ASSESSMENT OF THE SCOPE OF THE MISSING PERSONS PROBLEM IN LIBYA, INCLUDING AN OVERVIEW OF LIBYA’S INSTITUTIONAL, LEGAL AND TECHNICAL CAPACITIES TO FIND MISSING PERSONS
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<td>General Authority for the Search and Identification of Missing Persons</td>
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<td>Ministry for the Affairs of Families of the Martyrs and Missing</td>
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EXECUTIVE SUMMARY

This assessment, developed with the support of the Government of the Netherlands and the U.S. State Department Bureau of Democracy, Human Rights and Labor, examines the current status of efforts to account for missing persons in Libya and the steps that should be taken in order to set in place a sustainable and effective missing persons process.

Prior to 2011, missing persons and forced disappearances were linked to the regime’s violations of human rights, or were a consequence of wars in which the Libyan regime was involved. After 2011, missing persons and forced disappearances resulted from widespread violations of human rights law and international humanitarian law. Additionally, Libya is the crossing and departing hub for large numbers of migrants; the exact number of those reported missing in the context of migration in Libya is unknown. Overall, there are between 10,000 to 20,000 persons estimated to be missing in Libya.¹

Current legal, institutional, and technical provisions to account for missing persons are inadequate. This is compounded by continuing unrest in large parts of the country, with the presence of contending factions and parallel institutions.

Although Libya has not signed or ratified the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), under international law, it must abide by obligations relative to missing and disappeared persons, and their families. Under International Human Rights Law, for example, Libya is obliged to take steps to ensure that families are informed of the fate of their missing relatives.

The United Nations has referred the situation in Libya to the International Criminal Court noting that widespread and systematic attacks against the civilian population may amount to crimes against humanity. UN fact-finding missions have consistently reported violations of international human rights law and international humanitarian law, and abuses of human rights, including torture, illegal detention, extrajudicial executions and enforced disappearances.

The Libyan Political Agreement of 2015, which established the Government of National Accord (GNA), refers to the issue of missing persons. However, legislation to address the issue has been primarily focused on the period prior to the 2011 uprising. A number of institutions have been established to address the issue, operating alongside ministerial departments (including Interior, Justice and Health) that are responsible for specific aspects of accounting for the missing. Despite a complex allocation of responsibilities, cooperation does take place. The Ministry of Justice and the General Authority for the Search and Identification of Missing Persons (GASIMP), for example, have collaborated on exhuming and identifying human remains from mass graves discovered in the town of Tarhuna, under the umbrella of the Forensic Medicine Committee (also known as the Mass Graves Committee) established in June 2020.

¹ In 2011, at least 10,000 people were believed to be missing in Libya as a result of conflict and domestic repression during the Qadhafi dictatorship. The overall number of people who have gone missing since then is unknown, but could be as high as 20,000 in total.
The GASIMP directly interacts with families of the missing, including by recording information on missing persons cases and collecting genetic data. There is no evidence of dedicated personnel providing psychosocial support to families. In theory, families of the missing can approach a police station in their area and report a missing person. Statements are taken before a missing persons investigation file is opened. Each reported case should be officially documented with the GASIMP. Police stations do not have access to an electronic database and reports are documented on paper; investigations by prosecutors are also reported to be maintained in paper format. Although the mandate of the GASIMP covers all missing persons, in reality it is not in charge and does not deal with missing migrants.

Immediately after 2011, mass grave sites were processed without the presence of forensic archaeologists and anthropologists as there was an insufficient number of trained personnel; since then, ICMP and other international actors have provided training, but there remains a need for further skills transfer to relevant institutions, including the GASIMP. Work conducted at sites where mass graves have been found appears to take into account the need to maintain the integrity of evidence and avoid commingling of bodies, and systematic numbering systems are in use. However, it is not clear whether the full range of international standard procedures and techniques are being applied.

The assessment recommends that legislation should be amended to provide an inclusive legal definition of a missing person in line with international human rights standards as well as providing for data protection and data privacy guarantees, among other things; Libya should ratify the ICPPED; the responsibilities of agencies and departments should be defined and institutional cooperation should be enhanced; training should be provided to Libyan institutions on crime-scene investigation, documentation, recovery of mass and clandestine graves and identification methods; Civil Society Organizations (CSOs) and families of the missing should be included in the process of accounting for the missing; families of the missing should be enabled to organize themselves in meaningful ways; and the Libyan State should secure the rights of all families of the missing, and provide financial, legal and technical support.

The assessment calls for the issue of the missing to be included as a key part of ongoing peace efforts, and for cases of missing migrants and refugees to be treated in the same way as cases of missing Libyans, and it recommends that a centralized, secure data system is created to collect, process, and protect missing persons data.
1.1. CONTEXTUAL OVERVIEW

In the aftermath of the Qadhafi period, when Libya experienced a promising democratization process with three general elections, the country made significant advances in accounting for missing persons. However, in 2013 the security situation deteriorated\(^2\), and impeded further advances. Libya continued to experience a dramatic decline in its political and security situation in 2014 and 2015, amid competing legislatures, divided State security institutions and forces, and the presence of multiple armed groups. This had devastating consequences for the population and brought promising efforts to find the missing to a halt.

In the east, in May 2014, retired General Khalifa Haftar, the leader of the Libyan National Army- LNA, launched the Al Karamah (“Operation Dignity”) campaign, reportedly to eradicate “radical terrorist” groups from eastern Libya. In the west, heavy fighting erupted in Tripoli in July 2014. Originally focused on control of Tripoli international airport, Misrata-based armed groups together with armed groups from Tripoli, Al-Zawiya, Zuwarah and other towns launched the Fajr Libya (“Libya Dawn”) campaign against armed groups based in the city of Zintan southwest of Tripoli. Ceasefire agreements in 2015 have since reduced the intensity of clashes in the west. Armed conflicts in the north also spilled over to the south, with some groups allying with either Operation Dignity or Libya Dawn. In the meantime, groups pledging allegiance to the so-called Islamic State in Iraq and the Levant (ISIL) further emerged as a force, particularly in Derna, Sirte and Benghazi.

In June 2014, elections were held for a new legislature, the House of Representatives, which confirmed the established Government. Owing to the precarious security situation in Tripoli, in August 2014, the Government, led by Prime Minister Abdullah Al-Thani, moved to al-Bayda. The House of Representatives commenced its sessions in Tobruk. The previously established legislature, the General National Congress, then re-convened, and parallel ministries were established in Tripoli. The House of Representatives endorsed Operation Dignity, while the General National Congress supported the Libya Dawn campaign. Following a year-long political dialogue, the Libyan Political Agreement to establish a Government of National Accord was signed on 17 December 2015.

On 31 March 2016, the leaders of a new UN-supported “unity government” arrived in Tripoli. On 5 April 2016, the Islamist government in Western Libya announced that it was suspending operations and handing power to the new unity government, officially named the “Government of National Accord (GNA)” led by Fayez al-Sarraj. In September 2016, Haftar boosted his political leverage by seizing control of two key oil terminals\(^4\). In December 2017,


\(^3\) For instance, in 2013 Ali Zeidan, Libya’s then prime minister, was abducted; following this, a congressional committee was appointed to investigate the event, gather information, identify those responsible and issue a report (the report was not presented to the public).

\(^4\) Haftar and the NOC then reached an agreement for increasing oil production and exports, and all nine of Libya’s major oil terminals were operating again in January 2017.
the LNA led by Haftar seized Benghazi after three years of fighting. In April 2019, the LNA launched a major offensive in an attempt to seize Tripoli. In December 2019, Turkish President Recep Tayyip Erdogan confirmed that Turkey would sharply increase its military support for al-Sarraj and the GNA.

The coastal city of Sirte, some 450 kilometers east of the capital Tripoli, had been held since 2016 by forces allied with the GNA. On 6 January 2020, Khalifa Haftar’s militia seized Sirte from the UN-backed government, raising tensions. On 18 February 2020 eastern-based forces stepped up their assault on the capital, Tripoli, hitting its port. The targeting of the strategic facility appeared to be the first such attack since Haftar’s forces launched an offensive in April 2019 to seize the city. A military airstrike on 16 May 2020 destroyed the air defense system of Haftar’s forces at the Al-Watiya airbase, southwest of the capital. After 14 months and hundreds of lives lost, Haftar’s attempt to seize Tripoli ended. On 5 June 2020, forces loyal to the GNA swept through the city of Tarhuna, the final stronghold of the LNA in Western Libya. The capture of the city was followed by the discovery of mass graves in the surrounding areas.

1.2. SCOPE AND METHODOLOGY

With the support of the Government of the Netherlands and the U.S. State Department Bureau of Democracy, Human Rights and Labor, ICMP has developed this assessment report to provide a fresh account of the situation of the missing in Libya, assess current institutional, legislative and technical capacities, and provide an overview of the civil society environment, including initiatives and actions undertaken by civil society organizations (CSOs), family associations, and families of the missing in Libya. This report presents a list of recommendations to address challenges and gaps so that the foundations for a sustainable and rule-of-law based process to account for the missing can be established with targeted actions and support in the short, medium, and longer term.

The methodology of this report entails an interdisciplinary approach and is based on an extensive desk review of primary and secondary source material, including institutional mandates, legislative and other legal texts, official statements, other material (e.g., academic and policy reports when relevant). The desk-review has also been combined with direct consultations and interviews with Libyan stakeholders (by phone or online, and when possible in person) representing civil society, government and other institutions. Through workshops with small groups of (Libyan and non-Libyan) experts, preliminary findings and information have been validated and/or corroborated. The report also draws on ICMP’s own experience in Libya, where it supported a missing persons process at the invitation of the government from 2012 to 2014.

The analysis touches upon aspects of the missing persons issue across the country (considering the limitations encountered in collecting information about the eastern and southern parts of Libya). The report sheds light on the historical and political aspects and implications of the issue (Section II); the legal framework (Section III); the institutional framework (Section IV); procedures, investigations, and other aspects of the process to account for the missing (Section V); the recently discovered mass graves in the Tarhuna area and the work conducted by various institutions and others so far (Section VI); civil society engagement (Section VII);
and external actors’ support, including the international community (Section VIII). The report provides a set of recommendations for each of the subjects addressed in these sections (Section IX).
II. THE ISSUE OF THE MISSING:
HISTORICAL AND POLITICAL ASPECTS

There are between 10,000 to 20,000 persons reported missing in Libya. This number includes persons missing from the recent conflicts – including victims found in 2020 in mass and clandestine graves in Tarhuna – and persons missing from:

- The 1977 war with Egypt;
- The 1979 war with Uganda;
- The 1980-87 wars with Chad, in which an estimated 6,000 persons went missing;
- The 1996 Abu Salim prison massacre in Tripoli, in which 1,272 persons were disappeared.

Libya is also the crossing and departing hub for migrants; the exact number of those reported missing in the context of migration in Libya is unknown.

The complexity of the issue of the missing in Libya is represented by three main factors:

a) a new gender dimension,
b) the plurality of actors involved, and
c) the geography of the issue.

While this section will mainly focus on the last two factors, it is important to underline the fact that the new gender dimension is not related to numbers, as there are more men missing than women. Historically, the social fabric and traditions shielded women from abductions; this shield has been broken in the post-2011 phase, when women became easy targets for kidnapping, due, among other things, to the high probability that they would be unarmed. Instances of disappearances have also impacted specific professional categories (e.g., doctors), adding another layer of complexity.

The semantics of disappearance reflects the above-mentioned complexity. Libyans often speak of kidnapping when the family of the kidnapped or others are offered an opportunity to obtain their release in return for a specific gesture (e.g., ransom or another concession).

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5 In 2011, at least 10,000 people were believed to be missing in Libya as a result of conflict and domestic repression during the Qadhafi dictatorship. The overall number of people who have gone missing since then is unknown, but could be as high as 20,000 in total.

6 ICMP Consultant Analysis based on interviews with activists and others.

7 A Chatham House meeting with activists and representatives of Libyan CSOs held by ICMP in December 2020 highlighted that the issue of missing doctors has been impacting society since 2011. As a reaction, many doctors have left the country for fear of going missing.
2.1. EASTERN LIBYA

In recent years, in Eastern Libya, kidnappings and other crimes have not revolved around a specific group, but have affected a variety of political, social, security, and military actors. Legal action has often been taken only after tribal mediation or efforts to threaten suspected culprits have failed, or in instances where the victim was not released after payment was made.

Disappearance through abduction or kidnapping, among other abuses, is a manifestation of power struggles. There are also incidents attributable to tribal and religious motivations. In the religious sphere, the assertiveness of purist Salafists has been growing over the last six to seven years. Purist Salafists, sometimes also designated with the derogatory term “Madakhila” or “Madkhalists”, are said to run secret prisons and occasionally carry out executions.

The increase in kidnappings and disappearances in the east of the country can be explained by identifying the social, political, security, and military dynamics at play. Several factors shape these dynamics. First, traditionalism: communal ties and relationships continue to determine the patterns of interaction between local forces at the group and individual level. Social norms are often held in higher regard than the law. When conflicts occur, formal institutions often step aside to make room for social forces to resolve them, resulting in a lax administration of justice. Secondly, the weakness of formal institutions means that some kidnappers are less likely to be held accountable for their actions. The hybridity of many armed groups in Eastern Libya is another contributing factor to the increase in kidnapping incidents. Groups are hybrid in the sense that they often behave as independent non-state actors while maintaining a

This section has been compiled with the support of external sources who have asked to remain anonymous – ICMP is not in a position to disclose their identities.
formal position in institutions. This phenomenon amounts to a modus vivendi between state and non-state authority. Together, these factors constitute a catalyst for kidnappings, especially in the context of competition between the centers of power in Eastern Libya, with each of them attempting to achieve political, legal, security and financial hegemony. The informal actors in this hybrid system derive their power from belonging to political factions, religious currents, or specific social forces, including criminal networks.

In Eastern Libya people have gone missing as result of various practices including financially motivated kidnapping (kidnapping for ransom) and enforced disappearances. While kidnapping for ransom has been mainly perpetrated by criminals, enforced disappearances tend to take place following tribal or religious disputes. Persons have gone missing as result of actions committed by individuals often affiliated with complex intertwined networks. These include elements of the Salafist movement, security forces, soldiers, and civilians. The networks in question are not perfectly cohesive and are divided into sub-units that compete with the main centers of power in Eastern Libya. Kidnappings affecting public figures and activists can also be a symptom of competition between the leadership of the LNA, federalist forces, and loyalists of the former regime. The fractiousness of power is therefore particularly relevant in the context of the issue of the missing in Eastern Libya, and disappearances and kidnapping constitute a form of constant low-intensity violence.

2.2. WESTERN LIBYA AND TARHUNA

2.2.1. The situation in Western Libya

Various types of kidnapping operations take place in the Greater Tripoli area: people are kidnapped for political reasons; most of Tripoli’s militias engage in kidnapping either for their own reasons, which are often financial, or while following instructions from internal or external actors.

Some kidnapping gangs distinguish themselves by their ability to conceal their operations and their ties to armed groups. They operate in semi-complex organizations and coordinate closely with groups from Janzour, Warshefana, Zawiyah, Abu Issa, Sabratha, Surman, and from other villages and cities outside Tripoli. People who fall into the hands of these gangs are sold between groups.

Some other groups of kidnappers aim at easy targets such as migrant workers and irregular migrants who reside in detention centers and other gathering places. These criminal groups often detain their victims in southeastern Tripoli, mostly in the Wadi al-Rabee area and in empty farms located on Airport Road.

Overall, with the exception of Tarhuna and, perhaps, Bani Walid, kidnapping occurrences are less frequent now in Tripolitania than they were half-a-decade ago. This has to do with the pluralistic nature of the political-and-security landscape there. There is less of a monopoly over the use of force relatively speaking compared to the eastern part of Libya.

9 This section has been compiled with the support of external sources who have asked to remain anonymous – ICMP is not in a position to disclose their identities.

10 For example, Ali Zeidan, the former Libyan prime minister, was kidnapped on two different occasions, in 2013, while in office, and 2017 (for 2013 see: Libyan prime minister kidnapped | Libya | The Guardian; for 2017 see: Former Libyan Prime Minister kidnapped in Tripoli | Africanews)
2.2.2. Tarhuna: an account of what preceded 2020 discovery of mass graves

Tarhuna, located 60 miles southeast of Tripoli, is a modest rural municipality with a population of 40,000, surrounded by smaller towns. In the years 2012-15, the al-Kani brothers slowly emerged as Tarhuna’s feared leaders by building up existing military and police forces in the town, creating their own militia of several thousand fighters. The group’s involvement in abduction, torture, and murder constituted the most crucial instrument that the brothers utilized to impose their hegemony on their municipality’s population. The al-Kani brothers ran Tarhuna and its surroundings like a mini-state. It is suspected that they murdered somewhere between 300 and 1,000 individuals in the last decade. Apart from the corpses found in the graves discovered after their departure, hundreds of their abductees were still alive when they fled Tarhuna in May 2020, but more precise statistics are hard to obtain.

Starting with an act of revenge in response to the killing of Ali al-Kani in 2012, the surviving brothers exploited the incident to institute violent practices with less hesitation than most of their peers in other Libyan municipalities. Their policy was to terrorize people for no other reason than to inspire constant fear. In March 2019, General Haftar convinced the al-Kanis to strike an alliance with him so that he could attack Tripoli. After this campaign began, more frequent abductions and murders were carried out by the brothers and their militia to maintain control over a territory deemed vital to a wide military operation.

In November 2020, the United States issued sanctions against Mohammed al-Kani, the leader of the group. A few days before this decision, arguing that more evidence about the killing of civilians was needed, Russia stopped a US/Germany-led proposal to the UN Security Council Sanctions Committee to blacklist the Libyan militia group and its leader for human rights abuses. In December 2020, Russia demanded once again more convincing facts proving the involvement of Mohammed al-Kani in the alleged crimes attributed to him by the US.

One must not rule out the possibility that similar events involving similar numbers of victims as those that unfolded in Tarhuna may have occurred in other parts of Libya.

11 HRW has released a poignant account of their deeds.
12 See Treasury Sanctions Militia and Its Leader in Connection with Serious Human Rights Abuse in Libya | U.S. Department of the Treasury (25 November 2020)
2.3. SOUTH-WESTERN LIBYA

Libya’s large southwestern province contains a large share of the country’s fresh-water, mineral and hydrocarbon reserves, on which the country heavily depends. In spite of this, institutions in others areas of the country regard it as peripheral. A pattern of neglect has dominated the history of this part of the country until today. This, along with the widespread corruption in this area, has produced a level of poverty greater than in the rest of the country. Widespread insecurity has been one of the consequences of this. As a result, three categories of motivation behind the disappearances exist in the south-western area: (i) politics; (ii) economic drivers; and (iii) tribal feuds.

Political reasons are behind some of the kidnapping cases in the Sebha, Awbari, and Murzuq localities. Kidnapping campaigns, for instance, are carried out by tribal actors to silence political opposition, by targeting the critics of politicians affiliated with their tribe. They have also been carried out in the months leading up to municipal, legislative or other elections.

People are also abducted due to local conflicts over strategic locations such as oil wells, military camps and airports. The vast southwestern Sahara province is the area where kidnappings represent a regular source of revenue. The pursuit of ransom, as the driving factor, tends to intensify especially where other sources of revenue have dwindled, such as revenue streams associated with smuggling.

Kidnappings are also carried out near the borders of the smuggling territory of tribes, spanning from the far south to the center of the country. Areas such as Wadi al-Shati and Shwerf are “hotspots”. However, in the southwestern part of Libya, kidnappings as part of inter-tribal disputes are seldom geographically confined, and could spread easily to other parts of the country. Intra-tribal disputes can also result in an increase in kidnapping cases.

Extremist groups, such as ISIS, also engage in kidnapping for ransom, for instance in Ghadwa. The area, including the southeastern neighborhoods of Sebha, is considered dangerous because it has been disproportionately affected by the recent conflict.

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15 This section has been compiled with the support of external sources who have asked to remain anonymous – ICMP is not in a position to disclose their identities.
16 For instance, a conflict between the al-Maqarhah tribe and the al-Hasawna tribe that started in Brak al-Shati expanded into Sebha, where communities of the two tribes live. As conflicts spilled over into other areas, instances of kidnapping also spread.
17 This can be observed in the conflict between members of the Qadhadfa tribe.
III. LEGAL FRAMEWORK

3.1. INTERNATIONAL LEGAL OBLIGATIONS OF LIBYA

Although Libya has not signed or ratified the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), under international law, Libya must abide by obligations relative to missing and disappeared persons, and their families.

Libya is a party to a number of international and regional conventions that oblige it to protect the rights of missing and disappeared persons, including:

- The International Covenant on Civil and Political Rights (ICCPR);
- The International Covenant on Economic, Social and Cultural Rights;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- The Convention on the Rights of the Child;
- The United Nations Convention on the Elimination of All Forms of Discrimination against Women;
- The Convention on the Elimination of All Forms of Racial Discrimination;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and

Libya has also ratified a number of related Optional Protocols, including most relevantly for the current context, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

Libya is also a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

Moreover, Libya has ratified the International Convention on Maritime Search and Rescue. It has further ratified the United Nations Convention against Transnational Organized Crime, along with the related Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

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At a regional level, Libya is a party to the African Charter on Human and Peoples’ Rights, the African Charter on the Rights and Welfare of the Child and the Protocol on the Rights of Women in Africa.

Libya is also bound by relevant rules of international human rights law which form a part of customary international law. As a member of the United Nations, Libya is obliged to give effect to the UN Declaration on the Protection of All Persons from Enforced Disappearance and the Universal Declaration of Human Rights.

In light of the foregoing, Libya is bound to respect, protect, promote and fulfil the human rights of all persons within its jurisdiction, including:

- The right to an effective remedy (including the provision of reparations);
- The right not to be arbitrarily deprived of life;
- The right not to be arbitrarily deprived of liberty;
- The right to respect family life;
- The right not to be subjected to torture or other forms of cruel, inhuman or degrading treatment;
- The right not to be subjected to enforced disappearance; and
- The right to recognition as a person before the law.

The State is obligated to investigate human rights violations and bring to justice the perpetrators.

Libya is also a party to, among other International Humanitarian Law (IHL) treaties, the four Geneva Conventions of 1949 as well as 1977 Additional Protocols (I) and (II) to the four Geneva Conventions of 1949. Therefore, it has to take steps to protect civilians, combatants and prisoners during times of international armed conflicts as well as non-international armed conflicts.\(^\text{20}\)

Under IHL, specifically, Libya is obliged to take steps to ensure that families are informed of the fate of their missing relatives.\(^\text{21}\) Libya is accordingly obliged to also take steps to restore contact between family members who have been separated by conflict. Libya also has responsibilities in respect of the dead. It must trace, recover, and seek to identify the remains.

\(^{20}\) These include the four Geneva Conventions of 1949 as well as 1977 Additional Protocols (I) and (II) to the four Geneva Conventions of 1949.

\(^{21}\) According to the Geneva Convention (IV), parties to the conflict shall facilitate enquiries by persons looking for family members dispersed by the conflict (cf. Article 26). Additional Protocol I requires each party to the conflict to search for persons who have been reported missing by the adverse party (cf. Article 33). According to customary IHL, each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate (cf. Rule 117 – ICRC Study on Customary IHL).
Failure to conduct effective investigations into cases of missing persons, including the circumstances of disappearance, constitutes a breach of the fundamental human rights of missing persons and their family members. It is also contrary to the tenets of a rule-of-law-based system. Effective investigations are among the components needed for a credible commitment to dealing with the legacy of past crimes. Accountability for past crimes contributes to realizing the rights of the families as well as those of the missing. The overview below identifies ongoing international actions aimed at addressing the issue of accountability for international crimes and human rights and IHL violations committed in Libya over the past years and, where possible, at triggering the necessary response by domestic authorities to bring those responsible to justice.

**United Nations (UN) Security Council and International Criminal Court (ICC)** – On 26 February 2011, the UN Security Council unanimously referred the situation in Libya since 15 February 2011 to the ICC in Resolution 1970 (2011). The ICC may therefore exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of Libya or by its nationals from 15 February 2011 onwards. The referral noted that the widespread and systematic attacks against the civilian population may amount to crimes against humanity, and expressed concern at the plight of refugees forced to flee the violence. It underlined “the need to respect the freedoms of peaceful assembly and of expression, including freedom of the media” and stressed “the need to hold to account those responsible for attacks, including by forces under their control, on civilians”. The investigation, which opened in March 2011, has thus far produced three cases, originally against five suspects, and has involved charges which include the following crimes:

- **Crimes against humanity**: murder, imprisonment, torture, persecution and other inhumane acts.
- **War crimes**: murder, torture, cruel treatment and outrages upon personal dignity.

The arrest warrant against Muammar Mohammed Abu Minyar Qadhafi was withdrawn, on 22 November 2011, due to his death. Proceedings against Abdullah Al-Senussi before the ICC came to an end on 24 July 2014 when the Appeals Chamber confirmed a decision of

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Pre-Trial Chamber declaring the case inadmissible before the ICC. In the periodic report (19th report, 5 May 2020) by the Office of the Prosecutor (OTP) of the ICC to the UN Security Council, the Office voiced its concern over “reports of a continued escalation in abductions and enforced disappearances of civilians, including journalists, civil society activists, lawyers, migrants, and State officials, by armed groups, including the LNA, the Special Deterrence Force, and the Nawasi Brigade, among others. In particular, reports indicate that the 9th Brigade, also known as Al-Kaniyat, is allegedly responsible for multiple incidences of enforced disappearance, torture and extrajudicial killing in Tarhuna. ….”. Regarding crimes committed against migrants, the OTP voiced concern over “reports indicating that migrants and refugees in Libya continue to be routinely subjected to arbitrary detention, unlawful killing, enforced disappearance, torture, sexual and gender-based violence, abduction for ransom, extortion, and forced labour.”

**UN Human Rights Council** – At its 15th Special Session (2011) the UN Human Rights Council adopted Resolution S-15/1 and decided to “urgently dispatch an independent, international commission of inquiry...to investigate all alleged violations of international human rights law in Libya, to establish the facts and circumstances of such violations and of the crimes perpetrated, and, where possible identify those responsible to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable.”

In its report, the Commission of Inquiry “concluded that international crimes, specifically crimes against humanity and war crimes, had been committed by Qadhafi forces in Libya. Acts of murder, enforced disappearance and torture were perpetrated within the context of a widespread or systematic attack against a civilian population. The Commission found additional violations including unlawful killing, individual acts of torture and ill-treatment, attacks on civilians, and rape. The Commission also concluded that the anti-Qadhafi forces, the thuwar, had committed serious violations, including war crimes and breaches of international human rights law [...]. It found these violations to include unlawful killing, arbitrary arrest, torture, enforced disappearance, indiscriminate attacks, and pillage. It found in particular that the thuwar were targeting the Tawergha and other communities.”

The main recommendation was that the interim Government will need considerable support from the United Nations and the international community.

In its resolution 28/30 adopted in March 2015 on “Technical assistance and capacity-building to improve human rights in Libya,” the UN Human Rights Council requested the UN High Commissioner for Human Rights to “urgently... dispatch a mission to investigate violations and abuses of international human rights law that have been committed in Libya since the beginning of 2014, and to establish the facts and circumstances of such abuses and violations, with a view to avoiding impunity and ensuring full accountability, in coordination with the United Nations Support Mission in Libya”. In accordance with this mandate, the High Commissioner established the OHCHR Investigation on Libya which concluded

26 Ibid.
its work in January 2016. The report of the OHCHR describes widespread violations of international human rights law and IHL, and abuses of human rights, perpetrated by all parties to the conflict in Libya throughout 2014 and 2015. The report also describes the situation of human rights defenders, journalists, migrants, the Tawerghan community and children, and the administration of justice in Libya in this context. It also provides an assessment of the justice sector and describes initiatives towards accountability.

In 2020 at its 43rd session, the UN Human Right Council asked (resolution A/HRC/43/L.40) the High Commissioner immediately to establish and dispatch a fact-finding mission to Libya, and to designate experts to implement, in an independent and impartial manner, for a period of one year, the following mandate: “to establish the facts and circumstances of the situation of human rights throughout Libya, and to collect and review relevant information to document alleged violations and abuses of international human rights law and IHL by all parties in Libya since the beginning of 2016, including any gendered dimensions of such violations and abuses, and to preserve evidence with a view to ensuring that perpetrators of violations or abuses of international human rights law and IHL are held accountable”. Due to the situation on the ground with Covid-19 rampant and budget limitations, the mission has been slightly delayed and has become functional since January 2021.

Libya’s compliance with human rights obligations has also been reviewed in the context of the UN Human Rights Council Universal Periodic Review (UPR). Libya’s compliance was reviewed again in November 2020 during the third cycle of the UPR. Based on comments that CSOs shared with the UN Human Rights Council, a deterioration in the human rights situation in Libya was reported. Violations of international human rights law and crimes against humanity have occurred, including torture, illegal detention, extrajudicial executions and enforced disappearances. More than 700 new cases of disappearances were reported between January 2017 and June 2019. OHCHR has documented numerous unlawful killings, particularly of individuals taken captive, detained or abducted. Judges have been threatened for attempting to deliver justice to victims. Inadequate resources have meant many crimes have not been properly investigated or prosecuted.

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) - The CMW and the Committee on the Elimination of Racial Discrimination have noted with concern how similar acts of violence have been committed against many migrants and asylum seekers. In addition, the CMW has expressed its concern over the number of disappeared, missing and unidentified migrants within Libyan territory, including its territorial waters. Many migrants and refugees, as well as unaccompanied and separated children, are being held in detention centers and are denied access to judicial review.

34 UN doc A/HRC/WG.6/36/LBY/2 (2020), op. cit., para. 16
In 2012, Libya extended standing invitations to the Working Group on Arbitrary Detention and the Working Group on Enforced and Involuntary Disappearances. However, these visits have not yet taken place.\textsuperscript{36}

3.3. DOMESTIC LEGAL FRAMEWORK

The legal system in Libya has historically been influenced by Ottoman, French, Italian, and Egyptian sources. Under the Great Socialist People’s Libyan Arab Jamahiriya, Libya moved towards a legal system based on Sharia, but with various deviations from it. The current legal system of Libya has been described as “in flux and driven by state and non-state entities,”\textsuperscript{37} and there are no laws applied uniformly across the whole country. The hierarchy of legal sources is, in descending order, the Constitution, legislation, principles of Islamic law, customs, and principles of natural law and equity.\textsuperscript{38}

A rule-of-law based approach to addressing the issue of missing persons through court-led processes requires an adequate domestic legal framework that complies with relevant international human-rights standards and rule-of-law principles. Such a legal framework should also facilitate the use of technological and scientific methods in missing persons investigations. An overview of the existing legal texts relevant to the delineation of the legal framework tackling the issue of the missing in Libya is provided below.

A. Constitution

The constitution of the Kingdom of Libya entered into force on 24 December 1951\textsuperscript{39} and was amended in 1963. Chapter II revolves around the rights of the people and states that all Libyans are equal before the law and that “personal liberty shall be guaranteed” and everyone “shall be entitled to equal protection before the law” (Article 12).\textsuperscript{40} Under Article 16, “no one may be arrested, detained, imprisoned or searched except in cases prescribed by law. No one shall under any circumstances be tortured by anyone or subjected to punishment degrading to him.” This constitution remained in effect until the overthrow of the monarchy and the Libyan National Assembly by Qadhafi in 1969.

On 3 August 2011, following the removal of Qadhafi, Libya’s transitional Constitutional Declaration was promulgated by the National Transitional Council.\textsuperscript{41} This Declaration was to act as the basis of governance during the transitional stage until a permanent Constitution could be ratified through a referendum. Chapter I of the Declaration revolves around the establishment of a civilian, democratic political system based on political pluralism; according to the Declaration all Libyans are equal before the law, enjoying the same civil and political rights.

\textsuperscript{36} UN doc A/HRC/30/16 (2015), op. cit., para. 10
\textsuperscript{37} CIA World Factbook - Libya.
\textsuperscript{38} NYU Law Global, Libya’s Legal System and Legal Research (Nov./Dec. 2019), https://www.nyulawglobal.org/globalex/Libya1.html
\textsuperscript{40} English text of the Constitution of 1951, which entered into force on independence, 24 December 1951, as amended 25 April 1963.
Chapter II addresses the question of civil rights and liberties. Under Article 7, “human rights and basic freedoms shall be respected by the state. The State shall commit itself to join the international and regional declarations and charters which protect such rights and freedoms. The State shall endeavor to promulgate new charters which shall honor the human being.” Chapter II recognizes among others the right to asylum; the right to a fair trial with legal safeguards; the right to life and freedom of movement; the right to freedom of expression; the freedom of scientific research, communications, the press and information; and the right to peaceful demonstration and protest. Article 15 stipulates that the freedom to form political parties, associations and other civil society organizations must be guaranteed by the State. Article 30 defines the timetable for the transition to a permanent democratic constitution.

In 2017, a draft constitution was released, but still needs to be adopted. The 2017 draft constitution was presented to the House of Representatives for endorsement, but was rejected in February 2018 and followed by calls for an amendment of the 1951 Constitution instead. The 2017 draft partly reflects the structure of the 2011 Declaration, with its Chapter 2 dedicated to Rights and Freedoms. Article 35 of the draft stipulates that “the State shall protect human dignity, prevent all types of violence, and disavow torture and cruel, humiliating and inhumane treatment, forced disappearances, and all forms of slavery, involuntary servitude, forced labor and human trafficking. Such crimes shall not be subject to the statute of limitations.” The draft constitution also includes in Article 37 the prohibition of all acts constituting crimes against humanity, war crimes, genocide and terrorism; provisions which introduce new aspects include those on the right to health, the rights of children, the rights of persons with special needs and the support of women’s rights. Furthermore, the draft also envisages the creation of a National Council for Human Rights tasked with “strengthening, promoting and spreading the culture of the values of human rights and public freedoms provided for in the Islamic Sharia.” Its mandate will involve monitoring and reporting any human rights violations to national authorities and supporting citizens in obtaining their rights.

According to the 2017 draft, the status of Sharia as the source of legislation (Article 1), without a clear indication of what this signifies, has caused concern that human rights and freedoms will be subject to interpretation by the House of Representatives. Moreover, the positioning of international conventions below the status of the constitution creates the potential for any legal mechanisms that protect human rights to be annulled by legislators if these are seen to contradict constitutional provisions. While the draft constitution is praised for requiring that all interferences with human rights are “necessary, clear, limited, and proportional with the restrictions’ objectives,” it is possible that the Sharia as a source of legislation may prevent a truly liberal free exercise of rights and freedoms. Certainly the recognition that every citizen shall have “the right to vote in referendums and vote and run for office in free, fair
transparent, and equitable elections where all citizens are equal in accordance with the law” is to be considered a positive development (article 40).

The Constitutional Drafting Assembly has requested assistance from the United Nations Support Mission to Libya (UNSMIL) in meeting the constitutional deadline and urging the Libyan authorities, notably the House of Representatives, to approve the draft. To date, the Libyan constitutional framework is based on the 2011 transitional Declaration.

B. Legislation

The following is a list of relevant legislative and executive developments enacted since August 2011, directly or indirectly relevant to the issue of the missing and, more broadly, to the promotion and protection of human rights in Libya:

- Law No. 4 (2011) amending Law No. 6 (2006) on the judiciary system;
- Law No. 5 (2011) establishing the National Council on Civil Liberties and Human Rights;
- Law No. 50 (2012) on compensation for political prisoners and Decree no. 513 (2013) on issuing the Executive Regulation of Law No. (50) of 2012 on compensation of political prisoners;
- Law No. 65 (2012) regulating the right to peaceful protest;
- Law No. 10 (2013) criminalizing torture, enforced disappearance and discrimination;
- Law No. 29 (2013) on transitional justice, which abrogates and supersedes Law No. 17 (2012) and establishes a fact-finding and national reconciliation commission, a fund for victims and an ombudsperson’s office;
- Law No. 31 (2013) on the martyrs of the Abu Salim prison massacre;
- Law No. 18 (2013) on the rights of cultural and linguistic groups;
- Law no. 1 (2014) related to the protection of families of martyrs and missing persons in the 17 February 2011 revolution;
- Legislation concerning illegal immigration:
  - Law No. 19 (2010) on combatting illegal immigration,
  - Decree No. 165 (2012) on forming a committee and determining its functions,
  - Decree No. 184 (2012) on forming a committee and determining its functions,
  - Cabinet Decree No. 386 (2014) on the Establishment of an Anti-Illlegal Migration Agency;
- Penal Code and the Criminal Procedural Code.
Equally important are the Libyan Political Agreement ("LPA") which refers to the issue of missing persons;\textsuperscript{48} the Berlin Conference Conclusions;\textsuperscript{49} and the roadmap “For the Preparatory Phase of a Comprehensive Solution” attributed to the Libyan political dialogue forum.\textsuperscript{50} Whenever relevant these documents will be mentioned or considered across the analysis.

General considerations

Despite the set of laws and decisions concerning transitional justice-related matters, new relevant legislation has been primarily focused on the period prior to the Libyan uprising in 2011, the only exception being Law no. 10 of 2013 on torture, enforced disappearances, and discrimination; post-2011-armed conflicts and additional atrocities committed since then would have required new legislation with a genuine inclusive vision in line with international law.

The promise of a new Libya, where human rights ought to be respected and protected, was expressed in the Libyan constitutional declaration. However, since 2011 events, international fact-finding missions dispatched to Libya declared that human rights abuses had been committed by the “revolutionaries” turned militias and members of armed groups.\textsuperscript{51} With the Libya Political Agreement, the institutional and legal frameworks have evolved further.

Law No. 4 (2011) amending Law No. 6 (2006) on the judiciary system

The Supreme Judicial Council (SJC) was defined in Law No. 4 of 2011 following the 2011 Libyan Civil War as a replacement for the Muammar Qadhafi-era High Council of Judicial Bodies that was created in 2006. Following the uprising in 2011 and the ensuing desire to enhance the rule of law as a key aim of the movement, Law No. 4 of 2011 was passed by the National Transitional Council, the first post-Qadhafi government in Libya, which significantly enhanced the independence of the judiciary, in particular by removing the Minister of Justice as president and member of the Council.\textsuperscript{52}

Law No. 5 (2011) establishing the National Council on Civil Liberties and Human Rights

The National Council for Civil Liberties and Human Rights had been established pursuant to Law No. 5 (2011) on the basis of the Principles relating to the Status of National Institutions (i.e., the Paris Principles). The aim of the Council was to preserve, strengthen and defend civil rights, and monitor and document violations of those rights, and support and encourage

\textsuperscript{48} According to the LPA- Art. 26.1 &2, “all parties to this Agreement shall commit to collecting complete information on abductees and missing persons and submit it to the Government of National Accord, which shall commit itself to establish an independent body on missing persons pursuant to the provisions of Law 1 of 2014 within sixty (60) days of commencing the performance of its tasks. All parties to the conflict shall, within thirty (30) days of the Government commencing the performance of its tasks, release persons held in their custody without legal basis or hand them over to the judicial authorities, which will determine within the following sixty (60) days whether they should be brought before the judiciary or released on the basis of Libyan legislations in force and international standards.”

\textsuperscript{49} Berlin Conference Conclusions, para. 50, see https://unsmil.unmissions.org/sites/default/files/berlin_conference_communique.pdf

\textsuperscript{50} Article 6 states that the new executive authority’s priorities include: ending arbitrary arrest, forced disappearances, and release of the prisoners of opinion and prisoners who have been arbitrarily detained. There is no specific mention of missing persons. https://unsmil.unmissions.org/statement-acting-special-representative-secretary-general-libya-stephanie-williams-first-round

\textsuperscript{51} Account emerging from ICMP consultant’s interviews.

Law No. 50 (2012) on compensation for political prisoners

This law is part of the legal framework concerning reparations programs enhanced since 2011. With the term “prisoner” the law indicates “any civilian or military person detained in prison or special detention camps from 01/09/1969 to 15/02/2011 due to opposition to the former regime”. Compensation is determined by a dedicated body and is based on the duration of time the prisoner spent in detention (see also Decree No. 513 of 2013, art. 7). Nothing is said about possible compensation for family members of those political prisoners who might have died while in detention.

Law No. 65 (2012) regulating the right to peaceful protest

As stated in its Article 2, Law no. 65 aims to “organize the right to peaceful demonstration for citizens as a fundamental human right enshrined by the Constitutional Declaration and international covenants and treaties.” It also aims to “reconcile the nation’s integrity and security with the citizens’ exercise of their right to peaceful demonstration and to enable the public authorities to protect public and private funds and property, allow the continued operation of public facilities, and uphold public order”. The right is granted to citizens, political parties, CSOs, and professional syndicates; demonstrations are to be organized in line with the Constitution and the relevant legislation and “in such a way as does not obstruct the regular operation of public facilities” (Article 3). Although it is not uncommon to reserve the right of assembly or peaceful demonstration to citizens, this should not impact the general freedom of action that non-citizens also enjoy. The latter would be difficult to abrogate in view of the right to freedom of expression, which is provided for inter alia by the ICCPR, to which Libya is a state party.

According to Law no. 65, all planned demonstrations must have a committee composed of a leader and at least two members whose names must be listed in the notice given to the security directorate and stipulate where the demonstration will be taking place. This committee is under an obligation to maintain law and order during the demonstration and to forbid the delivering of speeches that undermine law and order or morality, or encourage crime (article 4). The Law forbids the authorities from banning any demonstration, except if the said demonstration is likely to cause public disorder or for any general security reasons (article 7). Criminal sanctions are imposed for gatherings in violation of the Law (Article 10).

The language of Article 2 and 3 has been considered vague, since, for instance, disruption of traffic or other uses of public spaces could be used as an excuse to prevent a demonstration; Article 4 is inconsistent with international law standards as it is the state’s responsibility to maintain public order and provide for the safety of protesters and demonstrators as well as of those not participating in demonstrations (see UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly UN Doc. A/HRC/20/27). Article 10 has been considered “alarming”, as there is the risk that organization of or participation in a demonstration which has not met the criteria of the Law might be punishable by imprisonment.53

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Law no. 10 (2013) on torture, enforced disappearances, and discrimination

This Law aims to protect the right to personal liberty (Article 1), physical integrity (Article 2) and non-discrimination (Article 3). Penalties provided by the law vary from 3-15 years of imprisonment for those who restrict by force, threat or treachery the personal liberty of a person, 5-15 years of imprisonment for committing physical or mental torture, and 3-15 years of imprisonment for depriving a person of any of their rights on the basis of discrimination. The law provides a penalty of life imprisonment for cases in which the victim dies as a result of the treatment inflicted.\(^{54}\) The law is enacted following a consideration of the Interim Constitutional Declaration of 3 August 2011, the Penal Code, the Criminal Procedure Code, and the Military Penal and Procedure Codes.

The text is problematic, since it lacks a definition of enforced disappearance in line with international law. The law tackles inter alia acts of kidnapping and acts of torture. With regard to the latter, the law criminalizes ordering, committing or acquiescing to torture, defined “as any act that inflicts physical or mental suffering for the purpose of extracting confessions, seeking revenge, or because of discrimination or any other motive”. Although the definition of torture has a wider scope than the one under the CAT, as it includes torture committed by private individuals, it does not incorporate all of the elements of torture as prescribed by Article 1 of the CAT.\(^{55}\)

Any public official, executive, administrator or military commander is subject to the same penalty for committing any of the crimes mentioned in the text and may be punished for failing to report a crime committed by an individual under their supervision.

Law No. 29 (2013) on Transitional Justice

On 2 December 2013, the Libyan General National Congress adopted this law to address the severe and systematic human rights violations perpetrated by the Qadhafi regime since September 1969, including those committed by the ‘17 February Movement’ during the 2011 revolution. The main aim of this law is to reveal the truth about past human rights violations, tackle state and individual responsibility, reform institutions from the Qadhafi regime, and provide reparations for the victims of these violations. The law also established a Fact Finding and Reconciliation Commission (FFRC) to investigate any human rights violations brought to its attention. Nevertheless, the Law:

- Does not explicitly allow victims to initiate proceedings before the FFRC;
- Limits the involvement of victims or affected parties in both the investigation and decision-making processes;
- Does not foresee the involvement of the alleged perpetrators in FFRC proceedings;
- Does not require the FFRC to make public its proceedings; and


• Does not foresee that the public may participate in the FFRC proceedings (no public hearings).

The above may impact transparency and effectiveness in conducting investigations into violations of human rights law and IHL.

**Law No. 31 (2013) on the martyrs of Abu Salim prison massacre**

The law is designed to provide justice and reparations for victims of this event. It was enacted following a consideration of, among others, Law No.19 of 1989 on the adoption of certain advantages for persons killed during military operations, missing persons and captives, and Council of Ministers Resolution No. 85 of 2012 on Caring for and Honoring the Families of Martyrs and Missing Persons. Decision no. 59/2013, issued on 26 June 2013 by the General National Congress also related to the Abu Salim massacre; the decree recognized that the Abu Salim massacre is considered genocide (article 4). Law no. 31 of 2013 enacted a few months later (December 2013), instead, considers it a crime against humanity (article 1). However, neither of these legal texts provides a definition of the crime that can serve as a basis for prosecution.

Among other relevant provisions, Article 5 refers to the establishment of a special committee through a resolution to be issued by the General National Congress; the committee had to include a member from the Ministry for the Affairs of the Families of the Martyrs and the Missing (MAFMM). Article 6 outlines the powers of the committee, which include the creation of a database to record the personal data, reasons for and dates of the deaths of the martyrs.

In 2017 the Ninth Criminal Circuit of the Tripoli Civil Appeals Court apparently did not follow what is provided for under Law No. 31 of 2013 when it dropped Case No. 782/2017 relating to the Abu Salim prison massacre because of the statute of limitations. The Court made its ruling on the grounds that the massacre was not a crime against humanity, to which the statute of limitations does not apply, instead considering it an ordinary crime.

**Law No. 18 (2013) on the rights of cultural and linguistic groups**

According to Law no. 18, the Amazigh, Tuareg, and Tebu languages are considered linguistic and cultural components of Libyan society (article 1). However, the law does not refer to these communities as minority groups or indigenous people as stated in international laws and standards (and notably article 27 of the ICCPR). The law is silent in relation to problems connected to citizenship rights – many among the Tuareg and Tebu for instance face discrimination and cannot easily access Libyan citizenship, leaving them stateless.

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Legal texts concerning civil society in Libya

According to Article 15 of Libya’s Constitutional Declaration, “the state shall guarantee the freedom of forming political parties, associations and other civil society organizations (CSOs), and shall adopt a law for their regulation. The establishment of clandestine or armed groups or societies in conflict with public order or public morals or threatening in other ways the State or the integrity of the national territory shall be prohibited.” The law mentioned in the constitution has not been drafted or adopted yet. On 26 December 2018, the GNA adopted Order no. 1605 aimed at re-organizing the Civil Society Commission in Libya and further specifying its mandate.

Law no. 1 (2014) on the protection of families of martyrs and missing persons

Within the remit of Law no. 1, a missing person is any person who went missing during the war of Liberation whose death has not been confirmed; based on this definition, Law no. 1 has a narrow scope of application. The law also defines the situations that would qualify a person as a martyr. Instances of martyrdom or disappearance must have occurred between 15 February 2011 and 23 October 2011. Any person who is proven to have opposed the 17 February Revolution at any time and in any form may not benefit from the provisions of the law. According to the law, only first-degree family members are considered “family of a martyr or a missing person”.

The law provides for the establishment of a “Public Commission for the search and recognition of missing persons.” This commission was to report directly to the Cabinet (Government), which oversaw its work.

The Commission was not established until 2018 (see below Section 4.1.). The 2015 Libya Political Agreement openly endorses Law No.1 of 2014, despite a discriminatory approach to the issue of the missing and to the benefits recognized to those who have fought against the regime and their families. The endorsement of specific legal texts in the LPA could make any change to such texts very difficult, should the LPA gain a constitutional status as part of the Libyan Constitutional Declaration. Based on the most recent developments concerning the MAFMMM and its disbandment, two General Authorities are now dealing with the issue of missing persons, the General Authority for the Search and Identification of Missing Persons (GASIMP) and the General Authority for the Care of the Families of the Martyrs and Missing Persons (GACFMMMP).

Legal texts concerning civil society in Libya

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57 According to Article 1 of Law no. 1, a martyr is a person who died on the battlefield while fighting the former regime’s forces; died from injuries suffered due to missiles fired by the former regime’s forces, whether at home, in the street, in public places, mosques or any other place; died of gunshot wounds while guarding revolutionaries; died at the hands of Qadhafi forces; died from stray gunfire in the air while participating in pro-17 February Revolution demonstrations; died in an arms-warehouse explosion, provided that he was performing procurement or guard duties for fighters at the time of the explosion; died while providing medical or first aid services and others to the 17 February revolutionaries; accidentally killed himself due to misuse of weapons or by friendly fire, if such accident happened on the battlefield or during the performance of procurement, guard, or other duties for the 17 February revolutionaries (unofficial translation of Law no. 1).

58 The LPA states that “all parties to this Agreement shall commit to collecting complete information on abductees and missing persons and submit it to the [GNA], which shall commit itself to establish an independent body on missing persons pursuant to the provisions of Law 1 of 2014 within sixty (60) days of commencing the performance of its tasks”.

59 Libyan scholars are not aligned on this aspect according to ICMP consultant analysis.

60 English Translation (unofficial) of the Arabic Consolidated text of the Charter of 3 August 2011 as amended to Constitutional Amendment no.8 of 6 August 2014.
The GNA has also adopted Order no. 286 (2019) which revolves around the conditions concerning the establishment, registration, and the organizational structure as well as the operations of any local CSO or foreign non-governmental organization (NGO) in Libya. The order also specifies what step each CSO must undertake in relation to these aspects, what procedure to follow, and which document needs to be submitted for each step to the Civil Society Commission.

Order no. 286 also tackles the relationship between domestic CSOs and external actors; notably, any domestic CSO must notify the Commission ten days before its acceptance of any donations or funding from any party, including foreign party; the Commission must respond within one week from the date of notification, and should it find a violation of the legislation in force or the goals of the organization, the Commission must inform the organization not to accept these donations or funding. In the event that the organization does not adhere to the decisions of the Commission in this regard, the provisions of disbandment and suspension of the organization shall apply (Article 37).

Interactions of domestic CSOs with international intergovernmental organizations should proceed through notification to the dedicated section at the Ministry of Foreign Affairs.

The strict regulations concerning the work of domestic CSOs impact country-wide operations and the work of the CSOs; the current situation in the country means that if a CSO is registered in the east and not in the west or vice-versa it cannot easily operate in the part of the country where it is not registered. At the local level, the various branches of the Civil Society Commission have regulated the actions of CSOs. For instance, the Tripoli Civil Society Commission has adopted a circular requiring all CSOs registered in the last five years to register again. The Civil Society Commission in Benghazi adopted Decrees no. 1 and 2 in January 2016 which are similar to Order no. 286 adopted by the GNA. Recently, the Civil Society Commission in Benghazi also issued a decision (Decision no. 3/February 2019) to dissolve 19 CSOs; likewise, the Civil Society Commission in Misrata issued a decision (Decision no. 29/May 2018) to dissolve 37 CSOs. These executive decisions are viewed by CSOs as being contrary to the scope of the above-mentioned Article 15 of Libya’s Constitutional declaration.

Legal texts on irregular migration

The way a state regulates migration should always be in line with international law standards. Tightening border controls and dealing with irregular migration should not disregard the rights of migrants and should go hand in hand with efforts to increase safe and legal migration pathways: the absence of this basic tenet in the approach of the authorities vis-à-vis migration flows can lead to higher risks for migrants during their journey, thereby increasing their chances of going missing. The overview below highlights some of the pitfalls in the texts on “illegal” migration in Libya, including the overwhelming focus on fighting “illegal” immigration and border control.

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61 This is an unofficial translation of the terminology used in the Order.
62 In November 2020, a group of NGOs addressed a statement to the participants to the Libyan Political dialogues facilitated by UNSML in order to repeal order no. 286. See https://lofim.org.ly/archives/516.
63 See Libya: Human Rights Briefing (June – October 2020) - Cairo Institute for Human Rights Studies (cihrs.org)
Law No. 19 (2010) on combatting illegal immigration

Law No. 19 of 2010 provides the legal basis for detaining migrants. The detention of a migrant would have to be determined by a court decision where the migrant appears before a judge, but this rarely happens.

The law does not distinguish between migrants, refugees, victims of trafficking or others in need of international protection, instead referring only to “illegal immigrants”. The Law also implies that indefinite detention is allowed by not precisely stating otherwise. In light of these elements, children, including unaccompanied minors, are equally at risk of arrest and indefinite detention.

Decree No. 165 of 2012 on forming a committee and determining its functions

This decree established a committee responsible for monitoring illegal migration. The committee is to be responsible inter alia for reviewing treaties and legislation for illegal migration, whether international or national, as well as evaluating the procedures taken to combat illegal migration and proposing necessary solutions while observing relevant international laws and treaties entered into with foreign states. The committee is also to be responsible for identifying national and international organizations working on the matter; evaluating their position; and proposing means and methods to work with them. (Article 2)

Decree No. 184 of 2012 on forming a committee and determining its functions

Decree No. 184 contains additional provisions to Decree no. 165 for supervising migrant detention and deportation. The committee handling this matter is to seek assistance from whoever it deems necessary. (Article 3)

Cabinet Decree No. 386 of 2014 on the Establishment of an Anti-Illegal Migration Agency

This decree is based in part on a review of Law No. 19 of 2010 on combating illegal migration. It provides for the creation of an Anti-Illegal Migration Agency, later renamed the Directorate for Combating Illegal Migration (DCIM). The Agency enjoys legal personality and independent financial liability and is subordinate to the Ministry of Interior. The mandate of the DCIM includes apprehending illegal migrants in Libya and placing them in shelters to monitor them and complete the procedures necessary for deporting them to their countries of origin in coordination with the relevant authorities; collecting information and investigating cases of human trafficking, organized crime, the smuggling of persons, and infiltration. According to Article 4, the DCIM, will observe the legislative texts, charters, and treaties pertaining to human rights as well as international treaties to which Libya is a party.

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The decree gives the DCIM the authority to detain migrants without a court decision, but only in the case of individuals awaiting deportation.\textsuperscript{68} There is currently no legal process around migrant detention in Libya. Such a process would have to include: a court decision; an opportunity for the migrant to establish the legality of his or her migration; and a process that separates the vulnerable, or those with special needs, from the general group; allowing migrants the chance to apply for humanitarian protection, with clear guidelines stipulating the length of detention and ways in which migrants may end their detention, and respect for the principle of non-refoulement when deporting. This process is rarely implemented.\textsuperscript{69} International organizations, such as the International Organization for Migration (IOM) and United Nations High Commissioner for Refugees (UNHCR), are attempting to ameliorate the problem by providing programs to help migrants return safely to their country of origin. However, these efforts are complicated by the growing number of disappearances and the fact that the Libyan government has maintained a policy of detaining illegal migrants since 1987.\textsuperscript{70}

\textbf{Criminal law system – Observations}

Criminal law in Libya is divided into substantive and procedural criminal law. The Penal Code and the Criminal Procedure Code (CPC) were adopted in 1953 under King Idris of Libya. From the 1960s onwards, the Penal Code has been subject to amendments, and additional complementary penal laws were promulgated. However, the CPC has been subject only to a few changes. Following the coup d’état led by Qadhafi in 1969, Libya introduced certain laws based on Sharia Law. Laws related to manslaughter, adultery, theft, and drinking and trading alcohol, for instance, are based on Sharia Law. In 1975, the section related to state security (Section 2) in the penal code was amended. Libyan penal law classifies crimes into three categories: felonies, misdemeanors, and contraventions.

The Libyan Penal Code and the CPC include gaps and provisions that are not in line with international human rights standards. For example, Libyan legislation does not yet criminalize genocide, war crimes or crimes against humanity.\textsuperscript{71} The Penal Code (Article 17) provides for two types of penalty: principal (death, life imprisonment, imprisonment, detention, fine) and accessory (deprivation of civil rights, interdiction from practicing professions or arts, loss of legal capacity, publication of the conviction).

The death penalty is prescribed for a broad range of offences, including offences that do not meet the threshold of “most serious crimes” under international human rights law. This term has been interpreted to mean that the death penalty should only be applied to the crimes of murder or intentional killing (See A/HRC/24/18, para. 24.).\textsuperscript{72} Libya is not a State Party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, which

\begin{flushright}
\textsuperscript{69} Idem.  
\textsuperscript{70} Article 19 of Law No. 6 (1987).  
\end{flushright}
aims for the abolition of the death penalty. In such situations international human rights law requires as a minimum full compliance with the clear restrictions prescribed in particular in Article 6 of the ICCPR (to which Libya has been a State Party since 1970). Article 6 strongly recommends the abolition of the death penalty.

The provisions of Article 435 (Torture of Prisoners) of the Penal Code criminalizing the act of torture were repealed by Article 2 of Law No. 10 of 2013 (see above). Article 1 (Forced Disappearance) of Law No. 10 of 2013 criminalizes kidnapping. This provision replicates the provision of Article 428 (Abduction of Persons) of the Penal Code, which is repealed by Article 6 of Law No. 10 of 2013.73

Evidence, arrest, investigation, custody and other aspects of criminal procedures are regulated by the CPC. The CPC has not been updated in respect of technological developments in the forensic domain. The fact that modern investigative techniques and sophisticated forensic methods are not included in the CPC may explain to some degree the acceptance of policing practices that are not in line with international law. Also, the CPC does not address the issue of witness protection and confidentiality. The Libyan CPC contains guarantees of some basic human rights but does not conform to international standards. A thorough review of the CPC is therefore required.

The criminal judiciary in Libya consists of judges and prosecutors and is administered by the High Judiciary Council, which acquired an independent status from the executive branch in 2011. It is spearheaded by the Chief Justice of the Supreme Court. The Libyan criminal system consists of the following:

- **District Courts:** Courts composed of a single judge to deal with contraventions and misdemeanors. Appeals to misdemeanor sentences are decided by the First Instance Court;
- **Courts of First Instance:** These courts are composed of three judges as an appeal court;
- **Criminal Courts:** These courts deal with felonies and crimes and are composed of three senior judges. Such courts are equal to the court of appeal in the civil court system. Appeals to their decisions are decided by the Libya Supreme Court.

Before appearing before a criminal court, the individual accused of a felony is heard by an accusation chamber, which is composed of a single judge who decides either to dismiss the case or refer it to a competent criminal court.

The Libyan Supreme Court is the highest court of the nation. It is composed of different chambers, including a criminal chamber. It also acts as the constitutional court when composed of all its justices. Supreme Court decisions are binding on all other courts in Libya. The presence of a defense lawyer with the accused is only mandatory before criminal courts and the Supreme Court. A defense lawyer cannot be present during primary investigations by the police, and the power of a prosecutor to allow a defense lawyer’s presence during investigations is discretionary.

73 Ibid.
The Prosecutor-General’s Office is the guarantor of criminal procedures (for more details see below under Section 4.2.2). It initiates procedures and refers them to a court, except in certain exceptional cases where the law states otherwise. It is also in charge of conducting investigations. The Libyan Prosecutor-General has vast powers in criminal proceedings.

The victim may file complaints about crimes but only within a limited timeframe, i.e. “three months after the date that the victim learns of the offense and the perpetrator, unless the law provides otherwise.” (Article 3). The right to file a complaint expires upon the victim’s death. If death occurs after filing of the complaint, it will not affect the proceedings (Article 7). These limitations impair the rights of the victims’ next of kin who should be considered as victims entitled to the right to an investigation and reparations. Secondly, the set time frame for filing a complaint constitutes a serious impediment to ensuring that the offences are investigated and prosecuted and perpetrators are brought to justice.
IV. INSTITUTIONAL FRAMEWORK

4.1. INSTITUTIONS DEALING WITH THE ISSUE OF THE MISSING IN LIBYA

In early October 2011, the Libyan National Transitional Council (NTC) created the National Commission for Search and Identification of Missing Persons (NCSIM) and in December 2011, the NTC merged the functions of the NCSIM into the Ministry for the Affairs of the Families of the Martyrs and the Missing (MAFMM), which was established along with other ministries at the end of 2011.

With the assistance of ICMP, the MAFMM collected more than 11,000 genetic reference samples from families of the missing, representing more than 3,000 missing persons in Tripoli, Benghazi, Sabha, Ben Walid, Sirte, and other places; ICMP issued DNA match reports for more than 100 individuals and transferred them to the relevant authorities in Libya.

An ICMP expert collects a genetic reference sample from a Libyan relative of a missing person. Photo: ICMP

* PM Sample: A post-mortem sample, i.e., a physical sample taken from unidentified human remains in order to determine a DNA profile to match with family reference samples. The samples, usually taken from a bone or a tooth, are submitted to ICMP for DNA analysis and comparison, potentially leading to identification.
After the deterioration of the situation in Libya in 2014, and the UN-brokered 2015 Libya Political Agreement (“LPA”), the institutional setting concerning the issue of the missing evolved further. Article 26 of the LPA urged all parties to “commit to collecting complete information on abductees and missing persons and submit it to the GNA, which shall commit itself to establish an independent body on missing persons pursuant to the provisions of Law 1 of 2014 within sixty (60) days of commencing the performance of its tasks.” (Article 26)

In 2016 the Libyan Government adopted Decision No. 10 to form public bodies, including one that was meant to provide full care for amputees and the families of martyrs and missing persons in Libya; the decision led to the creation of the “General Authority for the Care of Families of Martyrs, Missing Persons, and Amputees - GACFMMPA”, which replaced the MAFMM; the GACFMMPA had a technical department dealing with aspects concerning search and identification. In 2018 the Presidential Council issued Decree No. 525 to create the General Authority for Searching and Identification of the Missing Persons (GASIMP) as a substitute for the Technical Department embedded initially in the MAFMM and then in the GACFMMPA. Officially, Decree No. 525 was activated on 27 October 2020, through a handover ceremony between the heads of the GASIMP and the GACFMMPA. A short synopsis is provided in Figure 1 below.

MISSING PERSONS INSTITUTIONS SINCE 2011

Establishment of National Commission for Search and Identification of Missing Persons
Establishment of MAFMM (and dismantling of the Commission)
Establishment of GACFMMPA
Establishment of GASIMP as per Law no. 1 (the MAFMM is no longer present; GASIMP is an institution independent from the Government)

Figure 1: Missing Persons Institutions since 2011

Ministry for the Affairs of Families of Martyrs and Missing Persons (superseded by GASIMP and GACFMMPA)

Three legal texts constitute the legal basis of the MAFMM:\(^\text{\textsuperscript{77}}\)

- Decree No. 28/ 2012 on the Organization of the Executive unit of the Ministry for the Affairs of Families of Martyrs and Missing Persons;
- Decree No. 85/2012 on assisting and honoring the Families of the Missing; and
- Resolution of the Ministry for the Affairs of Families of Martyrs and Missing Persons No. 32/2012 regarding payment of financial gratuities to families of the missing.

Concerning Decree No. 28/2012, the MAFMM was authorized to develop policy and execute measures of legislation in force (including to care for the families of the martyrs and missing, set the necessary controls, and handle the files of the missing in coordination with the relevant authorities). The MAFMM was also required to make proposals for new legislation regarding martyrs and the missing. The Decree established the internal structure of the MAFMM, which had to have a Department of Martyrs’ Affairs and a Department of Missing Persons’ Affairs (Article 3). Decree no. 85 sets out the amounts payable to families of the martyrs and the missing and the type of moral support to be provided.\(^\text{\textsuperscript{78}}\) The decree also specifies the amount that each family of the missing can receive.\(^\text{\textsuperscript{79}}\) The difference in the amounts paid between the former and the latter brings about a disparity and unequal treatment among families, to the detriment of those who have missing relatives who are not defined as martyrs according to the legislation. Under this decree, the MAFMM was responsible for identifying the relevant beneficiaries and arranging the payments.

General Authority for the Searching and Identification of Missing Persons (GASIMP)

Law No. 1 of 2014 mentioned the establishment of the Authority; the Prime Minister’s Decree no. 525 of 2018 established the Authority and defined its mandate. The wording and timing (4 years after the LPA) of issuance of this decree reflect a low level of responsiveness in addressing the issue of the missing.

The Authority is to undertake the process of searching for and identifying the missing, whatever the cause, and in order to achieve its objectives, it can cooperate with all parties in accordance with the legislation in force (Article 3, Decree No. 525, unofficial translation).


\(^{78}\) Article 1 provided that a monthly gratuity of 500 Libyan Dinars (LYD) (equal to 367 USD) is payable to each family of a martyr plus an additional 100 LYD (equal to 73 USD) to each dependent in the martyr’s family. In the case of a missing person, a monthly gratuity of 500 LYD is payable to each family. Article 2 sets out the moral support to be provided to martyrs’ families, namely the creation of a Martyrs’ Day to commemorate the martyrs’ anniversary; erecting a monument to martyrs of 17 February 17; and awarding the Order of the Martyrs to the family of each martyr.

\(^{79}\) Article 1 provides that each family of the missing for the year 2011 is to receive a payment of 2,000 LYD (equal to 1,469 USD). According to Article 2, this amount is to be regarded as deducted from the amounts provided to the families of the missing under Decree no. 85/2012.
On 31 May 2020, Decree no. 361 on the mandate and organizational structure of the GASIMP was issued by the Presidential Council. The decree preceded the discovery of the mass graves in Tarhuna by a few days. It extensively describes the tasks and competences of each department of the GASIMP and seems to make the GASIMP the sole entity in charge of any operational aspects concerning the issue of the missing (including DNA processing, forensic medicine, registration of missing persons cases, and cooperation with regional and international organizations).

According to Decree no. 361, the GASIMP is to have adequate capacities to search for and identify the missing and record their information; locate the missing in a non-discriminatory manner and regardless of the circumstances of their disappearance; protect, document, and deal with mass graves; cooperate with the competent authorities to determine the identity of corpses for judicial purposes; apply advanced techniques in forensic medicine, genetics, and fingerprinting in identifying the missing; establish an official databank of genetic data taken from the bodies of the missing as well as of those received from the families of the missing; train national staff and develop their scientific and technical skills in accordance with international standards and, in this context, liaise with international and regional organizations and the like regarding scientific and technical (training) programs relevant to the nature of the work to be conducted (Article 2).

In line with Decree no. 361, the registration of the missing section is to work as follows: receive all official documents from the family, which are necessary to open a file; record all data relevant to documenting the incident/event concerning the disappearance; issue a follow-up document concerning the missing persons case; collect DNA samples from the family of the missing; and provide an encrypted number for the samples (Article 6).

The Decree also stipulates that the section in charge of the search for and recovery of remains should operate as follows: deployment of the Reconnaissance Unit to acknowledge the number of remains and their location; extraction of remains according to scientific methods; completion of forms related to remains and hand-over of remains to the Forensic Medicine Section; compilation of data, visual material, and statistics concerning operations of exploration, reconnaissance, extraction, and hand-over of remains, and reburial; compilation of the tracking process in cooperation with the inventory department; taking DNA samples

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80 On 10 October 2020, the GNA president issued Decision No. 1108 appointing the GASIMP president and vice president.
82 Unofficial translation of Decree No. 361.
During their visit to the Office of the General Authority in Tripoli in early July 2020, UNSMIL observed six different laboratories with brand-new US-made equipment, still wrapped in plastic. From a recent evaluation conducted by ICMP (22.11.2020), it seems that the Authority has a well-equipped laboratory – further assessment is ongoing. The Laboratory was initially sponsored by the oil company Repsol and the state-owned National Oil Corporation.

The Decree defines the working modalities of the forensic medicine section as well: after receiving the remains from the section in charge of the search, check and sign forms corresponding to the remains; take radiological pictures of remains; and prepare forensic medical reports after conducting forensic medical examinations, the autopsy, and the examination of other relevant evidence (Article 8). The Laboratories section includes a DNA extraction laboratory, a laboratory for quantitative analysis of DNA, a DNA amplification laboratory and a genetic analysis laboratory (Article 9). An inventory management section takes on the task of creating and maintaining DNA data and files for the families of the missing (article 10).

The GASIMP does not have a criminal investigation mandate – this lies with the Forensics and Criminal Investigations directorates within the Ministry of Justice (MoJ) (see below Section 4.2.). The GASIMP also does not administer martyrs’ benefits to victims’ families. The GASIMP has no operational offices in the east or the south of Libya, and therefore its geographical scope of action is limited to the western part of the country. Nevertheless, the geographical scope of the GASIMP’s mandate is in principle comprehensive (covering the issue of the missing in Libya as a whole).

The GASIMP maintains a hard copy and electronic version (excel spreadsheet) of a database of missing persons cases. Overall, 6,000 missing persons cases are recorded in the GASIMP database (from the east, west, and south of Libya); the GASIMP has also collected more than 14,500 DNA family reference samples and more than 2,500 PM samples corresponding to these 6,000 cases. According to the GASIMP, the main challenge remains DNA data analysis and interpretation as well as the right tools to conduct DNA matching (at the moment the GASIMP has a demo version of the MFISyS DNA matching software; a licensed version is expensive and does not cover all aspects of a missing person’s file).

Concerning DNA Laboratory capacities, the GASIMP reportedly maintains appropriate modern laboratory equipment for DNA identification testing. The Laboratory was initially financially supported by Repsol Oil Company and then by the South Korean Ministry of National Defense Agency for Killed in Action (MAKRI). MAKRI has helped the GASIMP with the construction of a forensic laboratory that will be equipped with refrigerators (the due date is set in 2021). However, the work of the DNA Laboratory has been impacted by financial restraints to purchase kits and reagents. The DNA Laboratory has ten technicians (eight with MSc level degrees; two with BSc level degrees).

Concerning GASIMP’s capacities and competences, between 2012 and 2016, ICMP provided extensive training for Libyan experts involved in investigating mass graves, from field to mortuary training and other courses related to recovery and identification. More than 50

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MAFMM staff were trained; most of those employees are now working under the GASIMP. Some of these employees who have received training from ICMP are also operating in Tarhuna.

Challenging areas in the work of this institution include:

- Lack of budgetary allocations in 2019 and 2020;
- Lack of transport vehicles; and
- Basic DNA interpretation capabilities;
- Lack of expert capacity in forensic pathology – the presence of a forensic medicine section needs to be boosted with the necessary skillsets and competences for this section to be fully operational;
- Lack of expert capacity in forensic anthropology examinations, and limited capabilities in expert forensic archaeological recovery of remains;
- Lack of advanced data recording and processing capacities and resources.
General Authority for the Care of the Families of Martyrs, Missing Persons and Amputees (GACFMMPA)

The GACFMMPA was established in 2016 following a decision (Decision no.10) adopted by the Libyan government. The Authority had the mandate to formulate policies and plans, and prescribe implementation procedures for the legislation in force in its field of competence. It also had responsibility for developing plans and investment projects concerning families of martyrs and missing persons and setting up the necessary implementation controls. In June 2020 the Prime Minister allocated a budget of 100 Million LYD (more than 22 Million USD) to the GACFMMPA.

4.2. OTHER RELEVANT INSTITUTIONS

Concerning the work of other relevant institutions dealing with the issue of the missing, in 2012 a DNA laboratory operating under the Criminal Investigation Directorate of the Ministry of Interior (MoI) was established; in 2013 the Laboratory became the National DNA Center, an entity operating under the MoI. According to the Head of the Center, the Laboratory has issued thousands of DNA profiles and contributed to identifying hundreds of bodies belonging to missing persons.

Apart from the role of the MoJ, the MoI, the Ministry of Health (MoH), this section will also consider other - relatively new - institutions. Since 2011, Libya has initiated the establishment of some transitional justice-focused institutions. The current situation shows that these need to be strengthened and enabled to work in line with the rule of law.

95 Value in USD according to the exchange rate at the time of writing.
97 Account provided to ICMP by Senior Expert (pro bono), Dr. Othman A. Mohamed.
98 idem
4.2.1. Ministry of Justice

Department of Forensic Medicine at the Centre for Judicial Expertise and Research (CJER)

The mandate of the Department is spelled out under Article 3 of Decree No. 54 of 2002 of the Former General Peoples Committee (it is also addressed under Decision of the Prime Minister No. 50 of 2012 on the Re-organization of the MoJ); the mandate includes the following:

- Providing technical expertise to the courts, prosecution offices, and other judicial authorities in relation to criminal laboratory work;
- Analyzing materials and samples;
- Studying criminal acts and phenomena, determining their causes, following up on their development, and proposing ways to combat and reduce them;
- Conducting legal and judicial research and studies related to crimes and possible punishments;
- Forensic affairs; and
- Collecting and following up to relevant international agreements and scientific publications, and participating in seminars and conferences at the national and international level.

The center has the right to seek the assistance of scientific and technical expertise in accordance with the legislation in force to perform its work (Article 4, Decree no 54). It has sub offices in Misrata, Alkhoms, Sabha, Sabrata.

In terms of challenges, although this is the biggest national forensic department in the country and has a heavy workload, it has been reported that it needs support to strengthen or acquire technical capacities and resources, and to upgrade them (notably in relation to the DNA Division under the Pathology section). The CJER\(^9\) is the only institution that, in accordance with the laws, is in charge of the examination of unidentified human remains, sample taking, and storage.

The CJER has received assistance from the International Committee of the Red Cross (ICRC).\(^90\) In 2019, the ICRC provided the Forensic Medicine Department with 2,500 body bags, 100 kits “for the management of the dead,” five portable autopsy kits and other material for the morgues under the umbrella of the CJER in the western and eastern parts of Libya.\(^91\) Moreover, the ICRC assessed the needs of five mortuaries and conducted an operational assessment of Tripoli CJER Genetic Lab with a forensic geneticist and provided recommendations for further development.\(^92\)

\(^{89}\) Interview by ICMP Consultant, 17-18/11/2020.


\(^{91}\) Id., p. 2.

\(^{92}\) Id.
**Prosecutor-General’s Office**

Competences of the Office are addressed under the Criminal Procedure Code (see above under Section 3.3.) and its amendments. For investigations, it depends on the MoJ’s forensic capacity and on the Criminal Identifications Directorate of the Ministry of Interior (MoI).

The Investigations Department of the Prosecutor-General’s Office\(^93\) has been working closely with the International Criminal Court (ICC) team in relation to investigations of mass graves in Libya (see chapter VI concerning Tarhuna for more details).

**Forensic Medicine Committee (also known as “Mass Graves Committee”)**

On 10 June 2020, the Libyan Minister of Justice issued Resolution No. 411 of 2020, forming a committee under the supervision of the Prosecutor-General’s Office. The establishment of the Committee followed a visit of the Minister of Interior to the city of Tarhuna.\(^94\)

The Forensic Medicine Committee’s mandate includes:

- To excavate mass graves;
- To recover human remains and locate places where human remains might be buried;
- To determine the circumstances of death; and
- To identify the victims and preserve unidentified bodies temporarily, until they are identified in line with legally recognized methods.

The Committee is now working on the exhumation of graves discovered in and around Tarhuna. According to Resolution No. 411, the committee consists of five representatives from the CJER – MoJ, one representative from the Field Medicine Support Center of the MoH and one representative from the GASIMP.

**Joint Committee for Monitoring and Documenting Violations of Human Rights**

The Joint Committee was established by Presidential Council Decree No. 735 of 2019. The Committee has addressed the issue of bodies found in Tarhuna General Hospital and in other locations. It has been involved in clarifying responsibility for the events connected to the Tarhuna mass graves.\(^95\)

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\(^95\) The committee has experienced internal tensions and changes in its composition that have slowed down its work. Anadolu Agency (18 October 2020): [https://bit.ly/3mzLQ0](https://bit.ly/3mzLQ0)
The Committee recently reviewed cases of victims of landmines in areas of southern Tripoli previously controlled by the forces of General Haftar. It also addressed the issue of bodies found in mass graves around Tarhuna following the withdrawal of militias allied with General Haftar. The Joint Committee recently confirmed that it will continue its attempts to track down those responsible for the mass graves.\textsuperscript{96}

\textbf{4.2.2. Ministry of Interior}

\textbf{Criminal Investigation Directorate (CID)}\textsuperscript{97}

The mandate of the CID is laid out in Decree No. 92 of 2013; it includes:

- Preparing and implementing security measures related to crime prevention and control;
- Preparing and implementing joint security plans to ensure the maintenance of security and public order in the country;
- Conducting identity work, evidence work, and criminal laboratory work;
- Carrying out investigative work, including gathering evidence in cases of serious crime;
- Preparing studies and research related to causes of crime and methods of prevention;
- Ensuring technical supervision and coordination of the criminal investigation departments in the National Security Directorates to support efforts to prevent and combat crime;
- Detecting and inspecting explosives and working to dismantle them;
- Cooperating with the corresponding agencies, including Arab, regional and international organizations dealing with combating crime, to benefit from their expertise and capabilities in this field.

The CID’s primary task is to combat all types of crimes on the territory of Libya and to investigate the perpetrators anywhere.\textsuperscript{98} Various areas of work are covered by the CID, including crime-scene management and bloodstain-pattern analysis, biological screening and DNA analysis; and fingerprinting. The CID has several specialized departments, including a laboratory and Forensic Department. The laboratory is located in the Salahaddin area, which was in the conflict zone during the fighting in 2019-2020. Based on pronouncements by CID officials during meetings with international agencies, it follows international standards and SOPs in its work.

\textsuperscript{96} Middle East Monitor (2020). Op. Cit.
\textsuperscript{97} Decree No. 1565 from MoI to appoint General Bokra.
\textsuperscript{98} Criminal Investigation Directorate/MoI official website: https://www.cid.ly/wp/main-page/
Directorate for Combating Illegal Migration (DCIM)

The DCIM was created in 2012 to oversee detention centers and integrate militia-run facilities into the state system.\(^9^9\) As of 1 August 2020, there are 11 official detention centers in Libya run by the DCIM. According to data from IOM and UNHCR, approximately 1,760 migrants out of the estimated 625,000 migrants in Libya are in the DCIM-run detention centers, although IOM’s data only covers eight of the eleven DCIM facilities.

Official detention centers in Libya are unable to operate effectively without the support of armed groups.\(^1^0^0\) This creates a situation in which even the official centers are poorly maintained and questionable practices are allowed to take place. The DCIM is trying to increase its influence over non-official centers, often unsuccessfully given its lack of leverage over the armed groups that run them. There are currently no regulations or guidelines in Libya that stipulate how long migrants should be detained or how they may be released.

Human Rights Affairs Office

In 2018, the Minister of Interior of the Government of National Accord, issued a decree to establish the Office of Human Rights Affairs, directly reporting to the MoI. According to Decree No. 1950 (2018), the Office for Human Rights Affairs consists of a complaints and communications unit, an investigation and information gathering unit, an investigation and evidence gathering unit, and a follow-up and reporting unit.

The Office of Human Rights Affairs is competent to:

- Investigate and collect allegations about human rights conduct of employees of the agencies affiliated with the MoI and other inspection agencies not affiliated with the Ministry;
- Receive communications and complaints; and
- Edit records and undertake criminal procedures in accordance with the provisions of the relevant criminal and legislative procedures law.\(^1^0^1\)

The office also:

- Hears witness testimony,
- Seeks expert assistance and conducts necessary investigations,
- Inspects and seizes implements, devices, equipment or other items used in the commission of a crime,
- Conducts arrests, and personal and location searches with the help of judicial officers of the directorate associated with the case being investigated, and
- Refers evidence of crimes to the competent public prosecution, and coordinates with it regarding the implementation of orders issued by the prosecutor or the competent court.

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\(^1^0^0\) Malakooti (2019). Op. Cit., p.5-8

\(^1^0^1\) See a post from MARSAD the Online Security Sector Observatory: https://bit.ly/396vCDz
The Office of Human Rights Affairs is mandated to follow up on all written or published reports and news about human rights violations in Libya in order to investigate and respond to them, as well as reports by local and international human rights organizations regarding human rights violations.

**4.2.3. Ministry of Health**

**Field Medicine Support Center (FMSC)**

The FMSC has three laboratories (chemistry and toxicology, genetics, and pathology) and covers various disciplines, including facial identification, dactyloscopy, and genetics. The center has recently increased its staff from 200 to 1,000 medical staff and administration personnel. The FMSC operates 13 field hospitals and 20 ambulance bases covering all areas from Abu Shaybah, south of Gharyan, to the outskirts of Sirte. The FMSC works with the Office of the Prosecutor-General as part of the Forensic Medicine Committee to recover bodies from mass graves, and is involved in the MoJ Forensic Medicine Committee created in June 2020. The Center reportedly works according to international standards and SOPs.

**Tripoli Hospital Morgue**

The hospital has collaborated with the Medical University of Vienna in training and education projects to improve Libya’s overall healthcare service delivery. The hospital’s performance has also been improved through the modernization of equipment and IT resources.

The morgue has reportedly been very slow in contributing to identifying the remains recovered from mass graves in Tarhuna and other areas.

**4.2.4. Minister of State for Migrants and Displaced Persons Affairs**

The Minister was appointed after the Libyan Political Agreement in 2015, with Presidential Council Order no. 12 of 2016. The minister is responsible for measures to support Internally Displaced Persons (IDPs), Libyan nationals abroad, and migrants in Libya. The minister also facilitates the services of international organizations working in the humanitarian field in Libya.

The minister and the GNA played a vital role in concluding a reconciliation agreement between Misrata and Tawergha in 2018 with support from UNSMIL and the UN Office for the Coordination of Humanitarian Affairs (UN OCHA) in Libya allowing the return of 48,000 IDPs to Tawergha and paving the way for developmental projects in the city.

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105 Peace treaty signed between Misrata, Tawergha in Libya, 4 June 2018 see: http://www.xinhuanet.com/english/2018-06/04/c_137229021.htm
Since June 2020 the minister has held several meetings with Libyan officials to discuss the difficulties that IDPs from Tarhuna are facing in returning to their homes.\textsuperscript{107}

\section*{4.2.5. Independent Institutions}

**Fact-Finding and Reconciliation Commission (FFRC)**

Law no. 29 (2013) (also known as the Transitional Justice Law) provides for the establishment of the FFRC\textsuperscript{108} under the General National Congress (GNC) (see above Section 3.3.). The Commission, which has legal personality and financial independence, is mandated\textsuperscript{109} to:

- Examine the issue of missing persons and detainees, issue adequate decisions in order to take the necessary measures to address this issue, as well as measures to ensure a dignified life for their families;
- Conduct fact-finding on severe and systematic human rights violations and determine the identity of those involved in them;
- Draw a complete picture of the nature, causes and scope of severe human rights violations during the former regime;
- Issue adequate reparation decisions for victims in all forms, including material compensation, memorialization, treatment or rehabilitation, and the provision of social services.

Although the FFRC has judiciary police powers,\textsuperscript{110} it does not have the explicit power to order experts to conduct exhumations and autopsies and preserve forensic evidence. Reportedly, various types of external technical support (e.g., by UNSMIL, United Nations Development Program, the International Center for Transitional Justice, the United States Institute of Peace, and the Netherlands Forensic Institute) have been provided to the Commission since 2012.

**National Council for Civil Liberties and Human Rights (NCCLHR)**

The NCCLHR was established on 29 November 2011 by Law No. 5 (2011) issued by the National Transitional Council. Its mandate is to promote the protection of civil liberties and human rights, promote awareness of and contribute to ensuring the practice of civil liberties and human rights and monitor and deter violations. It also encourages and supports CSOs in protecting these values and\textsuperscript{111} publishes reports on human rights violations.\textsuperscript{112} The NCCLHR is

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\textsuperscript{107} See short account posted by Libya Al Aan News Agency on their Facebook Page (25 June 2020) https://www.facebook.com/libyaalaanvt/photos/a.1625819397659373/2601940843380552/?type=3&theater
\textsuperscript{108} The specialized departments within the Commission are defined in Article 8 of Law No. 29 as follows: Department for revising legislation relevant to transitional justice; Fact-finding department on public and collective violations of human rights during the former regime; Fact-finding department on individual violations; Department of Displaced Persons; Department of Arbitration and Reconciliation.
\textsuperscript{109} Cf. Article 7, Law no. 29 (2013), DCAF unofficial translation.
\textsuperscript{110} According to Article 16, “the FFRC shall have the power to order individuals, inspect locations, seize and seal documents and evidence, and visit locations relevant to the subjects under investigation. The individuals designated in a decision issued by the president of the FFRC’s Administrative Board shall have judicial police powers in this regard”.
\textsuperscript{111} The National Council for Civil Liberties and Human Rights, ‘Universal Periodic Review Submission, State of Libya,’ 22\textsuperscript{nd} session (Apr-May 2015), paras. 18-30.
\textsuperscript{112} UN Doc. A/HRC/WG.6/22/LBY/1 (2015), op. cit., paras. 36-37.
also mandated to:

- Develop a national action plan to enhance the protection of public freedoms and human rights in Libya in cooperation with human rights agencies and CSOs, and propose means to implement the plan to the relevant authorities;
- Propose legislation in the field of protecting public freedoms and human rights, and making recommendations to the competent authorities, as well as providing advice to the security services and the Ministry of Justice in this regard as needed;
- Receive complaints related to violations of public freedoms and human rights and refer these to the competent authorities with the necessary follow-up and information to concerned parties about legal procedures;
- Cooperate with national and international organizations and agencies concerned with human rights, in a way that contributes to achieving the council’s goals and developing its relations with other agencies; and
- Raise the attention of the judiciary to any law or decree that includes a violation of public freedoms or human rights, as well as working with the legislative authority to avoid enactment of any legislation that violates human rights.

In 2013, a partnership was formally established between the NCCLHR and the Danish Institute for Human Rights, the result of which was the adoption of a strategic action plan in 2014.113

4.2.6. Institutional aspects concerning Civil Society in Libya

In 2017 Prime Minister al-Sarraj established a dedicated ministry of state114 to deal with matters relevant to civil society. A commission was also established to deal with aspects such as registration of CSOs, monitoring of their actions, and relations with international actors.

The Civil Society Commission115 originally fell under the then Ministry of Culture and Civil Society (in 2017 the Ministry was transformed into an independent General Authority for Culture). The Commission was established by Council of Ministers Decision No. 649 (2013) amending Decision No. 12 (2012). This body is responsible for registering CSOs, approving their charters and monitoring them to ensure that they carry out their work in accordance with the legislation in force. It also provides CSOs with logistical and technical support and advice. To date, the Commission has registered more than 3,000 such organizations.

The Commission regulates the work of international CSOs that wish to operate in Libya, in coordination with the competent authorities and in accordance with the legislation in force. The Commission also adopts plans and programs to enhance its work and build the capacities of its staff, and it organizes and sponsors workshops and training programs to develop the capacities of the staff of CSOs, in cooperation with national and international agencies and institutions.

114 In the Libyan governmental system, the minister of state is a “junior” minister who has the duty to assist in specific activities or issues; the minister of state has no department or portfolio.
As early as 2011, the MoJ with its CJER (and notably its Department of Forensic Medicine) was strongly involved in dealing with the issue of the missing. In 2011, a new laboratory was established under the MoI. The CJER collaborated with the MoI-based laboratory and, successfully obtained DNA results. In that early period, international organizations and international aid was also provided. The issue of the missing is nowadays mainly under the remit of the GASIMP; however, the creation of new committees and ad hoc agencies requires stronger inter-agency/inter-institutional cooperation.

Some cooperation frameworks exist in the country. For instance, a recent example is represented by the work conducted under the umbrella of the forensic medicine committee (also known as the mass graves committee) established in June 2020. Within this committee, the MoJ and the GASIMP are closely collaborating in relation to the mass graves discovered in and nearby Tarhuna. As for relations between the MoJ and the MoH, in September 2020 discussions were initiated by both institutions to establish a new DNA laboratory for the identification of missing persons in Libya.116

4.4. OVERVIEW OF THE INSTITUTIONAL FRAMEWORK

The overview below does not include all ministries and ministries of state that are placed under the GNA, only those ministries and departments and other institutions that seem to have a direct or indirect role in addressing the issue of the missing. The different color used for the ministry of state/migrants and displaced persons is due to the fact that in the Libyan governmental system a minister of state is a “junior” minister who has the duty to assist in specific activities or issues; the minister of state has no department or portfolio.

Figure 2: Overview of the institutional framework
4.5. EASTERN LIBYA-BASED INSTITUTIONS

The Office of Injured and Missing Persons

An office dedicated to Martyrs, Injured and Missing Persons has been established under the control of the LNA. The issue of the missing is solely associated with war operations. This office has been subject to criticisms, including lack of responsiveness towards the families of victims and corruption. Recently peaceful protests took place in Benghazi against it, and protesters were summoned and interrogated.

Center for Judicial Expertise and Research (CJER) - Ministry of Justice/Interim Government

The center was established in 2014 after the relocation of the interim government (the parallel administration in the east of the country) from Tripoli to al-Bayda. It has an analogous mandate to the CJER in Tripoli; it was part of the comprehensive transition of institutions from Tripoli to al-Bayda in 2014. The center has forensic experts and consultants; it has active branches in many cities in Eastern Libya (Benghazi, Derna, Al Abyaar, Tubruk and the main office in Al Bayda).

The center is responsible for activities in Eastern Libya, including excavation, exhumation and identification of human remains, in coordination with public hospitals and universities. It has a laboratory for analysis, to examine all the cases referred to it by the Public Prosecution, concerning narcotics, including hashish, chemical compounds, heroin, cocaine and hallucinogenic drugs; it also has a biological and pathological analysis section in addition to a toxicology department, which is responsible for identifying causes of death related to contamination.

The center also tackles issues such as counterfeiting, detection of forgery, environmental pollution and oil pollution; it has a department of antiquities and a department of agricultural expertise. The center exhumed graves in Derna (previously stronghold of ISIS’s Wilayah al-Barqah) after the end of the conflict with extremists in 2018. In 2018 it signed an agreement with the “Benghazi International University for Medical Sciences” to coordinate autopsy and forensic work between the University and the forensic medicine office in the Benghazi branch. Agreement was also reached to conduct training courses on autopsies for technicians from the center.

In January 2020, employees of the Judicial Expertise and Research Center, consultants, experts, doctors and technicians, announced the suspension of their work as a protest against the decision issued by the Minister of Justice to move the headquarters from the city of al-Bayda to Benghazi. The center resumed its work in al-Bayda shortly after the suspension.

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117 Interview with Omar Hijaazi in 2018 here
118 News on graves in Derna here.
119 See the Agreement between Medical School and center referred to here.
120 See news report (24 January 2020) here
Benghazi Medical Centre

The Benghazi Medical Center (BMC) was established in the 1970s, and its completion was delayed until the beginning of 2006. It is the largest hospital in the Libyan city of Benghazi. In 2007, France and Libya joined forces to complete, equip and manage the center, making it a center of excellence at the regional level, to train medical and paramedical personnel. The first phase of the center was completed in 2009. The center has a separate building for forensic medicine. The BMC has been engulfed in a number of scandals, related in particular to the management of a morgue, and several senior staff members were arrested in 2017 on grounds of professional negligence.\textsuperscript{121} Between 2015 and 2017, the BMC dealt with the problem of “overcrowding” of human remains of unidentified fighters (likely non-Libyan fighters or from forces that had fought against Haftar’s militias in Benghazi).\textsuperscript{122}

DNA Analysis Center in Al-Bayda

In 2016 the head of the interim government (the parallel administration based in Eastern Libya) established a DNA analysis center to support the interim government in identifying human remains found during the conflict in Eastern Libya. The center works under the CJER of the Ministry of Justice of the Interim Government. The Director of the Media Office of the Judicial Expertise and Research Center in Eastern Libya during an interview with Middle East news in March 2020\textsuperscript{123} indicated that “despite the importance of the needed devices for conducting DNA analyses and the presence of medical and technical staff trained to deal with it, the laboratory has not worked until now due to a shortage of operational materials, which are being imported from abroad”\textsuperscript{124}.


\textsuperscript{122} See news report (2017) here

\textsuperscript{123} Interview with Middle East news (23 March 2020) – see here.

\textsuperscript{124} The same issue facing the GASIMP in Tripoli lack of operational materials they have mentioned “samples” and they need at least for the moment 1000 sample and the one costs 1000LYD.
V. ACCOUNTING FOR MISSING PERSONS: PROCEDURES, INVESTIGATIONS, AND OTHER EFFORTS

Libya started dealing with the missing persons issue during the 2011 revolution by collecting as much information as possible regarding missing persons, mass graves, and families of the missing, as a result of the 2011 events and actions committed during the Qadhafi regime. The issue of the missing has been prominent since the period following the events of 2014.

In countries that are in transition or that are emerging from violence, the issue of missing persons often exacerbates existing deficiencies in investigative capacities at both the administrative and the technical level. As a result, large-scale missing persons-related issues can become an obstacle to building overall domestic capacity to implement the rule of law fully. While it is especially important to support and strengthen regular law-enforcement operations, including the capacity to conduct forensic investigations, there is also the risk that large-scale missing persons-focused investigations may exceed domestic forensic capacities and thus impair the development of rule-of-law based regular investigative capacity. An account of procedures, investigations and other efforts in Libya is provided below.

5.1. REPORTING A MISSING PERSON

In theory, families of the missing can approach a police station in their area and report a missing person. Statements are taken before a missing persons investigation file is opened. Each reported case should be officially documented with the GASIMP. Police stations do not have access to an electronic database and reports are documented on paper; information emerging from investigations conducted by prosecutors is also reported to be maintained in paper format, as computers are used only in some courts and on a very small scale; both aspects are problematic for record keeping, readily accessing information, and maintaining accountability.

The situation on the ground is complex and fragmented due to the widespread presence of groups and militias that have been accused of kidnapping and forced disappearances. Civil society activists also denounce instances of threats and retaliation against families that report a disappearance.

In cases of kidnappings, some families are not willing to report in light of potentially dangerous consequences for their relatives and for themselves. Others, depending on the particular circumstances of their case, have approached the Office of the Prosecutor-General, which is the responsible institution in cases of abductions and kidnappings. Challenges arise related to under-resourced law enforcement agencies and prosecutors, and this has had a significant impact on their capacity to launch and conduct effective investigations into missing persons cases.

125 Situation emerging from interviews conducted by ICMP consultants.
126 See, for instance, Libyan Justice - Unforgotten: Enforced Disappearance in Libya - Lawyers for Justice in Libya (libyanjustice.org)
5.2. FORENSIC INVESTIGATIONS AND IDENTIFICATION-RELATED WORK AS PART OF THE INVESTIGATIONS

The Criminal Investigation Directorate (CID)\textsuperscript{128} under the MoI is in charge of the investigation of physical crime scenes including mass graves, without authority to deal with excavations. The establishment of the Forensic Medicine Committee in 2020 highlights the importance of inter-institutional cooperation in relation to any excavation-related work, and notably among the MoJ, the MoH, and the GASIMP. The latter remains the leading institution in the current excavation work being conducted at the Tarhuna site, in close collaboration with the office of the Prosecutor-General and the MoH.

The Forensic Medicine Department (FMD) within the MoJ is responsible for forensic examinations and subsequent autopsies. The Forensic Medicine Department has three laboratories consisting of toxicology, genetics, and pathology, while the MoI has its own laboratory, which raises issues with sampling and analysis duplication between the Forensic Medicine Department and the CID. Duplication can cause confusion with collection, storage, and record keeping, and can undermine the closing of cases and the overall identification process.

Site assessments are conducted by landmine specialist and professional teams prior to any forensic work by experts. This follows tragic events in the past where crime scenes have been staged and the location has been booby trapped.\textsuperscript{129} As a result of such incidents, it is now common practice for forensic teams to wait until the area has been completely assessed and cleared, prior to undertaking any forensic work.\textsuperscript{130}

Regulations addressing DNA testing and forensics are rather limited. Forensics was introduced in the Libyan legal framework when the MoJ issued Decree No. 360 of 1991 on the internal organization of the Secretariat of Justice.\textsuperscript{131} The establishment of the CJER (MoJ) with Decree No. 54 of 2002 represented another advance as the center had a Forensic Medicine department which was to employ experts and scientists in the field. Specific areas of expertise, however, were not specified. Despite the legislation examined above on the establishment of the GASIMP, its mandate, and organizational structure, there is no legal text or policy at the national level that regulates procedures for taking DNA samples, other than the fact that the GASIMP is one of the main authorities authorized to do this in the context of missing persons cases.

As for identification work through DNA-led processes, the GASIMP conducts DNA-related work\textsuperscript{132} in relation to the issue of missing persons by means of its laboratory facilities (for more details, see above section 4.1). The MoJ, the MoI, and the GASIMP have highly educated staff

\textsuperscript{128} CID/MoI works in line with BTI’s protocol.
\textsuperscript{129} Information from interviews conducted by ICMP consultants.
\textsuperscript{130} ibid.
\textsuperscript{131} Art. 15.
\textsuperscript{132} The process of identifying the remains of missing persons through DNA comparison requires: collecting data on missing persons from their families, including genetic reference samples; matching DNA from human remains with DNA from family members; official determinations of identity and cause and manner of death; issuing of death certificates; and returning the remains of the missing to their families. All these elements require various degrees of participation of competent public authorities.
in to conduct basic DNA analysis, many of them trained abroad.

The MoJ, the GASIMP, and the MoI maintain DNA identification capabilities and laboratories to conduct DNA identification work (see above under Sections 4.1 and 4.2).\(^{133}\) According to Al-Mijrabs and other authors, Libyan laboratories need to develop an international standard quality assurance system in order to demonstrate technical reliability and competence.\(^{134}\) Accreditation is still a new issue for laboratories in Libya, where new accreditation strategies are being implemented by focusing on difficulties and obstacles.\(^{135}\)

Depending on the jurisdiction, both the Ministry of Interior and the Ministry of Health exercise authority over mortuaries; post-mortem examinations and autopsies are performed to determine cause of death, however medical examiners are over-worked, dealing with matters outside the scope of their duties (e.g., illegal abortions, disputed paternity, among a range of other cases).\(^{136}\) Challenges have arisen with respect to post-mortem examinations where mortuaries are not properly equipped and lack the resources and equipment to overcome these shortcomings; till recently there were no imaging rooms for plain X-ray or associated histopathology labs for specimens taken during post-mortem examination.\(^{137}\)

Apart from visual identification\(^ {138}\) – which is recognized by the Office of the Prosecutor-General as one of the options to be followed for identification, DNA-sample collection is also undertaken in relation to human remains thought to belong to migrants. The Department of Forensic Medicine (CJER/MoJ) holds DNA profiles of unidentified bodies thought to be connected to irregular migration. Many of the victims were killed by armed gangs or during their journey. Although the mandate of the GASIMP covers all missing persons, in reality the GASIMP is not in charge and does not deal with migrants going missing in Libya (recovered from the sea or in the desert). After human remains have been recovered, DNA samples are taken and preserved in the laboratory of the Department of Forensic Medicine (MoJ). At the moment, more than 3,000 DNA samples are stored in the MoJ facilities. Following the attribution of forensic results, burial procedures are conducted. The whole process is supervised by the Prosecutor-General’s office. Reports by activists point to human remains belonging to migrants disposed in landfill sites by some municipalities; this is done on the premise that decomposition of human remains hampers the possibility of disposing of the bodies in individual burial sites.\(^ {139}\)

The CID/MoI has stressed that the main challenge in terms of DNA identification is at the operational level: equipment in use is outdated and some software needs to be upgraded; the main site where the MoI laboratory was located has been severely affected by shelling and

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\(^{133}\) Evaluation by ICMP personnel of the laboratories has not been possible in the course of the assessment work.


\(^{135}\) ibid


\(^{138}\) The traditional method of identification (identification by visual recognition of mortal remains and/or personal belongings) is not exact and involves an increased risk of error.

\(^{139}\) Information provided to ICMP consultants on condition of anonymity.
there are difficulties related to moving the equipment. Also, the CID/MoI is using "NET Bio\textsuperscript{140}\" to conduct analysis, but this is posing challenges (e.g., if a sample is contaminated, it won’t produce a result). For the Department of Forensic Medicine of the MoJ, data interpretation remains problematic. The GASIMP has identified a need for advanced DNA data analysis techniques including those applied to highly degraded samples; capacity-building support in this respect has been requested from ICMP.

Among the methods for primary identification, Decree no. 361 of 2020 stipulated that the GASIMP is to have adequate capacities to apply advanced techniques, including in the recovery of fingerprints in identifying the missing. Yet, it remains unknown whether this method has been used by the GASIMP. The CID/MoI also makes use of fingerprinting techniques and manages a fingerprint database.

5.3. OTHER TYPES OF EXPERTISE IN THE INVESTIGATION PROCESS

Immediately after 2011, mass grave sites were processed without the presence of forensic archaeologists and anthropologists, due to the absence of these expert disciplines in the country\textsuperscript{141}. training provided in the following years by ICMP and others has proved beneficial to the improvement of the work of relevant institutions. Yet, forensic archeology and anthropology is considered a subject-matter area where advanced knowledge must be acquired and incorporated by various relevant institutions, including the GASIMP.

\textit{Staff members from the Libyan Ministry for the Affairs of Families of Martyrs and of Missing Persons during a 2014 two-week training course at ICMP’s facilities in Bosnia and Herzegovina. Photo: ICMP}

\textsuperscript{140} NET BIO is an open source bioinformatics and genomics library created to enable simple loading, saving and analysis of biological data.

Forensic pathology specialist expertise was not widely present in Libya at the time of the ICMP program (2012-2014); authorities relied on Sudanese experts. To date, forensic pathology expertise remains scarce (and mainly in the Ministry of Justice; the GASIMP, for instance, relies on external consultants). Likewise, forensic archaeology was not widely present between 2012-2014 and remains scarce; the few professionals in this field are reportedly highly skilled and have received a good level of education (mostly abroad).

5.4. INFORMING AND SUPPORTING THE FAMILIES

The GASIMP directly interacts with the families at various stages, including by recording information on missing persons cases and collecting genetic data. There is no evidence of dedicated personnel providing psychosocial support to families.

No legislation guarantees the protection and privacy of data shared by families. DNA data collection is relatively recent in Libya, and local communities, particularly older generations and those with little education, lack awareness of DNA reference sampling and procedures; cultural and religious barriers also cause apprehension about dealing with modern technology.

There is no evidence of any outreach effort to families of missing migrants.

Decree No. 28/2012 on the Organization of the Executive unit of the MAFMM included, among the competences of the MAFMM, the overseeing of the provision of moral support to martyrs’ families (the same was not acknowledged for families of the missing). There is no evidence that this type of support has been provided while the MAFMM operated in Libya.

A person’s name, status, and location (region, city, and district), and the 2011-event positioning of the person are among the main factors behind disappearances in Libya. The last factor seems to have a direct impact on the type of information and the support that families receive. Various accounts, and the legislation above (see Section 3.3), highlight different treatment reserved for those missing and their families when they are perceived as having been pro-Qadhafi. For instance, people from Tawergha have been impacted by the issue of the missing, but their cases are reportedly not given the same attention as those missing, for instance, from Tarhuna.
5.5. DEATH REGISTRATION AND DEATH CERTIFICATES

Civil Status Law No. 36 of 1968 explains in detail how to register a death in different circumstances. The death of a Libyan citizen in Libya or abroad must be registered within 24 hours at an office of the civil registry, a health office, a hospital, a doctor or a consul. Direct family members of the deceased, a doctor or the person in charge of the location where the death occurred can report the death (article 34). After notification of the death, the identity of the deceased must be confirmed by the civil registry office, mukhtar or tribal chief depending on the context. After examination procedures are completed, the civil registry office, mukhtar or tribal chief will draft a death certificate and issue a burial permit; however, if the official assigned to examine the deceased suspects that the death was due to unnatural causes, the official will notify the nearest police station and will not issue a death certificate or burial permit until the competent investigation authorities allow him to do so. Two copies of the death certificate will be filed at the civil registry office and an original is given to the person concerned. To register an unnatural death, a report from the doctor who confirmed the death and a report from the Court or the Prosecution are needed. While, in principle, families of missing persons should have the right to object to the closing of a missing persons file, the legislation in place does not address this issue.

5.6. DATA PROCESSING

Data and information concerning the missing are recorded electronically (excel spreadsheet) and in hard copy format by the GASIMP. These methods are considered problematic as they are more prone to human error and do not facilitate secure data sharing. Currently there are no data protection laws in Libya defining the use and protection of personal information and data derived from DNA profiling.

In 2012, ICMP donated desktop-based software to the then MAFMM. The Forensic Data Management System (fDMS) was to support the recording, processing and tracking of all data concerning efforts to find a missing person and to facilitate that process from mass grave reconnaissance, to collecting data from families, matching data, and closing a missing persons case. Specifically, the fDMS had three specialized applications, the post-mortem application (Examination Application), the missing persons application, and the relatives/families of the missing application.

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147 Law no. 36 (1968), article 37.
148 Idem, article 38.
149 Law no. 36 (1968), unofficial translation by DCAF, articles 32-45.
VI. CASE STUDY: TARHUNA AND OTHER AREAS

6.1. SETTING THE SCENE

On 5 June 2020, forces loyal to the GNA entered the city of Tarhuna (this event occurred a day after the GNA announced the recapture of the entire Greater Tripoli area). Tarhuna was General Haftar’s final stronghold in Western Libya. Following the fall of the city, the government’s Turkish-backed forces initially faced accusations of human rights abuses. With the discovery of mass graves, attention immediately turned on Haftar’s side.

On 5 June 2020, reports pointed to the discovery of more than 100 bodies, including women and children, in a hospital in Tarhuna. The Minister of Health declared that some of the bodies had signs of torture and execution. On 9 June 2020, workers from the GASIMP started recovering bodies from a mass grave in Tarhuna. On Twitter and Facebook posts on 10 June 2020, the military wing of the GNA posted images and videos of the purported mass grave, which it said included the handcuffed body of a 12-year-old girl. On 12 June 2020, the Minister of Interior (GNA), Fathi Bashagha, said that dozens of bodies had been found in at least eight graves with some victims appearing to have been buried alive. Separately, investigators found a shipping container filled with charred bodies, possibly of detainees. The Minister accused al-Kaniyat – a militia supporting Haftar’s forces – of “heinous crimes.”

UNSMIL noted “with horror” the discovery of the mass graves and reiterated the fact that international law “requires that the authorities conduct prompt, effective, and transparent investigations into alleged cases of unlawful deaths”. In a statement delivered by a spokesperson on 12 June, UN Secretary-General, António Guterres, said he was “deeply shocked” by the finding of the graves. He called for “a thorough and transparent investigation, and for the perpetrators to be brought to justice... [and] once again reminds all parties to the conflict in Libya of their obligations under international humanitarian law and international human rights law,” the statement added.

In the second half of June 2020, UNSMIL reached out to ICMP to seek support in investigating mass graves recently discovered in Tarhuna and collecting DNA evidence through dedicated capacity-building activities. On 22 June 2020, the UN Human Rights

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150 Libya: 100+ bodies found in hospital of Tarhuna city (aa.com.tr) (5 June 2020)

151 Pictures circulating on the Internet and social media show investigators in plastic suits cataloging the decomposing bodies; the NYT also reports that they would use DNA samples to assist with identification. See NYT, U.N. Expresses Horror at Mass Graves in Libya, 13 June 2020 https://www.nytimes.com/2020/06/13/world/middleeast/libya-mass-graves.html


154 See announcement on UNSMIL Twitter Official Account here: https://twitter.com/UNSMILibya/status/1271107079508561927?s=20

155 A Letter by the ASRSG/UNSMIL was sent to ICMP on 29 June 2020. Available upon request.
Council passed a resolution\textsuperscript{156} to establish a fact-finding mission to investigate violations and abuses of international human rights law and IHL committed by all parties to the conflict in Libya. The mission also has a mandate to preserve evidence with a view to ensuring that perpetrators of such violations are held accountable.

6.2. WORK CONDUCTED IN TARHUNA SINCE JUNE 2020

6.2.1. Background

In the initial stages of the exhumation work and operations concerning the discovery of mass graves in Tarhuna, coordination among institutions appeared to be problematic.

On 10 June 2020 a committee was established (see above MoJ – Forensic Medicine Committee, under Section 4.2.1.) to deal with mass graves – including those in Tarhuna – and to coordinate various institutions’ efforts. The work of the Committee is supervised by the Office of the Prosecutor-General, which remains central in all the operations conducted so far in and nearby Tarhuna. The CID of the MoI, not directly included in the Committee, has been working closely with the Office of the Prosecutor-General to search for missing persons and mass graves in Tarhuna.\textsuperscript{157}

\textsuperscript{156} The mandate of the Fact-finding Mission reads as follows: “Requests the High Commissioner to immediately establish and dispatch a fact-finding mission to Libya, and to designate experts to implement, in an independent and impartial manner, for a period of one year, the following mandate: (a) To establish the facts and circumstances of the situation of human rights throughout Libya, and to collect and review relevant information, to document alleged violations and abuses of international human rights law and international humanitarian law by all parties in Libya since the beginning of 2016, including any gendered dimensions of such violations and abuses, and to preserve evidence with a view to ensuring that perpetrators of violations or abuses of international human rights law and international humanitarian law are held accountable; (b) To work in cooperation with the Libyan authorities, the League of Arab States, the African Union and the United Nations Support Mission in Libya”. UN Doc. A/HRC/43/L.40 (2020), para. 43. Available at https://undocs.org/A/HRC/43/L.40

On 14 June 2020, the Prosecutor-General’s Office issued a statement concerning the investigations conducted by the Office into the crimes committed by armed groups that were in control of the city of Tarhuna. The statement highlights:

- The arrest of a group of indicted persons (mentioned in the statement) as well as the bringing to justice of the indicted before the competent authorities;
- The appointment of a team of forensic experts to take on, together with the Prosecutor-General’s Office, the task of operating where the graves are found in order to carry out exhumations and autopsies and determine the cause of death and the time of its occurrence;
- The assignment of the GASIMP to form a working group which should work with the Prosecutor-General and whose task is to take DNA samples from the exhumed bodies, to analyze them for possible matches with DNA samples taken from families of the victims;\(^{158}\)
- A call for testimonies concerning the events in Tarhuna in the context of the investigations of the deeds committed by the Kaniyat group in the area;
- Cooperation with the ICC in relation to the investigation that the ICC OTP is conducting.

In late July 2020, the Prosecutor-General’s Office released a list of more than 100 persons accused of being implicated in crimes related to the mass graves in southern Tripoli and Tarhuna.

More than 300 people were reported missing as a result of the events that unfolded in Tarhuna after the Kaniyat took control of the city in 2015; reports, however, point to as many as 1,000 missing persons.\(^{159}\)

### 6.2.2. Security situation at the sites

The GNA counteroffensive in 2020 saw the fighting expand to the south of Tripoli, including around Tarhuna in the district of Murqub. It took the GNA more than 12 months to push the LNA back from Tripoli, with many towns and villages being damaged or destroyed.\(^{160}\) Areas that were once held by the LNA are likely to contain higher levels of explosive contamination.\(^{161}\) There is evidence of persistent risk of the presence of Explosive Remnants of War (ERW) in the area based on recent reports, including reports received at the time of drafting.\(^{162}\)

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\(^{158}\) Statement available upon request.

\(^{159}\) This account has been shared by the GASIMP with Human Rights Watch (HRW) and BBC. See HRW, Libya: Militia terrorized town, leaving mass graves, 7 January 2021 available here: Libya: Militia Terrorized Town, Leaving Mass Graves | Human Rights Watch (hrw.org); see BBC, How six brothers – and their lions – terrorized a Libyan town, 7 January 2021, available here: How six brothers - and their lions - terrorized a Libyan town- BBC News.

\(^{160}\) Information provided by an external company contracted by ICMP to evaluate security and assess threat level. Detailed account can be provided upon request.

\(^{161}\) Idem.

\(^{162}\) Idem.
Uncleared suspected gravesites could represent a high risk level of landmine explosion.\textsuperscript{163} Since June 2020, to bolster police security in Tarhuna, supplementary GNA forces have been intermittently deployed to the town and region during periods of potential instability. The preferred unit deployed by the GNA Ministry of Defence is the 444 Brigade.\textsuperscript{164} Access to the mass grave sites is along a dirt track that runs parallel to the perimeter wall of a residential dwelling (see picture below). The general area of excavation benefits from some walled/fenced boundaries, which greatly assist in gridding and security at the site.\textsuperscript{165}

At the time of writing, there is a backlash against the atrocities and killings perpetrated against Tarhuna residents in 2019-2020, and retribution against Kaniyat militia members is being carried out in the form of setting fire to businesses and other properties; the cycle of revenge is likely to persist.\textsuperscript{167}

\textsuperscript{163} Idem.
\textsuperscript{164} Idem.
\textsuperscript{165} Idem.
\textsuperscript{166} Idem
\textsuperscript{167} Idem; see also AfricaGateNews: \url{afrigatenews.net}
6.2.3. Investigations and procedures at the sites

The Office of the Prosecutor-General is coordinating the activities of the CID/MoI, the Department of Forensic Medicine/MoJ, and the GASIMP with regard to the work that has been conducted so far at the site. In terms of competences, the CID/MoI is responsible for the examination of physical evidence in the crime scene investigation, the MoJ Department of Forensic Medicine is responsible for body recovery and analysis (including autopsy and DNA sampling), and the GASIMP is responsible for the actual excavation work and for DNA extraction and sampling. The Department of Forensic Medicine of the MoJ has reported that DNA extractions have been mainly performed on femur using liquid nitrogen with a manual DNA investigator kit; N-Lauryl sarcosine sodium salt has also been used. From the CID/MoI perspective, the MoI has obtained a number of post-mortem (PM) samples as a result of the discovery of the mass graves, and is considering avenues that are fast, inexpensive, and effective in terms of results. Low concentration of DNA following extraction has been a problem as it has resulted in partial profiles or no profile at all. With the permission of the Prosecutor-General’s Office, the GASIMP began extracting samples from bones stored at Al-Zahra Hospital (Tripoli) in December 2020. To date, the GASIMP has contributed to recovering more than 130 bodies (most of them complete). Excavations are all conducted in one site (a former farm of 25 or more acres); when referring to “excavation sites” the GASIMP has specified that those are all located within this macro-site.

In order to proceed with any investigation at any site, the Forensic Medicine Committee (mass grave committee) requests an order from the Prosecutor-General to conduct excavations in the presence of a representative from the Prosecutor-General’s Office. This representative is to ensure that all legal aspects pertaining to the work conducted at the site are covered and recorded. Thereafter, exhumed bodies are transferred to hospitals (including Tripoli General Hospital) to be examined by forensic pathologists operating under the MoJ. Although initially a decision on whether to use item catalogues or to exhibit items recovered from each corpse was put on hold, recent reports point to exhibitions of items from human remains recovered at Tarhuna along with other evidence of crimes committed in the area. This has been done under the aegis of the CJER (MoJ) in the Forensic Medicine Department of the University hospital of Tripoli; families were invited to view the items for identification purposes. This approach might be detrimental to the overall process of accounting for the missing, as it could lead to misidentifications, and families might experience distress as a result of the viewing or due to an eventual re-opening of cases as a result of misidentification. In general, “visual recognition (including from photographs), personal description, tattoos, property and clothing found on the body as well as medical findings may serve to support identification but should be avoided as sole identifier.”

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168 See formal announcement release on the official social media account of the GASIMP: بالإشارة الى الإرفاع 2020 / بالإضافة إلى 30/12/2020 في الهوية العامة للمجسمات المتعرفة على المفقودين / Facebook Based on interviews conducted by ICMP consultants, only 29 samples have been extracted (last update 9 January 2021).

169 Information shared by the GASIMP with ICMP. In its article quoted above, HRW reports that the majority of graves are located in a large agricultural area known as Mashrou’ al-Rabt.

170 See announcement that appeared on Daily Sabah on 13 January 2021 (link); see also a video account that appeared on LPC Reports Channel on 11 January 2021 (link).

171 Pictures on social media show the sponsors of the exhibition and the participation of Libyans and non-Libyans at the display of the items recovered from the sites: see here.

172 Klinkner M., Smith E. (2020), The Bournemouth Protocol on Mass Graves Protection and Investigation, edited with the support of Arts and Humanities and ICMP, available here: https://issuu.com/bournemouthuniversity/docs/the_bournemouth_protocol_on_mass_grave_protection_?fr=Mjc3OTI0MjAyNzM
Visual identification of human remains recovered at the various sites was also considered as an option. The condition of remains, however, meant that this option was not implemented. At the sites, security is ensured by the presence of law enforcement (which operates under the MoI). The CID/MoI has taken fingerprints from recovered remains whenever possible. Some of the remains have been identified because there was a criminal profile in police records. For each operation conducted at various sites, a legal report is issued by the Prosecutor-General. A forensic report is also issued elaborating the cause and manner of death.

Family reference samples have been collected and recorded in a database by the GASIMP; the overall number of family reference samples (blood samples) collected with FTA cards by the GASIMP amounts to 1,340 (corresponding to 320 families). Only families who suspect that their missing relative could be in one of these mass graves due to the events that followed Haftar operations in April 2019 participated in this type of data collection.

If human remains are identified, burial procedure comes under the responsibility of the MoH. In the case of unidentified human remains, after examination, burial comes under the responsibility of the GASIMP, which makes use of a unique number system that allows the location of the burial site to be tracked, and data collected on that individual (DNA etc.) to be matched with other data.

Regarding human remains that were found in a hospital in Tarhuna on 5 June 2020, pictures were taken and posted publicly. Overall, 20 bodies were identified through visual identification, which is recognized as a legal way of identification by the Prosecutor-General. Concerning charred bodies, the GASIMP reported difficulties in extracting DNA samples and conducting analysis.

The Forensic Medicine Committee/MoJ is under pressure from families in the area. Considering the complexity of these investigations and the importance of documenting sites to international standards of evidence, work at the mass grave sites and the ensuing examinations are going smoothly; however, technical support is needed in all areas of the investigation and in particular, recording and tracking data using a shared data system and the overall identification process. Staff working at the sites have reportedly received training from the ICRC or ICMP.

**6.2.4. Technical evaluation of factual developments**

Mass graves contain evidence that can be vital to justice processes and, as such, preservation of evidence, maintenance of sites, and investigation-related steps must be ensured. The evaluation below is based on visual analysis of 116 pictures posted on the official social media accounts (single-platform analysis, i.e., Facebook) of the GASIMP and other institutions between June and November 2020; additional information has also emerged from interviews with relevant actors.

The work conducted at the sites where mass graves have been found can be appraised as follows:

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173 An FTA card is a chemically treated filter paper designed for the collection, preservation and shipment of biological samples for subsequent DNA and RNA analysis
• The institutions’ teams at the sites are taking care to maintain the integrity of evidence,
• Their work does not seem to contribute to a commingling of body parts, and
• A systematic numbering system appears to be in place.

These three points indicate that the work is being conducted to internationally recognized standards in this field. From the visual analysis, it is however unclear how the teams have discerned the “graves” from the surface, and it appears that a systematic block excavation has occurred throughout the entire project area, rather than following a stratigraphic method on actual initial deposits.

Information is insufficient to comment on the manner in which the individual graves, which are mostly single or involving a small number of individuals, are located in order to be targeted for excavation. Mass grave sites were also located following information received by people arrested due to their connection with the events in Tarhuna. No conclusive evaluation can be made at this stage on whether the excavation method employed would ensure that all graves were identified and all bodies recovered from the sites in the pictures.
VII. CIVIL SOCIETY IN LIBYA AND THE ISSUE OF THE MISSING

CSOs in Libya were not particularly active during the Qadhafi regime (apart from those officially recognized by the regime and a small number of others). The 2011 uprising marked a turning point in civil society development and action, with many CSOs (associations, charities, NGOs) booming after the fall of Qadhafi. The Libyan constitutional declaration encourages civil society development and states that a law is to be enacted for that purpose. Such a law has not yet been enacted.

7.1. OVERVIEW OF DOMESTIC CSOS DEALING WITH THE ISSUE OF THE MISSING

Regarding missing persons-focused CSOs, in 2012 at the outset of ICMP’s Libya program, there were some Libyan CSOs representing families of the missing, including the “Libyan Society for Missing Persons” and the organization called “Mafgood (or Mafqood).” The Society for the Missing had been on the ground collecting information from family members and recording information on mass graves found at different locations in Libya. Mafgood, which means “missing or lost” in Arabic, created an online database to collect information about missing persons. The database contained 602 unique entries at that time. Since 2018, no activity has been reported in respect of either of these organizations, including their social media accounts (notably Facebook), where they used to post pictures of and information about missing persons.

Many small associations of families of martyrs, i.e., whoever died in various conflicts in Libya regardless of the party this person fought for (with a broader meaning attributed under Law no. 1/2014, see above Section 3.3.), are spread across the whole country. This section does not focus on them, but takes stock of their existence as CSOs defending the status and interests of a specific group of families.

Other CSOs are very active in relation to missing persons and enforced disappearances, migration and missing migrants, accountability and human rights violations, and human rights advocacy. A short overview of these CSOs, organized thematically (missing persons and enforced disappearance, missing migrants and migrants’ rights, and human rights) is provided below.

Missing Persons and enforced disappearance

Association of families of kidnapped in Benghazi
The association, composed of families of missing persons in Benghazi, was founded in January 2017 with the aim of determining the fate of missing persons in Benghazi (especially

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174 Facebook page of the NGO: Facebook
175 See Doc no. ICMP.DG.411.1.doc (2012)
176 It seems that these are families that are not in opposition to the LNA.
those reported missing between 2014-2017). The association has reached out to local authorities as well as to UNSMIL to request DNA identification of unidentified bodies in graves discovered in Benghazi.

**Association of families of martyrs, missing persons and detainees of Tawergha**

Founded in 2012 following the displacement of thousands of people from the city of Tawergha, the organization is composed of families of IDPs and seeks to defend the rights of the Tawergha IDPs and to search and identify missing persons and secure the release of those who are in detention. The organization also monitors enforced disappearances affecting Tawerghans; recently, it demanded the opening of the Jannat Cemetery in Misrata, which is believed to contain a large number of bodies belonging to Tawerghans.

**Lawyers for Justice in Libya (LFJL)**

LFJL, operating from London and Tripoli, is working alongside other CSOs to prevent and eradicate enforced disappearances in Libya and, more broadly, across Africa, and to bring justice to victims. The organization is a strong advocate for accountability, including in relation to specific cases (for instance recently it called again for accountability in the disappearance of lawmaker Siham Sergiwa). LFJL has an Accountability and Transnational Justice Program that seeks to achieve accountability for human rights violations and to shape Libya’s transition to peace.

**Neda’a for human rights and community development**

Neda’a is an independent, non-profit youth organization founded in January 2020 and registered in Libya as a local CSO. It is focused on human rights protection and support for victims of armed conflict in Libya. It has documented cases of enforced disappearance and extrajudicial execution, including in Tarhuna. The organization maintains regular contact with families of the missing.

**Officers of August 1975 Association**

The Association is based in Benghazi, seeks accountability for the killing of martyrs in the events of August 1975 (coup attempt against Qadhafi), and is involved in locating the graves of those “martyrs”. The Association offers support to families and files lawsuits before national and international institutions.

**Tarhuna Victims’ Association**

The Association communicates with families and local authorities to follow up on the process of search and identification of missing persons from Tarhuna. It also focuses more broadly on all victims of the Kaniyat militia in Tarhuna and has called for justice for crimes under legislation in force in Libya.

**The Center of Truth and Monitoring of Human Rights Violations**

The Center monitors human rights violations in Libya. Recently it has investigated kidnappings and mass graves in Tarhuna. It supports people displaced from areas south of Tripoli.

**The Free Generation Movement (FGM)**

The Movement was founded in 2011 and is based in Tripoli. The FGM runs a support center for families of those who went missing during the 2011 revolution. It has called for the release

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177 https://www.facebook.com/libya.8.1975/about/?ref=page_internal
of Libyan activists who have been kidnapped or illegally detained by militias.

**The Global Foundation for Human Rights**
The Foundation is a Tripoli-based CSO that aims to defend the rights of prisoners. Its main focus is on the protection of human rights in Libya, and notably on specific issues such as arbitrary detention, kidnapping and enforced disappearance.

**Missing migrants and migrants’ rights**

**Alsalam Bani Walid Association for Charity**
The Association is a humanitarian CSO, which has worked on distributing funds to low-income families in the city of Bani Walid since 2011. It has also offered support (accommodation, food and medicine) to IDPs, migrants and other vulnerable populations in a number of Libyan cities. Recently, it began working on recovering migrants’ bodies from the Libyan coast following incidents at sea resulting from attempts to cross the Mediterranean. The Association is also active in the collection of unidentified human remains from the streets and in the conflict zone in Bani-Walid. Alsalam Bani Walid recently participated as a mediator in facilitating the exchange of prisoners of war and human remains between warring parties in Libya.178

**Ayady Al Khair Charity**
The Charity is a Libyan humanitarian CSO that provides support to vulnerable groups, including IDPs, migrants and low-income households in central Libya. Founded in Bani-Waleed in 2011, it expanded its activities in the central region. It has carried out a series of relief programs within Libya throughout the current conflict to assist those displaced by the fighting. It recently conducted a relief mission for IDPs in Bani Walid with the support of the World Food Program.

**Belaady Foundation for Human Rights**
The Foundation is a Tripoli-based CSO working in different cities across Libya, on migration, asylum, and displacement. It works in cooperation with several international organizations, such as Médecins Sans Frontières, Amnesty International and UNHCR. Belaady advocates for respect for human rights especially for migrants and asylum seekers in Libya. In 2020, it sought to draw attention to the increased number of Libyan migrants choosing to cross the Mediterranean. The organization also monitors the violation of migrants’ rights, especially in detention centers.

**MIGRACE**
MIGRACE is a Libyan-based CSO dedicated to helping migrants detained in temporary accommodation shelters, by providing them with necessities including food, clothing and medicine. It also assists the Libyan authorities in meeting the growing operational challenges of migration management, including with sea rescue and the recovery of the bodies of migrants who died at sea. The organization is also active in detention centers and disembarkation points in Tripoli.

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178 Link to Alsalaam mediation in prisoners/bodies exchange
Human rights

Alemdad Charity
The Charity is a Libyan CSO founded in July 2011 in Misrata to provide care and material assistance to families of “martyrs” of the 17 February revolution along with low-income families and orphans. It helps people to finding employment by organizing seminars and training. It contributes to relief operations during natural disasters and conflict. The Charity also provides support in relation to human rights issues. Recently it held a meeting to establish a mechanism through which families in need can be identified. All identified families in need will be provided with grants of 1,500 LYD.\(^1\)

Al-Marsad Human Rights Observatory
The Observatory is a Libyan human rights CSO that monitors violations of human rights, including cases of torture, in Libya. It actively condemns enforced disappearances throughout the country and advocate for the release of those being held.\(^2\) The Observatory monitors violations of civil and political rights, including through the monitoring of the elections. It issues monthly and annual reports on the status of freedoms and human rights in Libyan society, as well as reports on electoral processes.

Aman Organization Against Discrimination (AOAD)
The Organization was founded in 2011 in Muruzuk in Southern Libya and has offices in the east, west and south of Libya. AOAD’s work focuses on ensuring proper reporting on human rights violations, including violations of the rights of irregular migrants. It also promotes the empowerment of women and gender equality. Since its first conference in January 2012, AOAD has worked to report human rights violations, particularly of vulnerable groups. AOAD has also established relations with various local and international CSOs to strengthen mutual networking and cooperation.

Center for Human Rights Defenders Association (CHRDA) is a CSO registered and founded in France in 2016 and actively working on monitoring human rights in Libya. For security reasons, the Center’s offices are in Tunisia. The CHRDA seeks to promote the rights of human rights defenders and vulnerable groups, analyzing difficulties in the application of international human rights law, and raising awareness about human rights in the region as well as engaging in a dialogue between cultures. A crucial part of the CHRDA mandate is to help shape an understanding of the most pressing concerns of human rights defenders in the region and to mobilize key players and NGOs from across the MENA region to work together towards solutions. The CHRDA is a Libyan network of human rights defenders, working on supporting, empowering and protecting Libyan human rights defenders inside and outside Libya. It frequently issues reports and papers on human rights in Libya.

First Women’s Forum seeks to guarantee the rights of Libyan women in the constitution and advocates for women’s issues both locally and internationally. The forum, based in Tripoli, seeks to create an environment in which violence against women is addressed and the conditions for women’s oppression disappear. It assists the most marginalized groups in Libya,

\(^1\) See Facebook post: https://www.facebook.com/emdaad.misrata/posts/320855795923045
\(^2\) For instance, following the kidnapping of a young woman in Tripoli in May 2020, the Association called on the Ministry of Interior to take all necessary measures to locate her, see here: https://www.facebook.com/Humancommitty/posts/2943560295722163
including displaced families. It works in cooperation with the United Nations International Children’s Emergency Fund (UNICEF) to create safe spaces for children.

**Human Rights Observer Association** of Libya is a CSO that aims to defend public freedoms and human rights. It raises awareness about human rights and provides Libyans with assistance in protecting these rights. The Association works with local human rights organizations and lawyers to help people claiming and defending their rights, including by filing lawsuits.

**H2O** is a Tripoli-based CSO founded in 2011, during the revolution. H2O communicates the ideas, views and aspirations of Libyan young people, and translates them into clear suggestions and demands to the authorities by using all available media. H2O also focuses on shaping the response of Libyan young people to policies and programs presented to them by the government. Through youth-driven civic engagement projects, H2O ensures that Libyan youth opinion reaches a wide audience and is influential at the government decision-making level.

**Jurists Without Chains** is a human rights CSO that seeks to protect and uphold human rights in Libya. It offers support to vulnerable people, particularly women and children. It also provides training for activists and human rights advocates so that they can work more effectively to address human rights violations.

**Libyan League for Human Rights** is a CSO based in Libya whose mission is to monitor, promote and safeguard human rights in Libya. It aims to create appropriate conditions for the establishment of democracy in Libya based on the recognition of the rights of the Libyan people as set forth in the Universal Declaration of Human Rights. Its projects in Libya are centered around protecting freedoms, encouraging political participation, and eliminating torture and cruel and inhuman treatment.

**The Libyan Women Defenders Network** (LWDN) is a Tripoli-based CSO that was launched in 2016. Its main goal is to raise awareness among Libyan women of their rights. The Network also aims to help women secure respect for their rights and to defend those who have been abused by ensuring that justice is achieved. LWDN has published papers on the issue of human trafficking and illegal immigration in Libya.

**Libyan Women’s Platform for Peace** (LWPP) was launched in October 2011 by 35 women from different cities, as one of the first NGOs defending women’s rights after the Libyan revolution. The Platform focuses in particular on the Libyan transitional phase, and in particular on ensuring that women remain a vital part of post-Qadhafi Libya. Specific emphasis is placed on inclusive traditions, women’s rights, youth leadership, women’s political and economic participation, and constitutional reform and education. As part of its advocacy activities, last year the Platform launched “Women Peace Mediators”, an initiative to advocate for the role of women in peace mediation and reconciliation. LWPP also launched the “Justice for Salwa is Justice for All” campaign, raising awareness about the issue of kidnappings and assassinations, while calling for accountability.

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The National Commission for Human Rights is a CSO established in 2012. It works on human rights-focused projects in Libya. Since its inception it has focused on human rights advocacy. NCHR has monitored human rights violations in migrants’ detention centers and has conducted workshops in the field of advocacy for women and migrants’ rights. In November 2019 NCHRL signed an agreement to train 1,000 young Libyans to enhance human rights culture. The training has not yet taken place.

Publicly mandated NGO

Libyan Red Crescent Society (LRCS) works with Libyan authorities to manage the recovery and transportation of human remains, and occasionally supports the authorities in the excavation of human remains from mass graves. In order to limit the separation of family members due to migration or armed conflict, the LRCS also provide Restoring Family Links services, receiving hundreds of requests to search for missing persons.

### 7.2. ENGAGEMENT OF CSOS AND RELATIONSHIP WITH AUTHORITIES

The role of CSOs in the context of the missing persons issue is growing. Social media campaigns and public pressure are used to raise the attention of the public and the authorities regarding specific cases of disappearance (cases for which either the location where the person is held or the kidnappers are known). When those behind the disappearances are “known” actors, or when the location of the disappeared is known, the pressure generated by the campaign can be successful in solving the case. Attention-raising activities addressed to international NGOs and international organizations can also be beneficial in cases of disappearance. In common cases of kidnapping for ransom, traditional social connections or prompt payments are well-known factors that can lead to positive results.

Documentation of cases is also being conducted by various organizations as shown in the list above and as emerged from interactions with CSO representatives; documentation efforts are often conducted for accountability purposes and to capture the scale of the missing persons issue. Advanced documentation techniques and basic data collection, storage, and protection measures have been identified as crucial elements that are needed in this field.

The relationship of CSOs to institutions requires further investigation. It is clear that organizations such as those that are focused on Tarhuna are interacting with the authorities, including the MoJ, and facilitating the link between authorities and families. Some problematic issues arise in relation to CSOs dealing with other specific events, for instance the events in Tawergha, as the same level of interaction is reportedly absent.

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182 During a Chatham House meeting with activists and representatives of Libyan CSOs organized by ICMP in December 2020, participants pointed to the inaction of authorities vis-à-vis the events in Tawergha. Reportedly, legal representations with UN bodies have been made but have not triggered the expected reactions from the authorities.
VIII. INTERNATIONAL ORGANIZATIONS, INTERNATIONAL NGOS, AND OTHER EXTERNAL ACTORS AND THE ISSUE OF MISSING PERSONS IN LIBYA

International organizations are providing different kinds of support to Libya. A small group of organizations has addressed or is currently addressing aspects relevant to the issue of missing and disappeared persons. State support is also being provided. An overview is provided below.

8.1. INTERNATIONAL ORGANIZATIONS

The EU Border Assistance Mission (EUBAM) and United Nations Office on Drug and Crime (UNODC) started a three-year joint action (2020-2022) with the overall objective of initiating a comprehensive needs assessment of the Libyan forensic services to enable the country to counter the challenges posed by organized crime. The joint action will include the following key elements: identification of critical needs and priorities of Libyan forensic services regarding their SOPs and guidelines, their needed capacity training and required priority equipment; and development of a roadmap and a clear way forward for the improvement and capacity building of Libyan forensic services according to the current priorities/challenges of Libyan counterparts in the short, medium and long term.

ICRC in Libya: with regard to missing persons, the ICRC’s focus is on humanitarian work, including restoring family links (RFL) and tracing missing persons. In the framework of capacity building, the ICRC has held various activities including workshops on the “dignified management of the dead”, addressed to Libyan forensic practitioners, police officers, prosecutors, hospital staff, and volunteers from the LRCS. Workshops have also been organized for military officers in relation to the issue of the dead and missing under International Humanitarian Law (IHL).

ICC Investigation: on 26 February 2011, the UN Security Council unanimously referred the situation in Libya since 15 February 2011 to the ICC, in Resolution 1970 (2011). The ICC’s investigation was launched in 2011 and is focusing on alleged crimes against humanity and war crimes committed in the country since 15 February 2011. Two crucial investigative missions were deployed to Libya between May 2020 and November 2020 to collect additional evidence that would further strengthen the cases. The missions also provided an opportunity to strengthen cooperation with Libyan authorities and other stakeholders.

IOM is taking the lead in responding to the urgent need for humanitarian assistance related to the country’s migration crisis. Present at disembarkation points, IOM assists rescued migrants with healthcare, psychosocial support and humanitarian direct assistance such as the provision of hygiene kits and clothes. By working closely with the Libyan authorities, particularly with detention center management, IOM is also working to enhance living conditions for detained migrants. IOM has a department in Libya whose work is relevant to the issue of missing persons/enforced disappearances: the Search and Rescue (SAR) Department is working on
ICMP was invited by Libya to assist in its efforts to build a sustainable process to account for all missing persons, including those missing from the 2011 conflict. In line with an agreement with the Government of Libya, ICMP established a program in late 2012 and supported the country until 2014, when the deteriorating security situation forced an end to the program. The program focused on helping Libya develop institutional, legislative and technical capacity to account impartially for missing persons in line with the rule of law, including by developing the capacities of the MAFMM and other state institutions engaged in the issue of the missing. Among other things, ICMP trained Libyan experts, including more than 50 MAFMM staff, in crime-scene management forensic archaeology, anthropology, pathology, DNA reference sample collection, post-mortem sampling procedures and chain-of-custody procedures. With ICMP assistance, more than 11,000 genetic reference samples were collected from families of the missing, representing more than 2,500 missing persons in Tripoli, Benghazi, Sabha, Ben Walid and Sirte. ICMP also supported a DNA-led identification process that made it possible to submit more than 100 DNA match reports to the authorities concerning missing persons cases, including the case of the former Minister of Foreign Affairs and then human rights activist and dissident of the Qadhafi regime, Dr. Mansour Rashid Khikia.  

The International Criminal Police Organization (INTERPOL) has a National Center Bureau (NCB) in Libya. Its mandate involves connecting Libyan law enforcement with other countries and with the General Secretariat. The NCB helps to investigate crime or criminals within the country and share criminal data and intelligence to assist other countries. INTERPOL has been supporting the Libyan authorities from different angles. For instance, from 2012 to 2014, in the context of INTERPOL’s Project RELINC (Rebuilding Libya’s Investigative Capability), the organization assisted Libyan authorities in developing a sustainable capability to identify security threats and investigate criminal and terrorist activity. The project included provision of access to INTERPOL’s databases at Libya’s border crossing points and the creation of a crime analysis unit within the CID/MoI. The project was a European Union-funded initiative. In July 2020 INTERPOL launched a new office in Tripoli with the support of the Minister of Interior; Libya also participated in the INTERPOL “Flyway project”, which aims to identify and disrupt the criminal networks involved in people smuggling, human trafficking and related crimes in North Africa. The Project is funded by Norway.

UN Fact-finding missions: the UN Human Rights Council has dispatched three fact-finding missions since 2011:

- Resolution S-15/1, adopted in 2011 at the Council’s 15th special session, established an independent international commission of inquiry, which released its report in 2014 concluding that, “international crimes, specifically crimes against humanity and war crimes, had been committed by Qadhafi forces in Libya. Acts of murder, enforced disappearance and torture were perpetrated within the context of a widespread or systematic attack against a civilian population,” 184

- Resolution 28/30 adopted in March 2015 asked the UN High Commissioner for Human Rights to “urgently... dispatch a mission to investigate violations and abuses of international human rights law that have been committed in Libya since the beginning of 2014”. In its report released in 2016 185 the mission concluded that widespread violations of international human rights law and international humanitarian law, and abuses of human rights had been perpetrated by all parties to the conflict in Libya throughout 2014 and 2015;

- Resolution 40/43 adopted in 2020 asked the High Commissioner immediately to establish and dispatch a fact-finding mission to Libya “to establish the facts and circumstances of the situation of human rights throughout Libya, and to collect and review relevant information to document alleged violations and abuses of international human rights law and international humanitarian law by all parties in Libya since the beginning of 2016”. The fact-finding mission has faced several obstacles ranging from limited budget to short timeframe (one year) for such a broad mandate. Its mandate has already been extended. 186

UNSMIL, has been supporting the Libyan authorities in relation to, among other things, the issue of the missing almost since its establishment. For instance, after the creation of the MAFMM, UNMSIL helped the Ministry to develop the Ministry’s strategy in formulating

186 For recent updates see here: https://www.ohchr.org/EN/HRBodies/HRC/FFM_Libya/Pages/Index.aspx
a law on missing persons; it has also offered technical support to victims’ organizations that support families of the missing. UNSMIL was also instrumental in the development of the Transitional Justice Law. More recently, with the support of the UNDP, UNSMIL organized a two-day workshop under the title “Knowing the Fate of the Missing Persons in Libya: A Condition for Meaningful Reconciliation”, with the aim of examining the best ways to address this issue (March 2018). This thematic meeting contributed to identifying the main needs and challenges in working on cases of enforced disappearance in Libya, while also recommending legal, technical and social measures to be taken in this regard. The workshop included technical experts and representatives of the GACFMMPA, the Ministries of Justice, Interior, and Social Affairs, and the Office of the Prosecutor-General, in addition to families of the missing and CSOs.

8.2. INTERNATIONAL NGOS

The work of international NGOs in Libya is strictly regulated. According to Order No. 286 (Article 45), any foreign NGO that plans to work in Libya must obtain a work permit from the Commission before engaging in any activity. Permission is issued upon the submission of the organization’s request via a dedicated form prepared for this purpose, as well as of an extensive list of documents. The foreign NGO must open a bank account with one of the banks operating in Libya, to deposit any money it receives; it is forbidden from depositing these funds in any account other than the one approved by the Commission (Article 59). The organization must keep its place of work in Libya with all records, documents and financial and administrative documents related to its activities in Libya; the Civil Society Commission has the right to check these at any time and prepare reports about the organization (Article 60). The organization is also obliged to submit quarterly periodic reports (31 March, 30 June, 30 September, 31 December) to the Commission, regardless of the date it began work in Libya; a periodic report should include a report on the activities, programs and projects that the organization initiated or completed in Libya, an evaluation of each activity showing also the percentage of objectives achieved, and the number of staff involved in each activity, and a financial report showing the details of its funding and all its expenditures for its work in Libya (Article 61).

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189 These include: a certificate of registration of the organization issued in accordance with the laws in the country where the organization was established; a copy of the statute of the parent organization, indicating that it is non-profit; the parent organization's decision to approve the opening of a branch in Libya, including a statement of the legal representative of the branch in Libya, a copy of the last budget of the parent organization, as well as a report of its activities for the same year; a proposal of the organizational structure of the branch of the foreign organization in Libya, a proposal of the staffing, and the scale of wages, facilities, funds, and the job conditions in the organization; the organization's work program to be implemented in Libya, provided that it includes a statement on the requirements and components of the project, a statement of the main and subsidiary activities, the start and end date of each activity, and the financial value that will be spent on each activity; a statement of the monitoring and review mechanisms for implementing the project and achieving its objectives; a statement concerning the budget allocated to the work in Libya as well as the time-plan for each stage of the work; a statement addressed to the Commission from the donor concerning the work of the foreign organization in Libya, indicating the overall amount of funding, the method of payment and any conditions related to this funding, as well as the project for which the funding was granted (the condition also applies in the event that the parent organization is the partly financing the work of the branch in Libya).
Foreign NGOs must obtain prior approval from the Commission before performing the following: receiving any cash or in-kind money; transferring funds outside Libya; opening a bank account to deposit the amounts earmarked for the work in Libya; changing the signature of those authorized to sign the instruments with the bank; granting any funding or cash or in-kind support to a Libyan or foreign CSO inside Libya; concluding work contracts or using volunteers to perform work or tasks related to its work in Libya. When a foreign NGO works in Libya, it should use all local human resources and expertise to perform its work and conduct its activities; it may not seek the assistance of a person or service from outside Libya unless this is not available locally (Article 65). It is forbidden for the foreign NGO to carry out the following actions: collecting donations inside Libya; collecting donations from outside Libya in the name of the organization branch in Libya; engaging in any act that violates public order and morals (Article 66).

There are several International NGOs (INGOs) working on providing health care and other forms of support to migrants detained in Libya (e.g., Norwegian Refugee Council (NRC), Danish Refugee Council (DRC), Mercy Corps, Terre des Hommes). In 2016, a Libya INGO Forum (LIF) was established; the LIF is an independent network of 23 INGOs implementing humanitarian programs, or in the process of setting-up operations, to respond to the needs of the vulnerable population living in Libya. The focus of the forum is humanitarian aid; in the past years the forum has strongly called for a closure of detention centers where migrants were held in Libya.191

Among the International NGOs that are operating/have operated in Libya with projects relevant to the issue of the missing, including missing migrants, are:

**The American Bar Association – Rule of Law Initiative (ABA ROLI)** has conducted workshops on judicial reform and on how to improve the Libyan legal system. It has also developed a judicial baseline assessment report with recommendations and provided technical assistance for improving the court administration system and training for judicial support staff. It has also conducted workshops aimed at increasing the Libyan justice sector’s capacity to improve practices and procedures that guarantee due process and human rights to detainees, including migrants and asylum seekers, and to promote the establishment of an effective transitional justice system through the implementation and improvement of the 2013 Transitional Justice Law;

**Democracy Reporting International (DRI),** a German INGO has been supporting the constitution-drafting process and the work of Libyan CSOs on topics related to the constitution, human rights and local governance. It aims to contribute to the consolidation of the democratic transition and stabilization process in Libya;

**The Italian Recreational and Cultural Association (ARCI)** is engaged in a campaign to protect the lives of migrants crossing the Mediterranean from Libya. ARCI works closely with other international organizations on the issue of migrants, refugees and asylum seekers in Libya;

**MSF** runs mobile clinics in migrant detention centers located in and around Tripoli. It has

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190 The full list is available here: Libya INGO Forum | ReliefWeb
191 See here: The Libya INGO Forum calls for closure of detention centers and the adoption of principled migration policies as they revise their assistance in these centers | NRC
treated people who have been arbitrarily detained in detention centers run by the Libyan authorities, as well as those who have escaped from clandestine prisons run by human traffickers. Its teams also provide physical and psychological care to people who have been intercepted at sea and forced to return to Libya;

Maat Foundation for Peace, Development, and Human Rights
In Libya, Egypt-based Maat foundation conducts activities that include holding seminars and training courses to raise public awareness and encourage best practice. The foundation publishes research on human rights, good governance and the rule of law. It also provides legal and judicial support for marginalized and vulnerable groups to the competent authorities;

Physicians for Human Rights (PhR) has been addressing human rights violations in Libya since 2006. Since 2011, PHR has collaborated with the MAFMM, the Libyan Prosecutor-General Office, the MoI, and UNSMIL to enhance forensic human identifications. In 2013 PHR produced a human identification and needs assessment report.192

8.3. OTHER STATES’ SUPPORT

Italy and Malta have pledged support to the Libyan authorities in regard to migration, notably with regard to irregular immigration; the agreements concluded by the two countries show that there could be room to address the issue of deaths in migration constructively. Nevertheless, the focus of both agreements on border and immigration management and the disregard for the human rights of migrants raise many concerns. Specifically, on 2 February 2017, Italy and Libya signed a Memorandum of Understanding (MOU) aimed at improving cooperation between the two countries in the fight against irregular migration.193 Under the agreement, Italy is committed to provide technical and financial support to the Libyan Government of National Accord in order to improve the institutions in Libya that fight against illegal immigration. Italy’s assistance involves financing Libyan reception centers, delivering medicine and medical equipment to meet the needs of migrants, and training Libyan personnel within these reception centers. In March 2017, a case was brought before the Tripoli Court of Appeal challenging the Memorandum of Understanding.194 The plaintiffs were a group of six Libyans (two lawyers and four civil servants) who claimed that the MOU would worsen the human rights situation for refugees and asylum seekers in Libya, resulting in an accumulation of people in detention centers. This is due to the pull-back strategy carried out by the Libyan coast guard and funded by Italy under the new agreement. The plaintiffs argued that, given the lack of legislation in Libya on asylum procedure and the fact that Libya is not a party to the 1951 Refugee Convention, the country is not able to safeguard human rights. While the Tripoli Court of Appeal declared the case admissible and ordered the temporary suspension of the MOU, the Libyan Supreme Court ultimately reversed this decision. The Memorandum was renewed in February 2020 despite growing criticism.195

192 The PHR report is available at the following link: https://phr.org/wp-content/uploads/2013/03/Libya-human-remains-id-assessmnt-report-Mar-2013.pdf
195 The CoE Commissioner for Human Rights, Dunja Mijatovic, has called on Italy to suspend its cooperation with Libya and end its support for the Libyan Coast Guard. She argues the MOU has “resulted in increased returns of migrants, including asylum seekers, to Libya, where they have suffered from serious human rights violations.” Commissioner for Human Rights (2020). Statement 31/01/20. Council of Europe. Online. Available at: https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-the-italian-government-to-suspend-the-co-operation-activities-in-place-with-the-libyan-coast-guard-that-impact-on-the-return-of-p
On 20 May 2020, Malta Prime Minister, Robert Abela, and Libya President of the Presidential Council, Me. Fayez al-Sarraj, concluded a Memorandum of Understanding in the field of combating illegal immigration. The MOU launched the process to establish two coordination centers, one in Valletta and one in Tripoli, designed to “liaise between the two capitals and offer the necessary support relating to combating illegal immigration in Libya and the Mediterranean Region” (article 1). The Maltese Government will finance in full both of these centers.

Other states have also offered support in other sectors in the past ten years. For instance, in 2016 a Danish-led international maritime transport operation removed approximately 500 tons of remnants of Libya’s chemical weapons stockpile, with the aim of supporting a more stable Libya. On 27 April 2018, the United States and Libya signed a Memorandum of Intent for airport security, and a Letter of Agreement to support Libyan policing, corrections, and justice sector development. On 18 November 2020, during his visit to France, the Minister of Interior of the GNA signed a memorandum of understanding to strengthen cooperation between the ministry and a French security institution. The memorandum includes cooperation between France and Libya in the field of developing biometric systems in order to launch biometric identity systems for the elections process.

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196 See news report: Danish Team Removes 500 Tons of Chemical Weapons From Libya- Atlantic Council
IX. RECOMMENDATIONS

9.1. MISSING PERSONS IN LIBYA

A. Strengthen the legal and institutional framework to account for missing persons in a sustainable and effective manner

1. Address the issue of the missing in a comprehensive, non-discriminatory, and impartial manner
The competent Libyan institutions should consider amending the current legislation in force to provide an inclusive legal definition of a missing person which is in line with international human rights standards. The definition should ensure that all missing persons are accounted for regardless of the context in which they went missing, their personal status or any other bases, and that the rights of all families of the missing are secured, regardless of their ethnic, religious background, gender, citizenship, political beliefs, or the circumstances of the disappearance of the missing person.

2. Revise the penal code, the CPC, and relevant criminal law legislation in line with international law standards
Libyan criminal law texts should be updated and revised, as they do not for instance criminalize genocide, war crimes, or crimes against humanity. Modern investigative techniques and sophisticated forensic methods should be included in the CPC so that investigations and policing procedures are fully in line with international law standards. The issue of witness protection and personal data protection should be embedded in a revised CPC. The CPC should also define reliable methods for identification, including fingerprints, dental records and DNA.

3. Ratify the ICPPED and revise domestic legislation addressing enforced disappearance
Libya has not yet ratified the ICPPED among other international law treaties. For a credible and human rights-oriented approach to the issue of the missing, ratification of the ICPPED is strongly recommended. Law no. 10 addressing, among other things, enforced disappearances should be revised and should include the ICPPED definition of enforced disappearance, while also specifying that there is no abrogation of broader protections under the right to life.

4. Develop adequate legislation ensuring data protection and data privacy guarantees
Data protection guarantees must be embedded in the Libyan legal framework. The collection, use and storage of human genetic and other personal data must be in conformity with the principles of data subject control over personal data, including informed consent, confidentiality and anonymization of personal genetic information, as well as principles of data minimization and retention.
5. **Develop adequate legislation for the handling of DNA samples and data**
The handling of DNA samples should be thoroughly regulated; the legislation on this subject should define who handles samples, and how they are handled and protected; DNA data accessibility; DNA data retention timeframe; use of DNA samples for purposes other than identifying the missing, e.g., medical or genealogical purposes.

6. **Adopt Legislation to provide legal certainty to the families of the missing**
Dedicated legislation on the declaration of absence should be developed and adopted in order to recognize and protect the legal personality and the rights of missing persons and their next of kin. Such legislation should guarantee that in the months following a report of a missing person, his or her family can, through a simple procedure, obtain a declaration of absence; this step would facilitate continued access to pensions and other benefits for the next of kin. Such legislation should also cover family law issues to ensure that rights of spouses are retained in such period. The procedure concerning the declaration of absence should be triggered in a prompt manner and should be easily accessible.

7. **Institutional cooperation on missing persons should be enhanced**
To ensure that effective investigations are conducted, securing cooperation between all judicial and law enforcement institutions as well as with the GASIMP is pivotal in relation to the issue of Libya’s complicated missing persons challenge. The GASIMP should consider establishing a missing persons task force or similar mechanism to enhance coordination, limit duplication of effort, enhance understanding of roles and responsibilities of state actors, enable effective processing of information, and optimize the efficient use of resources.

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**B. Enhance standards and procedures applied in investigations and strengthen forensic capacity**

1. **Improve procedures to report a missing person**
The competent Libyan institutions, including the GASIMP, should enable family members of a missing individual to submit a report from wherever they are, whether in Libya or abroad, and institute a mechanism whereby they can be regularly informed of the status of their case and its progress and the outcome of the investigation. Information on how to report a missing person should be easily accessible across Libya, including through online mechanisms. Reporting procedures should also be made available to non-Libyans in relation to persons who went missing while migrating through or into Libya.

2. **Ensure informed, safe, and voluntary data collection efforts**
The GASIMP and all relevant institutions should ensure informed, safe, and voluntary participation of families of the missing in genetic reference data collection campaigns. Such campaigns should include an educational
component. Specifically, any data or genetic reference sample collection efforts involving the families should be preceded by information sessions aimed at informing the families of the implications of sharing their data, the way data will be handled and stored, and any other type of action involving their data. Such efforts should also give them choices, such as making their data available to justice processes, subject to adequate material and procedural protections, and should guarantee safeguards for the legal and physical protection of the families who participate in them. Such efforts should be accessible and inclusive, by considering access points for people of all age, all genders, and all ethnic and linguistic groups.

3. **Enhance evidence management and forensic practices**

Based on amendments to the code on criminal procedure and through standard operating procedures, specialist roles need to be defined and understood to enable an effectively coordinated crime-scene investigation. Formal training (or re-training) should be undertaken by all specialist staff prior to processing crime scenes according to established protocols. Protocols would include crime-scene preservation and management; maintaining crime-scene logs (e.g.: who enters the scene, time of entry and exit, reason for entering crime scene); maintaining records of chain of custody of all evidence; photographic logs; and documented access and secure storage of artefacts/evidence.

4. **Strengthen forensic services and investigative capacities**

An in-person and remote comprehensive advanced training program of the relevant institutions on documentation, excavation, recovery, methods of identifying bodies, determining the cause and manner of death and post-recovery matters appears to be necessary. A good understanding of the process can be acquired in a relatively short time, while a continuing mentoring program with external experts from international and other organizations can address any possible difficulties in implementing the knowledge acquired, and secure confidence in the investigation process.

5. **Strengthen DNA analysis capabilities**

Advanced training in DNA extraction, DNA profile interpretation and data analysis is needed, specifically in relation to DNA testing and analysis of highly degraded samples, as well as large-scale matching between databases of post-mortem DNA profiles and family reference DNA profiles. Although external expertise and international consultants can provide suitable short-term support, the complex issue of the missing in Libya demands that in the medium and longer term the competent institutions must be able to handle DNA data analysis independently under an internationally accredited or validated quality control system. This system must respect data privacy standards and must have the buy-in of families and Libyan society and be perceived as impartial and evidence-based.

6. **Expertise in the field of forensic archaeology, anthropology, and pathology, should be enhanced or acquired in relevant institutions**

Relevant institutions with little or no expert capacity in forensic archaeology (i.e., a combination of crime-scene investigation and archaeological processing
techniques), anthropology (e.g., to analyze minimum number of individuals, the age, sex, height, individuating traits, and trauma, etc.), and pathology (e.g., to determine cause and manner of death) disciplines should receive hands-on training. This would include monitoring and mentoring activities to develop specialist skills in practice, ensuring that evidence is recovered and analyzed according to international best practice and guidelines, for use in identification as well as in justice mechanisms.

7. **Centralize data processing on missing persons through a secure database system**

The collection, processing, matching and protection of missing person data in a centralized, secure data system is essential to resolving such cases; so far, Excel spreadsheets and hard copy formats have been used for the existing missing persons database. Since data sources can vary (e.g., from families of the missing, CSOs, responsible investigative institutions etc.), a centralized and secure database with online interface is recommended to avoid duplication of data, and minimize human error and any loss of data. An effective data system is an important tool to ensure protection of sensitive data and avoid delays in sharing data or performing large-scale query and analysis; it also supports the analysis and reporting of data for accountability and judicial processes. A centralized database would also enhance coordination among institutions involved in efforts to account for the missing and support Libyan efforts to provide reliable and accurate information on the missing persons process domestically and internationally.

C. **Guarantee the rights of families of the missing throughout the efforts to account for missing persons**

1. **Establish mechanisms for collaboration and coordination with associations of families**

The GASIMP – and if established, the Task Force on missing persons - should guarantee the participation of families, families associations and CSOs, incorporating a permanent mechanism that meets regularly to inform families of the missing and CSOs about efforts, policies, and initiatives to account for missing persons. The mechanism should also receive inputs from families of the missing and CSOs on such efforts, policies, and initiatives. The role of families and their associations should be formally recognized in relation to specific situations (e.g., mass graves scenarios) through the establishment of committees.

2. **Enhance public trust through public information and accountability**

The competent Libyan institutions should develop and implement public information strategies and should conduct public information campaigns to raise awareness about their efforts to account for the missing. Through an enhanced access to information, opportunities for participation of women, people of all age, and all ethnic and linguistic groups can be more easily available.

3. **Strengthen rehabilitation and restitution services for families of the missing**

Family support services should be established and strengthened when these are present within the institutions dealing with the missing, including the GASIMP.
In this manner it would be possible to maintain regular contact and trust with families and enhance transparency. These services should be accessible to the families at any time, and throughout all the procedures and steps undertaken to account for the missing.

4. **Support documentation efforts, including when undertaken by CSOs**
   Documentation efforts remain at a nascent stage and are often performed in a non-secure manner (including through social media). Trainings on the importance of documenting missing persons, including missing migrants, should be provided to CSOs that are willing to be engaged or are already engaged in conducting such efforts. Financial and technical support should be provided to document missing persons in a more thorough and methodical manner and in line with internationally recognized standards of data protection and data privacy.

### 9.2. ACCOUNTING FOR MISSING MIGRANTS

1. **Attention given to missing migrants and refugees should be equal to cases of missing Libyans** - Missing migrants and refugees do not fall under the competence of the institution mandated with dealing with the issue of the missing in Libya – the GASIMP. There is no impediment for the GASIMP to coordinate its work with the MoJ and MoI on the issue of missing migrants, and to be involved in any steps aimed at accounting for them, including for instance, collecting data concerning those deceased and their burial site or being notified of reports concerning migrants who have gone missing while entering or transiting Libyan territory.

2. **Reporting a missing migrant should be possible**
   The competent Libyan institutions should provide family members of missing migrants who find themselves in Libya with the possibility of reporting their missing relative without fear of any negative consequence. Reporting could be facilitated through, for instance, the granting of a humanitarian visa to the families residing in other countries with the exclusive purpose of reporting and receiving information about their missing relative in Libya. Reporting could also be made accessible through informing the families of the possibility of reporting online via third party organizations, like ICMP.

3. **The mortal remains of deceased migrants should be disposed in a manner that does not prevent future identifications and investigations**
   Disposal of unidentified human remains should not prevent any future identification or otherwise impede effective investigation of the circumstances of the migrant having gone missing or having died; this means that samples and other data should be collected from migrants’ bodies and a numeration system that ensures the ability to track samples to buried human remains should be applied and recorded in a secure database.
1. **Fully apply the basic tenets for the protection and investigation of mass graves**
   In order to ensure future judicial processes, maintain a strong connection with the affected community, and avoid undermining the credibility of the work conducted by various institutions, the following guiding principles should be followed: do no harm; guarantee physical and emotional safety of everyone (from people working at the site to families); adopt a non-discriminatory and impartial approach to avoid any perception of being biased; assure and respect confidentiality in relation to personal details in order to maintain or build trust; ensure transparency vis-à-vis all parties involved so that public scrutiny is secured; maintain regular communication with the affected community so that any type of engagement can be conducted with full trust; and set realistic expectations and avoid making commitments to the families that might be difficult to implement.\(^{199}\)

2. **Improve excavation techniques**
   Excavation at the site as discerned from photographs published on social media, are not following a stratigraphic protocol, where evidence is approached from the surface downward, preserving evidence of human activity at the site (e.g., evidence of the deposition event, such as the grave outline, methods used to excavate the grave etc.). Investigative techniques to locate the remains at the site are currently using a trenching method, it would be more efficient to employ a surface scraping method, discern forensic features and excavate these features following the distribution of the disturbed area. Currently, it is possible that additional remains between unexcavated areas are going undetected.

3. **Ensure maintenance of proper chain of custody**
   While it appears that care is being taken to number discrete evidentiary units (e.g. bodies or body parts), it is unclear how relevant data collected at the recovery site is transmitted through the additional mortuary and DNA laboratory analyses. Evidence recovered at mass grave sites may be used for accountability purposes and in judicial processes; therefore, it is key that a correct recovery and chain-of-custody procedure is ensured.

4. **Conduct identification work based on scientifically sound methods, and discontinue family viewing of skeletal remains and associated personal effects**
   Identifications made through visual identification from viewing decomposed remains and personal belongings have in other contexts resulted in an unacceptable rate of mis-identification. The process relies on subjective human perception, which may be exercised under duress, and indeed may be an additional stressor for families. The desire to recover their loved one may bias perception, and incorrect identifications made by family members will deprive

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\(^{199}\) These principles have been discussed extensively as part of the work conducted by Bournemouth University and ICMP. Bournemouth University and ICMP entered a partnership to develop mass grave protection guidelines, funded by the Arts and Humanities Research Council (AHRC). See The Bournemouth Protocol on Mass Graves Protection and Investigation, p. 6-7.
another family of the return of their loved one. In general, families should not have to bear the responsibility of identifying their missing persons, other than to provide information. The primary scientific identifiers should be the first resort of an official investigation: these are DNA, fingerprints, and distinctive ante-mortem and post-mortem comparisons involving dental or medical records performed by professionals.

5. Establish a register of all missing persons from the Tarhuna area
   A centralized register containing information on all missing persons from the Tarhuna area should be kept by the GASIMP in order to update and make easily available and accessible information to all those concerned, including relatives and all those with a legitimate interest in the information.

6. Maintain families informed and involved in efforts conducted in the Tarhuna area
   Communication with families of the Tarhuna victims should be institutionalized (e.g., through the GASIMP) with periodic meetings in situ or online in order to inform them about activities at the mass grave sites (e.g., exhumation and recovery of human remains). Families should also be able to provide timely and substantive inputs to the plans of the authorities.

7. Continue strengthening coordination among domestic institutions and other actors operating at mass grave sites
   Although coordination among institutions involved at the moment has greatly improved since the discovery of the mass graves, coordination should be strengthened in relation to operational efforts, including for instance DNA extraction from human remains, sharing of data among institutions involved, communication with families, and involvement of families in data collection and identification efforts.

9.4 INTERNATIONAL COMMUNITY ENGAGEMENT

1. Include the issue of the missing as a standing issue in ongoing peace efforts
   As peace efforts proceed, the issue of the missing should be a standing issue in all talks and initiatives, in order to pave the way towards a sustainable and rule-of-law-based process to account for all missing person in Libya. Advice by a specialized organization such as ICMP should be available to these talks and initiatives. This can be done through dedicated White Papers as well as direct technical support to relevant stakeholders.

2. Enhance efforts to support authorities in addressing the issue of missing and disappeared persons sustainably in Libya
   The attention of the international community at large should go beyond the recent events in and around Tarhuna resulting in the discovery of mass graves. Although short-term assistance in the form of technical support to the competent institutions can be beneficial, the whole issue of missing and disappeared persons in Libya deserves equal attention and should be addressed with Libyan
counterparts in a coordinated manner and as a long-term investment in peace, justice, and stability.

3. **A Libya/Missing persons inter-agency committee should be launched**

There is a need to strengthen coordination to maximize the impact on beneficiaries. An inter-agency committee exclusively dedicated to the issue of the missing in Libya can meet this need in light of the diversity of international organizations supporting Libyan authorities or others in various sectors on issues directly or indirectly connected to the issue of the missing; ICMP, as the only international organization exclusively mandated to deal with the issue of the missing, could serve as co-chair of this committee with a rotating co-chair.

4. **Foster civil society engagement on the issue of the missing**

The International Community should advocate for an independent and active civil society which is fully engaged in the issue of the missing. Support to the organization and mobilization of families of the missing should be part of any initiative aimed at reaching this goal.
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The content of the report is the sole responsibility of ICMP.