

Updated Version

Roadmap for Human Rights Reform & Restoring the Rule of Law in Libya



**CAIRO INSTITUTE
FOR HUMAN RIGHTS STUDIES**
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مركز القاهرة لدراسات حقوق الإنسان

Libya Platform
ائتلاف المنصة

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The Cairo Institute for Human Rights Studies and the Libya Platform coalition present an updated Libya Roadmap for Human Rights Reform and Restoring the Rule of Law

The Cairo Institute for Human Rights Studies (CIHRS) and the organizations of the Libya Platform coalition present an updated Libya Roadmap for Human Rights Reform and Restoring the Rule of Law. Given the current disregard for human rights and the failure to confront impunity, and absent any efforts to uphold the rule of law, there can be no genuine progress toward sustainable peace in Libya.

In the updated roadmap, our organizations outline the necessary steps to lead the country out of crisis. Progress on human rights and restore rule of law will require a constitutional referendum and elections, and an end to restrictions on the free functioning of independent civil society organizations; coupled with sustained international engagement and vigilance to maintain the ceasefire and stop breaches of the arms embargo.

Our organizations welcome the peaceful gatherings and mobilizations in cities throughout Libya. Demonstrations have continued in Tripoli, Sirte, Benghazi and Al Marj despite harsh repression from militias and armed groups affiliated to the Government of National Accord (GNA) and the Libyan National Army (LNA). Such mobilizations of the population are essential to unifying the population against persistent efforts by the warring parties and their foreign backers to sow division in Libya between East, West and South.

Our organizations further welcome the resumption of political negotiations between warring parties and their declared intention of holding elections and a referendum on the draft constitution, and the resumption of the (5 + 5) talks led by the United Nations in Geneva. These rounds of negotiations come after the August 20 ceasefire announcement by Libya's warring parties in the east and west of the country and the desire to move toward an end to the armed conflict. The initiative comes after LNA affiliated armed groups subordinate to the eastern parliament and their foreign backers withdrew from most territory in western Libya in recent months. This withdrawal permitted armed groups affiliated with the Government of National Accord (GNA) to break the siege on the capital Tripoli that began in April 2019 and take up positions near Sirte in central Libya.

Nevertheless, our organizations fear - as demonstrated repeatedly in the past - that the warring parties and their foreign supporters will not abide by or respect these declarations. With the parties intending to prolong the fighting and bloodshed at any cost, previous ceasefire announcements have not led to a genuine cessation of hostilities on the ground. As the armed conflict has grinded on since 2014, it has become clear that it will never result in a decisive victory for either side, even as multiple attempts to end conflict have floundered due to the determination of the warring parties and their backers to escalate hostilities. The never-ending conflict means the continued suffering of the population in Libya from wanton destruction from arbitrary attacks and the shelling of vital civilian infrastructure, including medical infrastructure. Their suffering is only compounded by the spread of the novel coronavirus.

In the following points, the Libya Platform organisations and the Cairo Institute for Human Rights Studies present what they view as a solid framework to uphold a peaceful and safe coexistence in Libya.

1. Maintain the ceasefire and enable international investigations into crimes committed in Libya.

- * All parties to the conflict must commit to a full ceasefire covering all of Libyan territory.
- * The United Nations Security Council (UNSC) and the European Union (EU) should use sanctions pressure against persons and states that violate the ceasefire and arms embargo.
- * United Nations Support Mission in Libya (UNSMIL) and African Union Commission (AUC) observers should be dispatched to monitor the ceasefire, with the support of the United Nations General Assembly (UNGA), UNSC, and AUC.
- * The fact-finding mission (FFM) created in June 2020, formed by the UN Human Rights Council, should be mandated to operate in Libya for at least three years.
- * The FFM should gather and protect evidence of violations of international human rights law and international humanitarian law, thereby facilitating accountability for the perpetrators of violations in appropriate international or domestic jurisdictions in due course.
- * A team at the International Criminal Court should be enabled to investigate all crimes falling under the Rome Statute committed since 2011 in all Libyan territory.

2. Empowering Libya to regain its sovereignty

- * All neutral states uninvolved in supporting the warring Libyan parties must use all diplomatic means to pressure the parties and their foreign backers into a genuine, sustained cessation of hostilities.
- * States and international institutions promoting an end to the conflict must clearly name lawbreakers on both sides, including violators of the arms embargo, in order to lend credibility to their stance as honest brokers for peace and avoid accusations of political bias.
- * Deterring illegal oil exports is a priority to prevent the partition of the country.
- * In order to end proxy interventions in the conflict, States need to reconsider their arms transfers to states like the UAE, Egypt, and Turkey, and to implement effective measures to prevent these weapons from being deployed in Libya. Weapons transferred to these countries are supplying radical groups and militias on both sides.

3. The constitutional referendum and local, presidential, and legislative elections should be observed by international observers and overseen by local civil society

Our organizations urge UNSMIL, the EU, and the Libyan authorities to immediately support and empower members of the Constitutional Committee, in order to:

- * Initiate a process to resolve disputes over articles in the 2017 draft constitution, with the participation of CSOs and minority groups, on:
 - Rewriting Articles 37 and 38 on freedom of the media and publication.
 - Providing constitutional guarantees for media freedom and eliminating any custodial penalties for opinion crimes.
 - Rewriting Article 46 on transparency and the right to information.
 - Clarifying the limits in Article 65 on the exercise of rights and liberties.

- Guaranteeing freedom of association, and explicitly providing for the formation of civic associations, labor syndicates, and political parties by notice to the authorities, rather than by a licensing regime.
- Creating a constitutional article that fully recognizes the authority of the Supreme Media Council, as a constitutional body. The council mandate would include independent members recognized for their expertise, competence, and integrity. It would be tasked with supporting media independence, promoting free expression, and combating hate speech and incitement to violence and armed extremism. This is necessary to support the media as a space for democratic dialogue and cement legal and ethical rules guaranteeing freedom of expression, media diversity, the independence of journalists, and the provision of high-quality information. The institution should establish a framework for preparing the next electoral calendar and aspire to protect the media against interference by the executive authorities. The Commission must be consulted on draft laws related to its area of competence. It can give its opinion on regulatory texts related to its area of competence. The Commission should be composed of independent, impartial, competent members, with integrity, who undertake their tasks for only one mandate.
- Create a constitutional commission on Good Governance and Anti-Corruption to contribute to policies of good governance and preventing and fighting corruption. The commission would be responsible for following up on the implementation and dissemination of these policies, for the promotion of a culture of good governance, and for the consolidation of the principles of transparency, integrity and accountability. The Commission would be responsible for monitoring cases of corruption within the public and private sectors. It carries out investigations into these cases and refers them to the competent authorities. The Commission must be consulted on draft laws related to its area of competence. It can give its opinion on regulatory texts related to its area of competence. The Commission should be composed of independent, impartial, competent members, with integrity, who undertake their tasks for only one mandate.
- Ensuring the fair distribution of resources between regions.
- Guaranteeing the right of Libyan women, equal to that of men.

- Ensuring guarantees to protect the diversity of the state to include linguistic diversity, the designation of Amazigh and Tebu as official languages, and the protection of instruction in that language.
- Safeguarding fair political representation in the state of minorities.
- Resolving nationality issues related to minority groups and children of non-Libyan fathers.

If the draft constitution does not receive the votes required for approval, we call on Libyan dialogue committee, in collaboration with UNSMIL, to form a technical committee of Libyan legal experts (similar to the February 2014 committee) and CSOs with a mandate to draft a law for presidential and legislative elections, including an instrument to hold the elections simultaneously before the end of 2021.

In both scenarios, we call on UNSMIL, the EU, and the Libyan authorities to support and empower the High National Electoral Commission (HNEC) and independent Libyan civil society activists in holding and monitoring referendum and elections, especially by:

- Enabling all Libyans to exercise their right to vote, stand in elections, and reach polling places safely; by working with the Civil Status Department to establish an instrument to grant all Libyans the right to vote and run for office.
- Campaigning to inform citizens about the elections and the referendum, and voter conduct education.
- Training the Libyan High National Electoral Commission (HNEC) personnel in international standards for elections and referendums.
- Dispatching international observers from the UN, AU, EU and other competent bodies to monitor the referendum and elections.
- Enabling Libyan civil society organizations to observe the elections.
- Enabling civil society organizations to monitor media electioneers and campaign finance during the elections and referendum.

4. Freedom of expression, association, and peaceful assembly

Our organizations call on UNSMIL and the EU to pressure the Presidential Council, the Civil Society Commission (CSC), and the House of Representatives to protect freedom of association, specifically by:

- * Repealing CSC Decrees 1 and 2/2016, and Presidential Council decision 286/2019, which undermine all attempts at civic action and contravene the constitutional declaration and Libya's international and regional obligations.
- * Repealing the 1971 Publications Law, which restricts freedom of expression and publication.
- * Issuing a new associations law drafted by Libyan legal experts and civil society. The law should protect the freedom to form associations in line with the International Covenant on Civil and Political Rights and the constitutional declaration.
- * Lifting the administrative restrictions on the CSC and supporting its technical role in assistance and support, to prevent it from becoming a repressive, authoritarian body.
- * Repealing all arbitrary, restrictive decisions issued by the executive authorities.
- * Taking urgent action on necessary legislative amendments.
- * Preventing attacks by armed groups affiliated with the security establishment.

5. Protection and empowerment of the Libyan judiciary

Our organizations call on UNSMIL and the international community to pressure all official and de facto Libyan executive authorities and assist them in enabling judicial personnel to perform their role freely and independently in ensuring the victims' right to justice. More specifically, we call for:

- * Enabling the Public Prosecution to play its role in monitoring detention centers.
- * Empowering the Public Prosecution to implement requests for summons, questioning and release.
- * A commitment from the executive authorities to implement judicial decrees without interference by the security establishment, for example:
 - Ending any acts of violence and reprisals against judiciary members;

- Providing necessary services and protection to courts.
- Guaranteeing the financial and administrative independence of the judiciary.
- Guaranteeing the effective separation of powers.

6. Restructuring the security establishment (security sector reform and governance)

Our organizations call on UNSMIL and Libyan dialogue committee to establish a technical group with members chosen from Libyan civil society to vet the Libyan security establishment. The group should include Libyan legal experts, military personnel, police, and academics as well as independent international experts in the field. The group's mandate should also include a review of all laws and decrees regulating the operations of ministries before and after 2011, issued by internationally recognized Libyan authorities and de facto authorities. The committee should propose a set of laws, including:

- * Laws to regulate the Defense and Interior Ministries, to establish a general, abstract plan for reforming the security sector, in order to:
 - Define the mandate of the Interior and Defense Ministries.
 - Define the divisions and various chains of command in each.
 - Define a mechanism for participation, a timeframe, and the content of training.
 - Develop an internal complaints system, including a mechanism for citizens to file complaints against both ministries' personnel and for security sector personnel to file complaints against their superiors.
 - Devise a legal framework to regulate the operation of labor syndicates in the security sectors.
- * A law to integrate, decommission, disarm, and rehabilitate members of existing militias and armed groups, within the framework of reconciliation and transitional justice legislation.

- * We call on the Supreme Judiciary Council to form a committee under the supervision of the judiciary to examine and vet all individuals accused of responsibility for extrajudicial killing or reprisals, taking into account previous complaints. Those suspected of committing war crimes should be investigated to establish whether prosecutions are warranted.

7. Internally displaced persons (IDPs)

Our organizations call on the Libyan authorities to:

- * Protect persons forced by the armed conflict to leave their homes and cities against reprisals by security bodies or armed groups in their host cities.
- * Provide aid in coordination with UN programs and local bodies working in the field to ensure the delivery of basic goods like food, water, and bedding.
- * Create an environment conducive to the integration of families in their host communities to avoid creating a sense of social, political, or economic difference, or discrimination, among the displaced.
- * Sign international agreements related to internal displacement, such as the Kampala Convention, given the positive impact it has on rapid response to displacement, and enhance the role of the Ministry of Displaced and Migrant Affairs.
- * Protect and empower IDPs, take rapid measures to provide assistance, and direct public and private bodies to assist IDPs in host cities in obtaining their documents, refrain from obstructing such measures, and demonstrate the necessary cooperation.
- * Provide compensation to IDPs – in collaboration with experts from INGOS, UN agencies and local CSOs, to support IDPs in overcoming the psychological, moral, and material harm they sustained, guarantee their return with safety and dignity, and protect them from any life-endangering attacks.
- * Strengthen the role of organizations and associations that work to increase awareness among IDPs or provide other services without harassment or marginalization by authorities in host cities.

8. Detention centers, including migrant detention centers

Our organizations call on UNSMIL, in conjunction with the Supreme Judiciary Council and the Justice Ministry, to form a technical committee headed by the Supreme Judiciary Council under UN supervision and including judges, prosecutors in the civilians and military courts, and independent Libyan legal observers selected by UNSMIL, in order to:

- * Enable civil society organizations to periodically visit detention sites without restrictions.
- * Survey and catalogue all detention centers and determine their supervisory body (Interior Ministry, military, outside judicial control).
- * Catalogue and map all detainees (women/men, civilians/military personnel, adults/minors, pretrial detainees, prisoners serving judicial sentences, detained without legal grounds) with the goal of combating arbitrary detention, providing fair trial where necessary.
- * Create a competent body to catalogue and monitor detainee conditions and guarantee access to detainees, to support their rehabilitation
- * Establish a mechanism to classify detention centers, guarantee access to them, monitor their conditions, and train their staff.
- * Assess the prisons law and the statutory framework governing detention in the Libyan Code of Criminal Procedure and submit a proposal to develop it to provide additional pretrial detention guarantees, basic detention guarantees, and other due process safeguards.

9. Protection of migrants, refugees, and asylum seekers

Reports from the UNHCHR indicate that no less than 1750 refugees and migrants, including women and children, have died in 2018 and 2019. In 2020, at least 70 refugees and migrants are known to have died in 2020 already, including at least 30 people were killed at the hands of traffickers in Mizdah in late May. Furthermore, migrants, refugees, and asylum seekers are subject of systematic ill treatment, torture and sexual abuses.

In this respect, the Libya Platform and CIHRS call on the Italian government and the EU:

- * The EU should withhold support from coastal and naval agencies until they meet the appropriate conditions, show due regard for the application of the law, and operate in accordance with human rights principles.
- * End aggressions against migrants and attempts to criminalize rescue ships operated by international humanitarian organizations like Doctors Without Borders, allow them to work freely, and respect international obligations in this regard.

The signatories call on the Libyan authorities to:

- * Enable civil society organizations to periodically visit detention sites without restriction.
- * Take the necessary measures to release all persons detained for their attempt to cross into Europe as refugees and respect all relevant international obligations.
- * Structure the legal framework to apply the right to protection through a transparent instrument that accords with Libya's constitutional, regional, and international obligations.
- * Strengthen legal protection for migrants subjected to human rights violations in and out of detention centers.
- * Establish a statutory framework for the legal status of people who want to regularize their status in Libyan territory for the purpose of work, based on the needs of the labor market.

10. Justice and medical and psychological assistance to victims of human rights violations

Our organizations call on the EU, UN (UNSMIL and the Office for the Coordination of Humanitarian Affairs), and the Health Ministry to form a committee under the auspices of UNSMIL, to include doctors, international experts, and civil society representatives. The committee's role is to:

- * Assess the legal framework and medical assistance services, inclusive of services for the rehabilitation of the mental health of victims of domestic violence, violence against women, and human rights abuses.
- * Submit a proposal to develop the legal framework and improve access to legal aid services to victims who need them.

- * Provide for community-based medical centers with the participation of civil society organizations, including those that offer psychological and rehabilitation services and especially to those most vulnerable to violations: women, children, the homeless, migrants, asylum seekers, refugees, and residents of peripheral areas.

11. National instrument to strengthen and protect human rights

Our organizations call on UNSMIL and the EU to pressure all Libyan authorities to empower the National Council for Civil Liberties and Human Rights to operate according to its founding law, refrain from infringing its financial independence from the executive authority, ensure that it is not subordinate to the executive, and guarantee sufficient space for it to perform its tasks under Libyan law and in accordance with the Paris Principles.