



**The International Commission of Jurists' (ICJ) Response to the "Call for Inputs on the Study to Assess the Level of Compliance of National Legislations with the Guidelines on Freedom of Association and Assembly in Africa"**

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In Libya, during the regime of Muammar Gadhafi (1969-2011), freedom of association was strictly controlled. In the aftermath of Gadhafi's ouster in 2011, a period of relative civic freedom until 2014 ensued during which the 2011 Constitutional Declaration, enshrining the right to freedom of association under article 15, was adopted. However, armed conflict broke out in Libya in 2014 and the period from 2014 until today has been characterized by increasingly restrictive laws and decrees, limiting freedom of association.<sup>1</sup>

The information that follows addresses questions (a) to (e) outlined in the call for inputs issued on 2 March 2024, focusing specifically on freedom of association in Libya. It does not address the legislative framework in relation to freedom of assembly.

**(a) Which laws regulate the freedom of association and freedom of assembly in your country? Please name the laws and year of adoption and indicate the name of the country**

During the regime of Muammar Gadhafi, the following laws, which are still in force today, regulated freedom of association in Libya:

- Law No. 71 of 1972 "on criminalizing partisanship";
- Law No. 80 of 1975 "amending and repealing certain provisions of the Penal Code"; and
- Law No. 19 of 2001 "on the reorganization of non-governmental organizations".

Following the ouster of Gadhafi, Libya's National Transitional Council passed the 2011 Constitutional Declaration,<sup>2</sup> which enshrined the right to freedom of association and specified that a law would further regulate civil society organizations (CSOs). However, since 2011, successive Libyan legislatures have failed to pass any such new legislation on CSOs, and the right to freedom of association has been regulated by a series of decrees, as follows:

- Decree No. 12 of 2012 & Decree No. 649 of 2013, (establishing a Civil Society Commission in Benghazi, first called the Centre to Support Civil Society Organizations);
- Decree No. 1160 of 2018 and Decree No. 1605 of 2018 (creating a Civil Society Commission in Tripoli);
- Decree No. 286 of 2019 (detailing how the Tripoli Civil Society Commission should operate);
- Decree No. 138 of 2023 (establishing a Committee for the Study of the Registration of Civil Associations in parallel to the Tripoli Civil Society Commission);
- Decree No. 5803 of 2023 (revoking the licenses of all CSOs established in Libya since 2011);
- Decree No. 7 of 2023 (allowing CSOs to operate temporarily and requiring them to regularize their status in line with Law No. 19 of 2001); and
- Decree No. 312 of 2023 (replacing Decree No. 138 of 2023, creating a Committee for the Regulation of the Work of Civil Society Organizations).

Note that in July 2022, the South Benghazi Trial Court suspended Decree 286 of 2019 with the effect of reviving the application of Law No. 19 of 2001 (see below), and that on 4 December 2023, a decision by the First Instance Civil Court of Al Bayda, in eastern Libya, revoked Decree No. 7 of 2023 and Decree No. 312 of 2023.<sup>3</sup>

With the fragmentation of the authorities in Libya, since 2014, and the uncertainties generated by the South Benghazi Trial Court's ruling of July 2022 mentioned above, the validity of all

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<sup>1</sup> For an overview of civic space and freedom of association in Libya from the Gadhafi regime until today, see ICJ, Libya's Civic Space: Repressive Frameworks; Continued Attacks, 2023, pp.1-4. Available at: <https://www.icj.org/libya-new-qa-on-current-attacks-on-the-right-to-freedom-of-association/>

<sup>2</sup> The Constitutional Declaration was passed by Libya's National Transitional Council in 2011 following the fall of the Gadhafi regime and is supposed to remain in force until a permanent Constitution is adopted. However, a permanent constitution has yet to be adopted.

<sup>3</sup> See: <https://twitter.com/aoadlibya/status/1734160428454867110>

these decrees<sup>4</sup> is uncertain, although not all of them have been expressly revoked, and the civil society commissions have continued to operate.<sup>5</sup>

**(b) Please attach a copy of the legislation or provide an accessible link to online copy of the relevant laws.**

Links to each law and decree are embedded below:

- Law No. 71 of 1972 ([English](#) | [Arabic](#))
- Law No. 80 of 1975 ([English](#) | [Arabic](#))
- Law No. 19 of 2001 ([English](#) | [Arabic](#))
- Constitutional Declaration of 2011 ([English](#) | [Arabic](#))
- Decree No. 12 of 2012 ([Arabic](#))
- Decree No. 649 of 2013 ([Arabic](#))
- Decree No. 1160 of 2018 ([Arabic](#))
- Decree No. 1605 of 2018 ([Arabic](#))
- Decree No. 286 of 2019 ([Arabic](#))
- Decree No. 138 of 2023 ([Arabic](#))
- Decree No. 312 of 2023 ([Arabic](#))

**(c) Which provisions in the respective laws demonstrate good practices that conform to the Guidelines on Freedom of Association and Assembly in Africa?**

Consistent with the overall scope of the Guidelines and paragraph 6 specifically, on the role of national constitutions, Libya's Constitutional Declaration of 2011 guarantees under article 14 the rights to "freedom of opinion, individual and collective expression, ... communication, ... assembly, demonstration and peaceful sit-in." Under article 15, the 2011 Constitutional Declaration enshrines the right to freedom of association, guaranteeing "the freedom of forming ... societies and other civil society organizations" and specifies that a law would further regulate CSOs.

In July 2022, the South Benghazi Trial Court invoked article 15 of the Constitutional Declaration as a basis to suspend Decree No. 286 of 2019 (detailing how the Tripoli Civil Society Commission should operate), which restricted the operations of the civil society commission, holding that it violated article 15 of the 2011 Constitutional Declaration since the exercise of the right to freedom of association should be regulated by legislation adopted by the legislature, instead of by decree enacted by the executive. On 4 December 2023, the First Instance Civil Court of Al Bayda similarly found that regulation of civil society is a task of the legislative branch and that the executive branch lacks the constitutional authority to issue decisions regarding the regulation of civil society, referring to article 15 of the Constitutional Declaration.

**(d) Which provisions in the respective laws do not conform to the Guidelines on Freedom of Association and Assembly in Africa?**

Beyond the Constitutional Declaration, Libya's legal framework for associations is not in conformity with the principles of the Guidelines on Freedom of Association and Assembly in Africa. Specific provisions are examined below and the ICJ also notes that the development of these laws has not been based on "broad and inclusive processes including dialogue and meaningful consultation with civil society", as recommended in paragraph 7 of the Guidelines.

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<sup>4</sup> Decree No. 12 of 2012; Decree No. 649 of 2013; Decree No. 1160 of 2018; Decree No. 1605 of 2018; Decree No. 286 of 2019; Decree No. 138 of 2023; Decree No. 5803 of 2023; Decree No. 7 of 2023; and Decree No. 312 of 2023.

<sup>5</sup> For more details on the adoption and content of these decrees, see ICJ, Libya's Civic Space: Repressive Frameworks; Continued Attacks, 2023, pp.5-7 and below section (d).

Law No. 71 of 1972 and No. 80 of 1975

Law No. 71 of 1972 “on criminalizing partisanship”, under article 3, and Law No. 80 of 1975 “amending and repealing certain provisions of the Penal Code”, under article 1, each criminalize advocating or calling for the establishment of assemblies or organizations prohibited by law, as well as founding, organizing, managing, funding, or providing meeting places for them. In addition, Article 206 of the Penal Code, as amended by Law No. 80 of 1975, punishes the participation in an unlawful CSO upon conviction with the death penalty. These legislative provisions are still in force today and are not in conformity with the Guidelines, which state that limitations on purposes and activities “shall be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society” (para. 24), and that sanctions “shall be strictly proportionate to the gravity of the misconduct in question” (para. 56). These provisions further run counter to paragraph 11 of the Guidelines which provides that even unregistered organizations should be allowed to operate freely, without having to register, and that they should not be criminalized on that sole basis.

Law No. 19 of 2001 “on the reorganization of non-governmental organizations”

Law No. 19 of 2001 is a Gadhafi-era law still in force in Libya today, which allows significant control by the executive over the work of CSOs in Libya. Under article 1 of Law No. 19 of 2001, only CSOs working on “social, cultural, sports, charity or humanitarian services” may register as legal entities. A strict interpretation of this provision led to a *de facto* ban of human rights-related work, as Libyan CSOs monitoring and documenting human rights violations could not register as legal entities. Such a state of affairs is not consistent with paragraphs 23 to 25 of the Guidelines, on “Purposes and Activities”, which recommend that associations “determine their purposes and activities freely” (para. 23); that limitations “be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society” (para. 24); and that associations be able to engage in political, social and cultural life, including matters relating to human rights and democratic governance (para. 25). Additionally, article 2 of Law No. 19 of 2001 sets out a burdensome procedure for CSOs to register, requiring that 50 of the founding members sign the by-laws. Conversely, the Guidelines recommend that registration be “simple, clear, non-discriminatory and nonburdensome” (para. 13).

The Law No. 19 of 2001, under article 14, also prohibits donations or gifts from foreign entities without the approval of the executive, and conditions funding to obtaining a permit from the executive, which is also empowered to examine the source of the donation, the method of obtainment and the objects of expenditures (art. 15). These provisions are not consistent with paragraphs 37 and 38 of the Guidelines on fundraising and sources of funds, with the latter specifically noting that “States shall not require associations to obtain authorization prior to receipt of funding”.

Under article 27, CSOs are to notify the executive of all the meetings of their congress and send them their minutes, and a representative of the executive may attend these meetings. The executive can oversee CSOs’ activities and even suspend their decisions – subject to review by a court. The executive can even assign an interim committee to manage the CSO (art. 32) or merge together organizations it believes to be working “on a joint purpose” (art. 34). Conversely, the Guidelines recommend that oversight bodies “have oversight only in relation to essential, minimum internal governance structures and standards” (para. 31), and that associations are not required to transmit minutes of their meetings or be required to have State agents in attendance at their meetings (para. 33).

Finally, the provisions on dissolution of CSOs under Law No. 19 are vague. Article 36 does not specify which entity is competent to dissolve CSOs, only referring to “the bodies competent” and does not define the grounds for dissolution strictly enough. The grounds are numerous and include vague and undefined concepts, such as “decency.” Moreover, in case of dissolution, the members of the CSOs found to be responsible for the breach of domestic law are ineligible for any leadership positions in other CSOs for five years following the dissolution (art. 40). The Law does not provide for any possibility of judicial review of decisions pertaining to dissolution grounds and procedures. Conversely, the Guidelines state that dissolution may only be applied “where there has been a serious violation of national law, in compliance with regional and international human rights law”, and that dissolution only takes place following a “full judicial procedure and the exhaustion of all available appeal mechanisms” (para. 58).

### Decrees

Following the ouster of Gadhafi in 2011 and the political and institutional fragmentation in Libya following the outbreak of the armed conflict in 2014, the authorities have issued a series of decrees, as outlined in section (a), with the stated aim at regulating civil society.

Decree No. 12 of 2012 & Decree No. 649 of 2013 established the Civil Society Commission in Benghazi, in the east of Libya. The Benghazi Commission is affiliated to the Ministry of Culture and Civil Society, which has to approve the Commission’s general policy, plans, programmes and establishment of new branches, and, therefore, lacks independence from the executive. Moreover, the decrees task the Commission with registering and approving CSOs and their activities but do not specify the conditions for such registration, thus giving the Commission discretionary powers to decide which organization is allowed to register, in contravention of the Guidelines (para. 13).

In 2018, Decree No. 1160 of 2018 and Decree No. 1605 of 2018 were issued, establishing a Civil Society Commission in Tripoli, in the west of Libya. Decrees No. 1160 and 1605 subordinated the Tripoli Commission even more to the executive and its Prime Minister by affiliating it to the Council of Minister, chaired by the Prime Minister. The Council of Minister nominates the Commission members, who report to the Council. In practice, the Tripoli Commission is under the Council’s direct supervision and, therefore, lacks impartiality, in contravention of the Guidelines (para. 21). The Guidelines, at paragraph 21, note that only one body should be tasked with registering associations, and paragraph 19 states that the same registration process should be employed across the country. These decrees create parallel registration processes and bodies in different parts of the country.<sup>6</sup> Furthermore, in February 2023, the western authorities issued Decree No. 138 of 2023 establishing a Committee for the Study of the Registration of Civil Associations and subsequently, in May 2023, issued Decree 312 of 2023, replacing Decree 138 and creating another Committee for the Regulation of the Work of Civil Society Organizations, under the direct supervision of the Prime Minister. This Committee is mandated to issue licenses to CSOs in accordance with applicable law, which the ICJ understands to refer to Law No. 19 of 2001; however, the Tripoli Civil Society Commission continues to operate in parallel.

The western authorities further issued Decree No. 286 of 2019, detailing the operations of the Tripoli Civil Society Commission. In practice, the Commission has imposed arbitrary conditions on CSOs, including requiring them not to “interact” with foreign States or foreign CSOs without the Commission’s approval before granting them a license, making it particularly difficult for them to register officially and obliging them to re-register in accordance with the conditions

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<sup>6</sup> Of note, on 9 August 2023, delegates of the Benghazi and Tripoli Civil Society Commissions announced they were merging as a single Civil Society Commission, based in Benghazi. However, other members of the Tripoli Commission denied this and refused to unify the two Commissions. See, ICJ, 2023, *Libya’s Civic Space: Repressive Frameworks; Continued Attacks*, p. 7.

imposed by Decree 286 or face suspension. In addition, according to Decree No. 286 of 2019, CSOs have to ask for the Commission's approval to organize any activity, manage their funds or even to open a bank account. Finally, the Commission could dissolve a CSO if the Commission considers that the CSO in question had exceeded its declared objectives or violated statutory laws, without the possibility of judicial review. In light of this, the Commission's mandate is not consistent with the Guidelines, which states that registration be by notification and be simple and non-discriminatory and without discretionary components (para. 13); that associations not be required to register more than once (para. 17), and that States respect the rights of associations to carry out their activities free from interference and intimidation (para. 29). Following an appeal filed by Libyan CSOs, Decree No. 286 was subsequently suspended by the South Benghazi Trial Court.

On 13 March 2023, the authorities issued Decree No. 5803 of 2023, revoking the licences of all CSOs established in Libya since 2011, following a decision of Libya's Supreme Judicial Council.<sup>7</sup> It was followed by Decree No. 7 of 2023, which instead allowed associations to operate temporarily and requiring them to regularize their status in line with Law No. 19 of 2001. As set out above, Law No. 19 of 2001 is not in conformity with the Guidelines on Freedom of Association and Assembly in Africa.

Several of the decrees outlined in this section have now been revoked; they are emblematic of the fragmented and inconsistent landscape for associations and, as outlined above, are not consistent with the Fundamental Principles of the Guidelines.

**(e) What measures would you propose that the African Commission undertakes to enable the respective government to effectively implement the Guidelines on Freedom of Association and Assembly in Africa?**

The ICJ recommends that the African Commission call on the Libyan authorities to ensure that:

- All existing laws and decrees on CSOs be abolished, and new ones be adopted in accordance with Libya's obligations under international human rights law and standards. Until then, the authorities shall ensure that any legislative frameworks put forward by the Government of National Unity or the Government of National Stability on the registration, functioning and funding of CSOs be fully in line with articles 14 and 15 of the 2011 Constitutional Declaration; and that
- All ongoing prosecutions and other arbitrary proceedings against civil society actors in relation to their legitimate work be terminated, and all those arbitrarily detained solely for their civil society work be immediately and unconditionally released.

The ICJ also proposes that the African Commission:

- Provide technical assistance to the Libyan authorities in drafting a new legislative framework, consistent with the Guidelines, the African Charter on Human and Peoples' Rights and international human rights law and standards;
- Provide assistance in convening an effective consultation with civil society actors in Libya in order to enable them to give input into legislative processes concerning freedom of association, as per paragraph 7 of the Guidelines; and
- Request a joint visit to Libya of the Special Rapporteur on human rights defenders and focal point on reprisals in Africa and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, in line with the Addis Ababa Roadmap on cooperation

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<sup>7</sup> This decision came after a request by the Tripoli Civil Society Commission to the Law Department of the Supreme Judicial Council, the body in charge of organizing the affairs of the judiciary, to clarify the applicable legal framework to CSOs, which found it was prohibited to set up a non-governmental organization or CSO unless a law had been promulgated and that authorities should dissolve CSOs, except those set up under Law No. 19 of 2001. See ICJ, 2023, Libya's Civic Space: Repressive Frameworks; Continued Attacks, pp.6-7.

between the Special Procedures of the UN Human Rights Council and those of the African Commission on Human and Peoples' Rights.