

LIBYA ACCOUNTABILITY UPDATES

Welcome to the first edition of Libya Accountability Updates. This is a quarterly look at the accountability situation in Libya, brought to you by Lawyers for Justice in Libya (LFJL), with the support of Libya Crimes Watch (LCW).

In 2023, human rights violations and international crimes continue taking place across Libya with impunity, and domestic justice efforts appear no closer to achieving meaningful accountability. International efforts for justice in Libya also hang in the balance with the closure of the UN Fact-Finding Mission (FFM) on Libya in March. At the same time, the announcement of new International Criminal Court (ICC) arrest warrants in the Libya situation in May is a promising development. Meanwhile, the Special Rapporteur on Violence against Women and Girls in May also published a report on her visit to Libya in December 2022, reflecting a grim reality.

In this first edition, we provide information on violations documented in Libya and analyse developments on the international stage. To contribute to future editions of this update, please contact LFJL at: accountability@libyanjustice.org

A SNAPSHOT ON THE GROUND WITH LIBYA CRIMES WATCH (LCW)



LIBYA CRIMES WATCH
رصد الجرائم في ليبيا

Below is a snapshot of human rights violations, potentially amounting to serious international crimes, committed in Libya between **April and June 2023**, as documented and verified by LFJL and LCW.¹

The below cases signal to the crackdown against civil society activists, often with militia groups such as Radaa Special Deterrence Forces (Radaa), the Internal Security Agency (ISA) and Tariq Ibn Ziyad Brigade (TBZ) playing a prominent role. Migrants continue to suffer violations and crimes committed across Libya, and women's freedoms are perpetually at risk with new discriminatory measures.

Abuse in prisons and other detention settings

- The Military Police of Al-Kweifya prison, east of Benghazi, holds 700 inmates, including many who are arbitrary detained having completed their sentences or having never faced trial, in inhumane conditions. Inmates face torture, sexual violence, deprivation of medical care, and other ill-treatment. See [here](#) for more information.

¹ This list is not exhaustive and it does not seek to portray a complete picture of the violations and crimes committed.

Crackdown on civil society

- On 1 May, armed men from the ISA abducted the activist and member of the *Barqa, My Nation* civil society organisation, [Khaled Al-Marghani](#), in Benghazi. Mr. Al-Marghani was taken to Al-Kweifya prison after he expressed criticism of the ongoing wave of abduction in the Benghazi. Mr. Al-Marghani was released on 13 June without charge.
- On 2 May, Radaa Forces arrested lawyer [Osama Omran Al-Safrani](#), near the Tripoli Medical Centre. He was taken to Mitiga Detention Centre and remains arbitrarily detained with no contact with his family.
- On 9 May, unknown masked armed men abducted activist and law professor [Dr. Muftah Omar al-Darbash al-Gaddafi](#) near his home in Sirte. Dr. al-Darbash remains in detention without contact with his family.
- On 29 May, the TBZ, affiliated to the Libyan Arab Armed Forces (LAAF), arbitrarily arrested [Maher Al-Gharyani](#), activist and employee of the Municipality of Benghazi, after he criticised an ongoing local campaign to demolish residential buildings, forcing the evictions of residents in the centre of Benghazi, led by the [Reconstruction and Stabilisation Committee](#) created by the House of Representatives (HoR) in January 2023. Mr. Al-Gharyani's whereabouts remain unknown. He has not been able to contact his family or a lawyer. Mr. Al-Gharyani faced previous arbitrary arrest by the ISA for his work as an activist.
- On 26 June, three gunmen from Radaa Forces arbitrarily arrested [Farouk Al-Siddiq Ben Saeed](#), prosecutor at the Military Prosecutor's office in Tripoli, while he was with his children. According to the information received by the family, Ben Saeed is currently held in Matiga prison. The family contacted the office of the General Prosecutor and was informed that there were no arrest warrants issued against him. He remains in detention without trial or contact with a lawyer or his family.
- On 27 June, armed men of the ISA arbitrarily arrested [Belkacem Mohamed Aljard](#), former candidate for parliamentary elections, from his home in Benghazi. According to witnesses and the family of Aljard, he is arbitrarily detained in an ISA prison in Benghazi. The family have been unable to contact him or ensure the delivery of his medications for his chronic illnesses. He remains in detention without trial or contact with a lawyer or his family.

Violations and crimes committed against migrants

- On 29 May, over 3,000 migrants and refugees were expelled from Musaid, a border town roughly 5 kilometres from the Libya-Egypt border. This expulsion follows a skirmish,

where a 14-year-old boy was killed, between the LAAF and smugglers suspected of transporting substantial quantities of illegal narcotics through Musaid. Raids by the LAAF led to the discovery of the migrants and refugees who were forced across the border to Egypt. See [here](#) for more information.

Freedoms

- In May, the ISA, operating under the UN-recognised Government of National Unity (GNU) in Tripoli, introduced a new procedure whereby Libyan women travelling alone from an airport in western Libya (Tripoli and Misrata) are required to complete an official declaration that includes her reasons for travel, an explanation of why she is travelling alone, and detailed information about her travel history. See [here](#) for more information.

INTERNATIONAL PERSPECTIVE

In this section, LFJL delves deeper into developments on the international stage regarding Libya and the prospects of these developments bringing tangible and meaningful justice.

The cases listed above are but a glimpse of the type of gross human rights violations and serious international crimes that have been committed in Libya for over a decade with rampant impunity. The recent [announcement](#) by the Office of the Prosecutor (OTP) that the International Criminal Court (ICC or the Court) has issued four new arrest warrants against alleged perpetrators of grave crimes in Libya raises some hopes that some accountability might finally be on its way.

For those who have been watching the ICC do close to nothing in Libya over the past decade, this is a [welcome](#) change. Now, the new test for the ICC is the arrest and transfer of these suspects to the Court. This will reveal how committed the ICC is to bringing justice closer to at least some victims.

Whomever the OTP hopes to prosecute before the Court, it is of foremost importance that the process be meaningful for victims. The Court needs to implement victims' rights under the Rome Statute fully and intentionally, including by properly informing them about the work of the Court and ensuring they can actively and safely [participate](#) in potential future proceedings and claim reparation, should they wish to do so.

The Court cannot do this without the support of Libyan civil society. Yet, Libyan civil society organisations are facing an unprecedented [crackdown](#) through draconian laws and reprisals enacted by the Libyan authorities, which the ICC Prosecutor has, so far, failed to publicly highlight. This

silence is ever more deafening as those threatening the very existence of civil society in Libya are often the same actors who might be responsible for crimes that fall under the jurisdiction of the Court.

The Prosecutor's emphasis on cooperation with Libyan authorities as a cornerstone of his [strategy](#) to achieve justice in Libya requires critical assessment. Libyan authorities' efforts to suffocate civil society, including organisations at the forefront of documentation and accountability, calls into question the authorities' willingness to support any genuine accountability process. As does the fact that Saif al-Islam Gaddafi, against whom an arrest warrant has been [pending](#) since 2011, is still free to make [plans](#) to run for election in Libya, instead of being arrested and transferred to The Hague.

While it looks like things are finally moving at the ICC regarding Libya, to ensure that hopes are not crushed yet again, states need to make all possible efforts to support the Court and implement arrest warrants. At the same time, the ICC must continue to push for...

EXPERT INSIGHTS

LFJL spoke to international justice expert Alexandra Lily Kather² on the recent findings of the FFM on Libya that noted in its 2023 report that crimes committed against migrants across Libya include the crime against humanity of enslavement and sexual slavery.

1. What does this finding mean in terms of accountability, and what should be the (legal) responses to that finding?

The FFM's report factually hones in on the slavery system operating throughout Libya. It forms the very basis for harms that occur in situations of slavery of migrants, including the gendered nature of harms, such as arbitrary detention, inhumane and degrading treatment, torture, rape and other forms of sexual violence. It also provides information on how any or all rights of ownership are being exercised over enslaved persons. These range from acts of a sexual nature to forced labour in weapon depots of armed groups. Migrants are being traded into situations of slavery, and slave traded when transported into new situations of slavery.

2 Alexandra Lily Kather (they/ she), co-founder of the [emergent justice collective](#), advises accountability actors on the strategic investigation and prosecution of intersectional dimensions of core international crimes and works to strengthen decolonial feminist and transformative justice approaches in international justice.

The FFM's findings are important because slavery crimes, the slave trade and slavery, have *jus cogens*³ status under international law – they are absolutely prohibited, and all states are bound by that universal prohibition. Slavery or enslavement, whether under international customary or treaty law, outlaws the exercise of any or all of the powers attaching to the rights of ownership over a person. The crime of slave trade prohibits the knowing reduction of a person into slavery or the further enslavement of an already enslaved person.

Given the end of the FFM's mandate, it is now up to national and international accountability actors, lawyers and advocates to ensure that the report's findings form the foundation of accountability strategies going forward. This includes the guarantee that all investigations and prosecutions consider crimes against humanity, slavery and slave trade committed against migrants in Libya.

2. There are currently proceedings ongoing against suspected traffickers in the Netherlands and in Italy for crimes committed in Libya. These proceedings do not expressly include crimes against humanity, or charges related to slavery. Why is it important that the charges accurately capture the crimes committed?

It is of utmost importance for the charges against the defendants, who are traffickers but also suspected slave traders and enslavers, to reflect the reality of the crimes and the context in which they were being committed. By not legally characterising the harms committed against migrants, including persons under 18 years of age, as slavery and crimes against humanity, the crimes are stripped of the context in which they were being committed.

By focusing on smuggling which is a transnational and not an international crime, the victims of trafficking, which are concurrent victims of the slave trade and slavery if their exploitation occurs through such crimes, are being denied concurrent legal protection under relevant frameworks that seek to protect them.

The Dutch authorities currently have a unique chance to afford victims concurrent legal protection and to set the record straight by prosecuting the two high-profile defendants for trafficking, enslavement and other relevant underlying acts of crimes against humanity, as well as the slave trade as a stand-alone crime as per Art. 274 of the Dutch Penal Code.

3 *Jus cogens* refers to fundamental, overriding principles of international law. It designates norms from which no derogation is permitted.

3. What should this mean for the Office of the Prosecutor of the ICC? Should these crimes be prosecuted before the ICC?

Prosecuting these crimes before the ICC requires the Office of the Prosecutor (OTP) to thoroughly understand the difference between the transnational crime of trafficking and the international crime of enslavement as a crime against humanity. The Rome Statute outlaws enslavement as a crime against humanity, and sexual slavery as a crime against humanity and war crime. Whilst the ICC does not have jurisdiction over trafficking, it can support national criminal justice authorities who advance Libya-related cases on the domestic level in the strengthening of complementarity in this regard.

It will be also important for the ICC to take a prevalent role in the investigation and prosecution of mass violence committed against migrants in Libya, as both crimes against humanity and war crimes. It will be equally pertinent to understand the involvement of actors and groups in Libya, as well as the relationship of such actors with European Union Member States and agencies, which continue to cooperate with those involved in the commission of gross human rights violations and international crimes. To deny the link between European agencies funding the Libyan Coast Guard is a denial of a reality that bears much resemblance to slavery crimes of the past.

4. How can litigation and advocacy best contribute to putting an end to the crimes against humanity committed against migrants in Libya?

Now, it is a defining time for litigation and advocacy to keep the ongoing violations in Libya on the international political agenda. With the termination of the FFM, there is now no official independent investigative work being carried out in Libya, despite ongoing gross human rights violations and international crimes. Against this backdrop, the work of the ICC-OTP as a central repository and driver of independent international investigations, as well as the quality of its relationships and cooperation with Libyan civil society, becomes more important than ever.

Litigation and advocacy need to stay critical of advancements that are being presented as successes by national prosecution authorities, particularly in cases where suspects are prosecuted only on charges such as smuggling or trafficking.

Criminal accountability is, however, merely one avenue towards a form of justice. To reduce and eradicate the harms we are seeing in Libya today, we will need more than international criminal justice. We need a mosaic of justice and accountability responses that tackle the systems and structures that enable these crimes, including corporate and state structures as a manifestation of colonialism and capitalism.

Ultimately, litigation and advocacy should help to identify the connection between crimes of the past and the way they have paved the path for the crimes of today. Colonial crimes, the extraction and stealing of land, the control over resources, the enslavement of people, control over their sexuality and epistemologies, set the conditions for contemporary forms of supremacy. There is an ongoing relationship between the mass violence we are currently witnessing around the world, and the system of political and social domination that are marked by colonial and slavery crimes of the past.