

158 Hybrid criminal tribunals are characterised by a mixed composition and jurisdiction, encompassing both national and international aspects, and usually operate within the jurisdiction where the crimes occurred. See OHCHR, *Rule-of-law tools for post-conflict states: Maximizing the legacy of hybrid courts*, HR/PUB/08/2, 2008, available at: <https://www.un.org/ruleoflaw/files/HybridCourts.pdf>. It is worth noting that the respondents did not explicitly mention hybrid courts because this is an international law legal term, but in general they preferred a mixed court comprising of Libyan and international judges.

159 UN, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, March 2010, available at: https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf.

160 See for example Extraordinary Chambers in the Courts of Cambodia (ECCC), accessed 15 February 2022, available at: <https://www.eccc.gov.kh/en>.

161 As with the Central African Republic's Special Criminal Court (SCC). See International Criminal Justice in Africa (ICJ Africa), "About the new Special Criminal Court in the Central African Republic", 23 October 2018, available at: <https://www.icjafrika.com/single-post/2018/10/23/about-the-new-special-criminal-court-in-the-central-african-republic>.

162 UN News, "South Sudan: UN rights commission welcomes 'first steps' towards transitional justice institutions", 1 February 2021, available at: <https://news.un.org/en/story/2021/02/1083492>.

163 OHCHR, *Rule-of-law tools for post-conflict states: Maximizing the legacy of hybrid courts*, 2008.

164 American Bar Association, *Transitional Justice Evolutions: Challenges and ways forward in Libya*, February 2021.

165 Despite serious allegations of sexual violence throughout the conflicts since 2011, Libya still lacks legislation to provide remedy to victims of SGBV in conflict. In 2014, the Ministry of Justice adopted Resolution 904, establishing a reparations fund for survivors of sexual violence during the 2011 uprising, but the resolution lacked protections for victims reporting crimes and was never enacted. UNSMIL announced in 2021 that it was working on a draft law that tackles violence against women but the draft text was not made available to the public.

166 Beneficiaries of compensation include: political prisoners under Gaddafi's regime (Law No. 50 of 2012); families of people killed in the Abu Salim prison massacre (Law No. 31 of 2013); disbursement of a sum of money to each Libyan family on the first anniversary of the 17 February Revolution (Law No. 10 of 2012); individuals with permanent physical and mental disability who were injured during the conflict against the Gaddafi regime – those fighting on the side or "supporting" the revolutionary forces against the Gaddafi regime; civilian victims of the Gaddafi regime's attacks (Law No. 4 of 2013); a monthly allowance for families of people who died or went missing in connection to the 17 February Revolution and the 2011 conflict, excluding "any person who is proven to have opposed the 17 February Revolution at any time and in any form" (Law No. 1 of 2014, art. 2(2)).

167 OHCHR, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 16 December 2005, para. 20, available at: <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>.

168 ICJ, *Impunity No More: A Roadmap to Strengthening Transitional Justice in Libya*, July 2020.

169 ECOSOC, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, 8 February 2005, Principle 31.

170 Ibid, Principle 32.

171 See law 13 of 2013 on Political and Administrative Isolation at <https://security-legislation.ly/en/law/31771>.

172 See Libya and flaws in the political isolation law at <https://www.files.ethz.ch/isn/165708/ARI20-2013-Amirah-Fernandez-Libia-ley-aislamiento-politico-arabe.pdf>.

173 BBC, Libya revokes law which banned Gaddafi era officials from office, 2 February 2015, <https://www.bbc.co.uk/news/world-latin-america-31104099>.

174 OHCHR, *Rule of Law Tools for Post-Conflict States, Vetting: an Operational Framework*, 2006, <https://www.ohchr.org/sites/default/files/Documents/Publications/RuleoflawVettingen.pdf>.

175 Community reconciliation has been used for settling inter-tribal and inter-ethnic conflicts such as the Misrata-Tawergha 2011 conflict, the Ma-shashia-Zintan conflict, the Tebu, Tuareg and Awlad Suleiman inter-tribal conflict in Ubari in the south, the Ghadames-Tuareg conflicts, etc. Some of these have been brokered by foreign states or the UN. See The University of Edinburgh, *Peace Agreements Database, Libya*, accessed 15 February 2022, available at: https://www.peaceagreements.org/search?Search-Form%5Bregion%5D=&SearchForm%5Bcountry_entity%5D=77&Search-Form%5Bname%5D=&SearchForm%5Bcategory_mode%5D=any&SearchForm%5Bgreement_text%5D=&s=Search+Database.

176 See Libyan Women's Platform for Peace, Women Local Mediators in Libya, YouTube video, 13 July 2019, available at: <https://www.youtube.com/watch?v=76cRwINKc8g>; Iffat Idris, *Implementation of UN Security Council Resolution 1325 in Libya*, 12 January 2017, available at: https://gsdrc.org/wp-content/uploads/2017/08/026_-Implementation-of-UNSCR-1325-in-Libya.pdf.

177 UN Human Rights Committee, *General Comment No. 31 (80)*, CCPR/C/21/Rev.1/Add.13, 26 May 2004, paras. 15 and 18, available at: <https://digitalibrary.un.org/record/533996>.

178 ICRC, Customary IHL Database, *Rule 158. Prosecution of War Crimes*, accessed 15 February 2022, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule158.

179 Crimes against humanity are also prohibited under international customary law. For more information please see UN Office on Genocide Prevention and the Responsibility to Protect, *Crimes Against Humanity*, accessed 15 February 2022, available at: <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml>.

180 E/CN.4/2005/102/Add.1, Principle 19.

181 The UN defined the term "serious crimes under international law" as encompassing "grave breaches of the Geneva Conventions of 12 August 1949 and of Additional Protocol I thereto of 1977 and other violations of international humanitarian law that are crimes under international law, genocide, crimes against humanity, and other violations of internationally protected human rights that are crimes under international law and/or which international law requires States to penalize, such as torture, enforced disappearance, extrajudicial execution, and slavery". See ECOSOC, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, 8 February 2005.

182 UN Commission on Human Rights, *Study on the Right to the Truth: Report of the Office of the United Nations High Commissioner for Human Rights*, E/CN.4/2006/91, 8 February 2006, available at: <https://www.refworld.org/docid/46822b6c2.html>.

183 Ibid.

184 E/CN.4/2005/102/Add.1, Principle 34.

185 UN, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, March 2010.

186 Ibid, p. 5.

187 Child Soldiers International, *What the Girls Say. Improving practices for the demobilisation and reintegration of girls associated with armed forces and armed groups in Democratic Republic of Congo*, 2017, available at: <https://www.refworld.org/docid/5949032a4.html>

188 Paris Principles, available at: <https://www.unicef.org/mali/media/1561/file/ParisPrinciples.pdf>

189 Ibid.

190 Five people chose not to identify their gender.

191 Central Intelligence Agency (CIA), *The World Fact Book: Libya*, accessed 8 February 2022, available at: <https://www.cia.gov/the-world-factbook/countries/libya/#people-and-society>.

192 This is reflective of the population density in each of these geographic areas. For more information, please see Worldometer, *Libya Population*, accessed 8 February 2022, available at: <https://www.worldometers.info/world-population/libya-population/>.

193 Some respondents did not specify their ethnicity. Due to security issues related to the ongoing conflict, the number of Mashashians who took part in the survey was lower than the national proportion.

194 The armed conflict in Libya lasted from April 2019 until a ceasefire agreement was signed by both parties to the conflict in October 2020. For more information, please see LFJL, *Victims' Voices: The Libyan Political Dialogue Forum*, 28 July 2021, available at: <https://www.libyanjustice.org/news/victims-voices-the-libyan-political-dialogue-forum>.

195 Although respondents were generally pleased to participate and appreciated the opportunity to discuss their grievances and aspirations for justice, there was general despair of Libya's dysfunctional state and justice system and pervasive impunity, which made many unsure of the prospects for accountability.

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LAWYERS FOR JUSTICE IN LIBYA