



# Freedom of the Press in Libya: A Long Way to Go

An assessment of the state of freedom of the press in Libya, in law and in practice, including perspectives from civil society and media practitioners



Nadège Lahmar

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## Introduction and Executive Summary

Libya is ranked 143rd out of 180 in Reporters without Borders (RSF)'s freedom of the press index<sup>1</sup> and its civic space is considered "Closed" according to the CIVICUS Monitor<sup>2</sup>.

Online activism in 2011 was instrumental to allow individuals in Libya to participate in public and political life. However, these opportunities have been heavily curtailed by the continuation and aggravation of violent repression against free speech, committed by state authorities and armed non-state actors<sup>3</sup>. Libyan media can be characterised by a lack of independence and plurality. Media outlets have become hostage to the political conflict, affiliated to armed groups or political groups, and used as a tool to incite against opponents and spread hate speech and disinformation<sup>4</sup>. Political polarisation has also been amplified by foreign-sponsored disinformation campaigns<sup>5</sup>. One of the journalist interviewed for this report explained : « It is very hard to work independently, often media outlets have to work with political or security groups ». In this context, the Libyan constitutional, legislative and regulatory framework fails to protect the rights of media workers and outlets in various ways.

The 2011 Constitutional Declaration does not provide sufficient protection for freedom of expression and the press based on international human rights law.

At the legislative level, the Penal Code retains overly broad and vague articles that place severe restrictions on freedom of expression, often sanctioned with extremely severe penalties like the death penalty. Gaddafi-era legislation, such as the Promotion of Freedom Act and the Publication Act, provides an interpretation of fundamental rights and freedoms that completely runs counter to Libya's

<sup>1</sup> "Libya | RSF." <https://rsf.org/en/country/libya>. Accessed on: 13 February 2023.

<sup>2</sup> "Libya - CIVICUS - Tracking conditions for citizen action." <https://monitor.civicus.org/country/libya/>. Accessed on : 13 February 2023.

<sup>3</sup> Human Rights Watch, "Counting the Dead in Benghazi | Human Rights Watch." 6 juin. 2014, <https://www.hrw.org/news/2014/06/06/counting-dead-benghazi>. Accessed on : 13 February 2023.

<sup>4</sup> Kafala, G. "The media's identity in the presence of hate speech." 5 March 2020. <https://daamdh.org/wp-content/uploads/2020/03/05.pdf>. Accessed on : 13 February 2023.

<sup>5</sup> Africa Center for Strategic Studies, "A Light in Libya's Fog of Disinformation" 9 oct. 2020, <https://africacenter.org/spotlight/light-libya-fog-disinformation/>. Accessed on : 13 February 2023.



international obligations, and organises the direct or indirect control of media by the State.

In 2012, Libyan authorities reinforced this problematic framework with Law 15 on prohibiting media discussions of religious opinions, which constitutes an illegitimate restriction of freedom of expression. In 2014, the Law on Combating Terrorism allowed the criminalisation of the legitimate exercise of freedom of expression under an overbroad definition of terrorism. Since 2017, under Law 4 on amending Provisions of the Military Penal Code and Military Code of Criminal Procedure, journalists tried for “terrorism” crimes are now tried under military court jurisdiction. Most recently, the Cybercrime Law, structured a system of digital censorship, while Electoral Law 1 and 2, adopted with the required legal quorum, do not guarantee all candidates equal access to media.

Libyan and foreign media professionals continuously report various obstructions as well as grave human rights violations at the hands of authorities or armed groups. Between 2020 and 2022, the Libyan Crimes Watch (LCW) was able to document ten kidnappings or arbitrary detentions of journalists, two enforced disappearances, fifteen cases of online or physical violence, or threats, and five arbitrary prosecutions, including one under military court<sup>6</sup>. In parallel, Libyan women journalists are subjected to multitude forms of gender-based violence and are restricted by harmful gender stereotypes and security conditions.

Furthermore, Libyan legislation does not address hate speech as such, and the newly-created General Authority for Monitoring Media Content (GAMMC) suffers from a lack of independence and clearly-defined monitoring standards in line with international law.

Interviews with 23 Libyan and foreign journalists and media activists highlighted 7 key points. All interviewees shared a bleak assessment of the situation, and highlighted the need to address connected issues such as the pervasive impunity and attacks on civic space. All Libyan journalists supported the assessment that a legal framework for the media was critically needed.

Overall, the lack of a clear legal framework with regards to media has resulted in a multiplicity of executive decisions and decrees, which often lack coherence and

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<sup>6</sup> Documentation provided by the LCW in writing.

clarity, and are not aligned with international human rights law. The legal vacuum for media regulation, combined with pervasive impunity, political polarisation and foreign disinformation has contributed to weakening freedom of the press and media literacy, and to promoting partisanship and media capture.

In this context, Libyan civil society, led by the Libyan Organization for Independent Media (LOFIM) has been mobilising to prepare and advocate for a media law in compliance with international standards. While its adoption is challenging, the draft provides a very valuable contribution and a basis for further reflection and advocacy.

## **Methodology**

The report is based on information collected through desk based research and interviews with journalists, activists and human rights defenders working in the field of media. Documentation of individual cases of human rights violations and relevant statistics, when not sourced online, was provided by Libyan human rights organisations such as Libyan Crimes Watch, the Libyan Organisation for Independent Media (LOFIM) and the Libyan Center for Freedom of the Press (LCFP) and the Defender Center for Human Rights (DCHR).

Interviews were conducted in January and February 2023 online, based on a questionnaire of 10 to 15 open-ended questions, to give respondents opportunities to share their views and experiences. Questions focused on getting journalists and activists' perspective on the situation of freedom of the press in Libya and the main challenges they face. We interviewed 23 people, including 10 women and 5 foreign journalists.

The identity and location of the majority of interviewees is withheld to protect their safety.

We express our gratitude to all those who contributed information to this report.

## Constitutional analysis

- **International human rights standards with regards to freedom of expression**

The right to freedom of expression and the press in Libya is guaranteed by several international human rights treaties and conventions<sup>7</sup>:

- Article 19 of the Universal Declaration of Human Rights guarantees the right to freedom of opinion and expression “without interference”
- Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Libya in 1976, similarly guarantees the right to freedom of opinion and information.
- The African Charter on Human and People’s Rights, ratified in 1986, also guarantees freedom of expression under its Article 9. It is complemented by the Declaration of Principles on Freedom of Expression and Access to Information in Africa (African Declaration) of 2019.

The right to freedom of expression and the press is not an absolute right, but it can only be restricted under very specific terms<sup>8</sup>. Under Article 19(3) of the ICCPR, these restrictions must only be provided by law, pursue a legitimate aim – either for the respect of the rights and reputation of others, for the protection of national security, public order or public health or morals – be necessary to pursue this aim, and be proportionate. The African Declaration provides a similar framework (Principle 9).

- **Constitutional declaration**

Following the overthrow of Colonel Qadhafi in 2011, the National Transitional Council (NTC), an interim executive body, published a draft interim constitution on 3 August 2011, which was meant to govern the country until a permanent constitution was established<sup>9</sup>. This very basic and vague document was not drafted by an elected body.

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<sup>7</sup> “Libya: Draft Constitution”, Article 19. August 2017. <https://www.refworld.org/docid/59b806704.html>. Accessed on : 13 February 2023.

<sup>8</sup> Ibid, 6.

<sup>9</sup> “Constitutional history of Libya | ConstitutionNet.” <https://constitutionnet.org/country/libya>. Accessed on : 13 February 2023.

The Declaration makes progressive commitments with regards to human rights in Article 1 and in Article 7, but significant gaps prevent it from providing sufficient protection for freedom of expression and the press<sup>10</sup>. Article 14 guarantees “freedom of opinion for individuals and groups” as well as “freedom of the press, printing, publication and mass media”, but somehow weakens this guarantee by making it conditional on an unspecified national legislation. There is no provision regulating restrictions on rights and freedom according to international standards.

It should be noted, however, that it is based on Article 14 that the Supreme Court decreed unconstitutional Law 37 in June 2012<sup>11</sup>. Law 37 criminalised the harming of “the 17 February Revolution”, the spreading of false information to harm national defence or terrorise people, as well as offence against Islam, the state and its institutions<sup>12</sup>.

Overall, the text suffers from many gaps. None of the rights proclaimed are clearly defined and international law is not included as a reference. Article 1 of the Declaration declares Islam to be the religion of the State and Islamic Sharia the “principal source of legislation”. This provision remains vague as to how Islamic Sharia is defined in practice and whether it would respect international human rights law, leaving it open to arbitrary interpretation<sup>13</sup>. Article 17 also provides that the NTC shall be entrusted “to embody and promote values and morals”. The lack of precise definition allows it to infringe upon fundamental rights.

## ● **Constitutional draft**

On 29 July 2017, over two thirds of Libya’s Constitution Drafting Assembly (CDA), elected in February 2014, approved a final draft constitution. While this

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<sup>10</sup> Libya’s Transition: The Constitutional Declaration, a Basis for Democracy?”. Democracy Reporting International. Briefing Paper 22, December 2011.

[https://democracyreporting.s3.eu-central-1.amazonaws.com/images/3188DRI\\_LY\\_BP22\\_constitutional\\_declaration\\_libya\\_21.pdf](https://democracyreporting.s3.eu-central-1.amazonaws.com/images/3188DRI_LY_BP22_constitutional_declaration_libya_21.pdf) Accessed on : 13 February 2023.

<sup>11</sup> "Libyan Supreme Court strikes down law aimed at curbing free speech." Reporters without Borders. 14 June 2012, <https://rsf.org/en/libyan-supreme-court-strikes-down-law-aimed-curbing-free-speech>. Accessed on : 13 February 2023.

<sup>12</sup> "Libya: Three years on, Gaddafi-era laws used to clamp down on free expression" 12 Feb. 2014, <https://www.amnesty.org/en/latest/press-release/2014/02/libya-three-years-gaddafi-era-laws-used-clamp-down-free-expression/>. Accessed on : 13 February 2023.

<sup>13</sup> Ibid, 9.



represented a significant achievement, the draft suffered from several procedural and substantial issues, and was never submitted to a referendum<sup>14</sup>.

The draft does provide for unprecedented rights and progressive guarantees. Article 13 provides that “ratified international treaties and conventions shall supersede the law but shall be subordinate to the Constitution”. Article 37 does recognise freedom of speech and information as “two safeguarded rights”. However, the text chooses not to clearly define the scope of these rights, which limits their protection<sup>15</sup>. Article 38 also “guarantees the freedom, plurality, and independence of the press”. However, a stronger Article would have also stated an important guarantee of pluralism and diversity with regards to ownership and content. The text also unduly limits ownership to “citizens”. The prohibition of provisional detentions in “cases of journalism” is not sufficient if international standards regarding limitations to rights and freedoms and provisional detention are not respected. Similarly, the draft only allows media outlets to be suspended or disbanded by judicial authorities, but without referring to the requirements set under Article 19(3) of the ICCPR<sup>16</sup>.

The draft does not give sufficient attention to media regulation<sup>17</sup>. There are no clear constitutional provisions protecting the independence of the Higher Council for Media and Press and defining its mandate and functioning, thus potentially allowing unjustified and disproportionate restrictions.

Under Article 37 on freedom of speech, a provision prohibits accusations of unbelief (*takfir*), which may be understood as incitement to hatred or violence, but could have been defined more clearly in order to avoid the prohibition of legitimate expressions of opinion<sup>18</sup>.

Article 65 includes a general limitation clause, stating that any restriction on fundamental rights must be ‘necessary, clear, defined, and proportionate to the interest being protected’, and consistent with ‘the provisions of this constitution’. These limitations however do not meet the requirements of international standards,

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<sup>14</sup> Al-Ali, Z. "Analysis of Libya's final draft constitution". Constitutionnet.org. 4 October 2017. <https://constitutionnet.org/sites/default/files/2017-10/Analysis%20of%20Libya's%20final%20draft%20constitution%20-%20Zaid%20Al-Ali.pdf>. Accessed on : 13 February 2023.

<sup>15</sup> Ibid, 6.

<sup>16</sup> Ebbs, T. "Libya; Freedom of Expression in Law and in Practice". MENA Media Law. January 2018. [https://www.menamedialaw.org/sites/default/files/library/material/libya\\_chp\\_2018.pdf](https://www.menamedialaw.org/sites/default/files/library/material/libya_chp_2018.pdf). Accessed on : 13 February 2023.

<sup>17</sup> Ibid, 6.

<sup>18</sup> Ibid, 6.

as they do not list the exhaustive legitimate aims provided in international law, and they do not fully and explicitly specify the requirements of legality, legitimacy, necessity and proportionality.

Another source of concern is the repeated mention of Sharia and Islamic values, for instance as a source of legislation in Article 6 and as a reference for the National Council for Human Rights in Article 159, without any specifications with regards to what constitutes Sharia, how this would be implemented in practice and guarantees on whether it is in line with international law.

## National legislation

- **The Penal Code**

The Libyan Penal Code of 1953, amended in 2014, retains overly broad and vague articles that place severe restrictions on the right to freedom of expression and the press, often with extremely severe penalties like the death penalty – such as Articles 166; 178; 195; 203; 205; 207; 220 and 421. For instance, Article 207 prescribes the death penalty for anyone promoting “views or principles” that aim at changing “the fundamental principles of the constitution or the fundamental structures of the social system” or at “overthrowing the state’s political, social and economic systems”.

The vague wording of these offences runs against the principle of legality and allows for their arbitrary use by authorities<sup>19</sup>, notably to punish critical speech, which is all the more concerning given the severe and disproportionate punishments that these offences carry.

Defamation continues to be a criminal offence under Articles 245 and 439, for which the sanction is aggravated if it is targeting a public official, and Articles 290 and 291 restrict the right to free expression by prescribing harsh punishments for “insulting” religion or religious figures. The right to criticise public officials as well as religious ideas and figures is clearly recognised and protected under the right to freedom of expression and the press, as stipulated in General Comment n°34 of the HRC<sup>20</sup>.

- **The Promotion of Freedom Act (Law 20 of 1991)**

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<sup>19</sup> "Libya: Politicians face death penalty over blasphemous cartoon." Amnesty International. 27 Feb. 2014.

<https://www.amnesty.org/en/latest/press-release/2014/02/libya-politicians-face-death-penalty-over-blasphemous-cartoon/>. Accessed on : 13 February 2023.

<sup>20</sup> United Nations Human Rights Council - General Comment n°34, CCPR/C/GC/34.

<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>. Accessed on : 13 February 2023.

The Promotion of Freedom Act is a text that provides an interpretation of fundamental rights and freedoms that completely runs counter to Libya's obligations under international law.

It includes a very constrained definition of freedom of expression in Article 8, limiting it to citizens, and only in "People's Congresses and Jamahiriyan media". It further poses ambiguous and broad limitations, sanctioning its exercise if "it is exploited to prejudice the authority of the people for personal purposes", which cannot be considered a legitimate restriction and can easily be used to censor free speech. The Act also does not provide sufficient clarity and detail when it prohibits attempts to impose opinions "through enticement, force, intimidation or fraud".

- **The Publication Act (Law 76 of 1972)**

The Publication Act is the only existing law pertaining to media regulation. The Publication Act is a punitive and restrictive piece of legislation which organises the direct or indirect control of media by the State<sup>21</sup>. The Act appears outdated as it mostly addresses printed media, and it was adopted in 1972, before Libya ratified international conventions pertaining to freedom of the press.

Article 1 starts by constraining freedom of expression "within the framework of the principles, values and objectives of society", which remains undefined. This definition runs against the right to freedom of expression as guaranteed by Article 19 of the ICCPR, and in practice allows the State to tightly control the media environment.

Article 2 appears to ban prior censorship; however the law unduly requires media owners to apply to the Publications Department of the Ministry of Information to obtain a prior approval to operate and to publish materials (Articles 9 and 10). Media workers, printing presses and publishers operating without a press card or licence granted by the Publications Department risk at least six months of prison (Article 25 and 26). Foreign journalists must submit their publications for prior approval to the Department (Art. 28).

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<sup>21</sup> "Preliminary reading of a draft law to regulate the media in Libya". Libyan Organisation for Independent Media. 16 Nov. 2022, <https://lofim.org.ly/2022/11/16/%D9%82%D8%B1%D8%A7%D8%A1%D8%A9-%D8%A3%D9%88%D9%84%D9%8A%D8%A9-%D9%81%D9%8A-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D9%84%D8%AA%D9%86%D8%B8%D9%8A%D9%85-%D8%A7%D9%84%D8%A5%D8%B9/>. Accessed on : 13 February 2023.

The licensing process is burdensome, with vague entry requirements leaving room for discretionary interpretation, and the law puts in place a series of illegitimate restrictions and specifications on media work, relating to the content that can be published, their ownership and internal management (Article 5; 6; 7; 8; 11; 12). They only serve to constrain media ownership and diversity, and have no basis in international law.

Under international law, media licensing schemes, through print media licences<sup>22</sup> and individual press cards<sup>23</sup>, are considered to be an infringement of the right to freedom of expression, as they are not necessary nor for public order nor for the organisation of the media profession, can easily be used as a restrictive and a censorship tool. Technical registration schemes are not recommended either, but may be justified as an administrative requirement to provide basic information, if they consist of a simple, automatic procedure, with no possibility for authorities to refuse it.

Furthermore, the Publications Department excessively interferes with the internal management, content, and finances of the media, and can easily suspend and revoke a licence, with no mention of a right of recourse. The law also provides for prison terms for a variety of ill-defined offences, including defamation and publishing information that constitutes contempt to religions or that intends to “mislead the masses”.

The Government of National Accord (GNA) stated that legislation contravening the rights to freedom of expression and the press - including the Publication Act - was abolished by the 2011 Constitutional Declaration<sup>24</sup>. However, executive authorities since 2011 have continued to refer to the Publication Act to call on media outlets and journalists to register with them<sup>25</sup>. The law was also used in August 2017

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<sup>22</sup> "International standards: Regulation of the print media". ARTICLE 19. 5 April 2012, <https://www.article19.org/resources/international-standards-regulation-print-media/>. Accessed on : 13 February 2023.

<sup>23</sup> "International standards: Regulation of media workers". ARTICLE 19. 4 April 2012, <https://www.article19.org/resources/international-standards-regulation-media-workers/>. Accessed on : 13 February 2023.

<sup>24</sup> Universal Periodic Review - National Report, Libya (A/HRC/WG.6/22/LBY/1). Para 82. 5 May 2015. [https://www.upr-info.org/sites/default/files/documents/2015-05/a\\_hrc\\_wg.6\\_22\\_lby\\_1\\_libya\\_e.pdf](https://www.upr-info.org/sites/default/files/documents/2015-05/a_hrc_wg.6_22_lby_1_libya_e.pdf). Accessed on : 13 February 2023.

<sup>25</sup> Ibid, 15.



to ban a book entitled *Sun on Close Windows*, criticised by authorities as “dangerous for public morality”<sup>26</sup>.

- **Law 15 of 2012 on prohibiting media discussion of religious opinions**

The NTC adopted Law 15/2012 which prohibited any media discussion of religious opinions (*fatwas*) issued by the National Council of Islamic Jurisprudence (*Dar Al-Iftaa*), which “all individuals of society must respect”<sup>27</sup>. This law constitutes an illegitimate restriction of freedom of expression and violates Libya’s international obligations, notably Article 19 of the ICCPR. According to the HRC General Comment 34: “All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature.”<sup>28</sup>

- **The Law on Combating Terrorism and the Law amending Provisions of the Military Penal Code and Military Code of Criminal Procedure**

The Law on Combating Terrorism (Law 3 of 2014) uses an overly broad definition of “terrorist acts” and “terrorist organisations” (Articles 1 and 2), which allows it to criminalise acts that fall under a legitimate exercise of freedom of expression and the press, and puts journalists and others at risk of harsh penalties including life imprisonment<sup>29</sup>. For instance, the law criminalises actions that “harm national unity” or that “disrupts public order or endangers peace of the society” (Articles 1 and 2). Article 3 also potentially extends the reach of the law to any ordinary criminal offence. Article 15 directly endangers media workers as it provides for a sentence of five to ten years in prison for “anyone that propagates, promotes or deceives in order to undertake a terrorist act, whether through speech, writing or any other mode of transmission or publication”.

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<sup>26</sup> Universal Periodic Review - Joint Stakeholders Report, Coalition of Libyan Human Rights Organisations. October 2019.

[https://www.upr-info.org/sites/default/files/documents/2019-11/coalition\\_of\\_libyan\\_human\\_rights\\_organisations\\_upr36\\_libya.pdf](https://www.upr-info.org/sites/default/files/documents/2019-11/coalition_of_libyan_human_rights_organisations_upr36_libya.pdf). Accessed on : 13 February 2023.

<sup>27</sup> Universal Periodic Review - Joint Stakeholders Report, Lawyers for Justice in Libya. October 2014. [https://www.upr-info.org/sites/default/files/documents/2015-04/ljil\\_upr22\\_lby\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/documents/2015-04/ljil_upr22_lby_e_main.pdf). Accessed on : 13 February 2023.

<sup>28</sup> Ibid, 20.

<sup>29</sup> “A Guide to Freedom of Expression in Libya”, International Media Support & Lawyers for Justice in Libya, 22 Nov. 2017. <https://www.mediasupport.org/publication/guide-to-freedom-of-expression-in-libya/>. Accessed on : 13 February 2023.

Furthermore, following the introduction of Law 4/2017 on amending Provisions of the Military Penal Code and Military Code of Criminal Procedure, terrorism crimes are now tried under military court jurisdiction, which does not guarantee adequate defence rights and due process. Members of the military judiciary are not subjected to independent oversight, and the legal framework governing military tribunals does not ensure the exercise of the right to a fair trial<sup>30</sup>. Law 4/2017 mandates that military tribunals have jurisdiction over “armed groups” and “individuals [who have committed] acts of terrorism” for crimes committed against the State and crimes committed against the military, irrespective of who commits them. These amendments are not in line with international law and standards, which provide that the jurisdiction of military courts should be limited to offences which are strictly military in nature and which have been committed by military personnel<sup>31</sup>.

### ● The Cybercrime law

The Anti-Cybercrime Law 5/2022 formally issued by the House of Representative in September 2022 undermines the right to freedom of expression and opinion, as well as the right to privacy, as it authorises unlimited and unchecked digital surveillance and allows for digital censorship based on several vague concepts opening the door for arbitrary interpretation<sup>32</sup>.

The law allows the use of the Internet only “provided that public order and morality are respected”. The National Information Security and Safety Authority (NISSA) is allowed to censor any online publication that “could possibly provoke racial or regional slurs and extremist religious or denominational ideologies that undermine the security and stability of the society” and that are “contrary to public morality”, without any judicial oversight (Articles 7 and 8). NISSA is also able to monitor electronic messages and conversations under the ill-defined requirements of “security” and “urgency”. Individuals who publish information deemed to be a threat

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<sup>30</sup> “Accountability :Libya in Law International under Criminal the of Assessment An System”. International Commission of Jurists, Dec. 2019. <https://www.statewatch.org/media/documents/news/2019/dec/icj-libya-accountability-serious-crimes-12-19.pdf>. Accessed on : 13 February 2023.

<sup>31</sup> Military Jurisdiction and International Law: military courts and gross violations”, Vol. 1. Jan. 2004. <https://www.icj.org/military-jurisdiction-and-international-law-military-courts-and-gross-human-rights-violations-vol-1/>. Accessed on : 13 February 2023.

<sup>32</sup> “Libya: House of Representatives must immediately repeal Anti-Cybercrime Law”, Acces Now. 11 Nov. 2022, <https://www.accessnow.org/libya-anti-cybercrime-law/>. Accessed on : 13 February 2023.

to “security or public safety” risk imprisonment. The law also illegitimately prohibits the production, possession and use of encryption tools without permission from NISSA, under risk of imprisonment (Articles 9 and 39). Under Articles 13 and 47, journalists could face at least one year of prison for intercepting or wiretapping information online, threatening their right to access information.

According to United Nations Experts<sup>33</sup>, “the Law in its current form constitutes an overreach of State authority on the actions and behaviour online of individuals residing in and outside the territory of Libya, and could lead to self-censorship, the stifling of civil society, the deterioration of media freedom, and unlawful mass surveillance in the country”.

### ● Electoral laws and regulations

Regarding media regulations in electoral contexts, it should also be noted that the House of Representatives issued two electoral laws in September and October 2021 (law 1 and law 2 of 2021), which were adopted without the legal quorum required<sup>34</sup>. On 29 November 2021, the High National Election Commission (HNEC) issued Resolution 82 of 2021 regarding the electoral advertising regulations. As analysed by the Libyan Organisation for Independent Media (LOFIM)<sup>35</sup>, both the laws and Resolution 82 suffer from ill-defined terms and a lack of clarity, as well as important gaps pertaining to the regulation of media electoral coverage (time-frames, content, finances, transparency). As a result, they do not guarantee all candidates equal access to media exposure. In addition, HNEC Resolution 35 of July 2021 excludes freelance journalists from participating in its press conferences and adequately following the electoral process, which is an illegitimate restriction to media activity.

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<sup>33</sup> United-Nations Special Procedures Communication OL LBY 3/2022, 31 March 2022. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27150>. Accessed on : 13 February 2023.

<sup>34</sup> "Libya elections: Can internal conflict move from bullets to ballots?", CS Monitor. 30 Nov. 2021, <https://www.csmonitor.com/World/Middle-East/2021/1130/Libya-elections-Can-internal-conflict-move-from-bullets-to-ballots>. Accessed on : 13 February 2023.

<sup>35</sup> Fhelboom, R. “The Defects of the electoral advertising Articles in the Libyan Election Laws and Its Executive Regulations”, LOFIM. 8 Jan. 2022. [https://lofim.org.ly/wp-content/uploads/2022/04/Policy-Paper-Reda-Fhelboom\\_The-Defects-of-the-electoral-advertising-Articles-in-the-Libyan-Election-Laws-and-Its-Executive-Regulations.pdf](https://lofim.org.ly/wp-content/uploads/2022/04/Policy-Paper-Reda-Fhelboom_The-Defects-of-the-electoral-advertising-Articles-in-the-Libyan-Election-Laws-and-Its-Executive-Regulations.pdf). Accessed on : 13 February 2023.

## Legal, security and other restrictions

- **Media regulation and restrictions of media work**

- **Endangering media independence and encouraging polarisation**

As presented above, the Publications Act gives executive authorities a discretionary right to licence print and electronic media, private and public<sup>36</sup>. Since 2011, various authorities have taken the mandate of media licensing as well as media regulation<sup>37</sup>. Overall, the lack of a clear legal framework has resulted in a multiplicity of executive decisions and decrees, which often lack coherence and clarity. These authorities have also not been independent and have benefited from discretionary powers to influence media access and content.

Decree 44 of 2012 issued by the NTC relocated the state's media regulation from the Ministry of Culture and Civil Society to a High Media Council. In February 2013, the General National Congress (GNC) replaced the High Media Council with the Ministry of Media. Its role and structure remained unclear. The GNA maintained a Ministry of Media, which requested media outlets to comply with the licensing requirements of the Publication Act<sup>38</sup>. In October 2015, the Ministry also issued communications referring to fatwas issued by Dar Al-Iftaa to forbid depictions of the prophet Mohammed<sup>39</sup>.

More recently, Decree 597, issued by the Government of National Unity (GNU) in September 2020, without input from journalists and media organisations, created the Libya Media Foundation<sup>40</sup>. The decree is inconsistent with international standards

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<sup>36</sup> "Libya: A complete failure to implement UPR recommendations since 2015", Cairo Institute for Human Rights Studies & Libya Platform. 2 April 2020, <https://cihrs.org/libya-a-complete-failure-to-implement-upr-recommendations-since-2015/?lang=en>. Accessed on : 13 February 2023.

<sup>37</sup> Universal Periodic Review - Stakeholders Report, Libyan Center for Freedom of the Press. October 2019. [https://www.upr-info.org/sites/default/files/documents/2015-04/lcfrp\\_upr22\\_lby\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/documents/2015-04/lcfrp_upr22_lby_e_main.pdf). Accessed on : 13 February 2023.

<sup>38</sup> Ibid, 26.

<sup>39</sup> Ibid, 15.

<sup>40</sup> "Libya: Press Freedom is the Path to Free and Fair Elections." Cairo Institute for Human Rights Studies (CIHRS). 15 April 2021, <https://cihrs.org/libya-press-freedom-is-the-path-to-free-and-fair-elections/?lang=en>. Accessed on : 13 February 2023.

for the formation of independent media regulatory agencies. It gives the Foundation broad and unchecked powers to restrict media content based on ill-defined terms, and does not provide for any guarantee for its independence.

However, instead of reforming the Foundation's legal status and role, Decision 116 of June 2021 dissolved the Foundation and transferred the oversight of ten public media outlets to six different Ministries and governmental bodies, including the Council of Ministers, which further increased government control and political fragmentation in public media<sup>41</sup>. Decision 116 also led to the arbitrary dissolution of several media institutions.

On 11 August 2021, the GNU then issued Decision 301 related to the Department of Information and Governmental Communication (renamed from "Department of Communication and Information"), which increased governmental control over the media and threatened its freedom and pluralism<sup>42</sup>. Decision 301 gives very broad powers to the Department, which is subordinate to the head of the government, including supervising media outlets and the quality of their content, nominating public media directors and granting licences. The Department is not structurally nor financially independent from the government.

Similarly, Law 8 of 2021 rendered the Libyan News Agency subordinate to the Presidency of the House of Representatives and constituted another step endangering the independence of the press<sup>43</sup>.

Furthermore, on 15 September 2022, the GNU issued Decision 811 of 2022 relating to the conditions and requirements for audiovisual media activities. According to Decision 811, audiovisual media must obtain permission to practise from the Committee for the Regulation of the Work of Private Audiovisual Channels, established in March 2022. The Committee lacks independence as it is supervised by the Department of Information and Government Communications, and includes

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<sup>41</sup> "Libya: Foundation's Dissolution Detrimental to Independent Media Required for Free and Fair Elections", CIHRS. 2 July 2021, <https://cihrs.org/libya-foundations-dissolution-detrimental-to-independent-media-required-for-free-and-fair-elections/?lang=en>. Accessed on : 13 February 2023.

<sup>42</sup> "Libya: Latest governmental decision undermines media freedom", Article 19. 20 Aug. 2021, <https://www.article19.org/resources/libya-latest-governmental-decision-undermines-media-freedom/>. Accessed on : 13 February 2023.

<sup>43</sup> Annual Report 2022 - Media Freedom Violations, LOFIM. 6 May 2022, <https://lofim.org.ly/en/2022/05/06/the-libyan-organization-for-independent-media-issues-its-second-annual-report-on-media-freedom-in-libya-2/>. Accessed on : 13 February 2023.



representatives of the Ministry of Interior and Intelligence Services<sup>44</sup>. In order to obtain this permission, media outlets must meet a set of conditions, obtain a licence from the Ministry of Interior, the Intelligence Services or tax administration, and pay a high fee. These requirements constitute prohibitive and undue limitations to enter the media field. According to HRC General Comment n°34, licensing conditions and fees for broadcast media must “reasonable and objective, clear, transparent, nondiscriminatory and otherwise in compliance with the Covenant”<sup>45</sup>.

In addition to these executive decisions, authorities have stipulated other conditions for media work, without any legal basis. In April 2021, the GNU arbitrarily required that media outlets wishing to publish news related to the Prime Minister send their licence, a letter, the names of two correspondents, their location and contact information to its media office, at least two days ahead of a publication<sup>46</sup>.

With regards to online media, it should be noted that the Terms of Service of the General Post and Telecommunications Company (GPTC), established under Gaddafi to regulate domain name registration, are still applied today. Under these Terms of Service, domain names that are deemed to be “obscene, scandalous, indecent, or contrary to Libyan law or Islamic morality words, phrases or abbreviations” are prohibited and can be deleted by Libya Telecom and Technology (LTT) without a court order<sup>47</sup>.

#### **- Intimidations, arbitrary bans and other obstructions**

Libyan media professionals have reported a series of obstructions coming from authorities or from armed groups, ranging from censorship to intimidation and confiscation of equipment. This is widely reflected in interviews conducted with Libyan journalists. One journalist explained that « there is a very narrow space for independent journalists, but you have to know the red lines, and you have to work underground ». Similarly, another journalist admits : « I cannot say that I am a journalist in Libya, I have to hide it and write anonymously. I always have to be careful about the content, to avoid any red lines at the national or local level ».

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<sup>44</sup> “Libya: Government must repeal new media rules”, CIHRS. 12 Oct. 2022.

<https://cihrs.org/libya-government-must-repeal-new-media-rules/?lang=en>. Accessed on : 13 February 2023.

<sup>45</sup> Ibid, 20.

<sup>46</sup> Ibid, 37.

<sup>47</sup> Ibid, 15.

GNC Decree 5/2014 imposed a ban on television and radio stations broadcasting views hostile to the 17 February Revolution or aimed at destabilising the country or creating division between Libyans<sup>48</sup>. It instructed the state to take “any measures” against countries or businesses in territories from where the channels are broadcast if they do not block the transmission of these stations. Such restrictions to freedom of press unduly limit media pluralism and access to information.

In July 2019, the Interim Government’s Public Institution for Radio and Television in Bayda issued a decree preventing local authorities from dealing with 11 satellite channels accused of operating without a licence, supporting extremism and terrorism, and threatening Libya’s social fabric<sup>49</sup>. On 23 June 2021, the Libyan Arab Armed Forces (LAAF) coalition forced *Ajdabiya News* to withdraw their issue published on that day, which talked about the kidnapping of the newspaper's former editor-in-chief, Mansour Atti<sup>50</sup>.

In 2021, ahead of elections that were expected to be held in December, local and international media have reported difficulties in gaining access to political events<sup>51</sup> and obtaining accreditations for media coverage of electoral events, reportedly attributed according to political affiliation<sup>52</sup>. For instance, on 11 February 2021, a number of local and international media correspondents were summarily expelled by the security officers of the Benina airport in Benghazi, after they came to cover the visit of the President of the Presidential Council<sup>53</sup>.

Furthermore, between 2019 and 2020, Libyan human rights organisations monitored 21 cases of individuals, who were stopped at security checkpoints and subjected to a control of their electronic devices, in flagrant violations of the right to

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<sup>48</sup> "Libya: Three years on, Gaddafi-era laws used to clamp down on free expression" 12 Feb. 2014, <https://www.amnesty.org/en/latest/press-release/2014/02/libya-three-years-gaddafi-era-laws-used-clamp-down-free-expression/>. Accessed on : 13 February 2023.

<sup>49</sup> "LIBYA : eleven TV channels banned in eastern Libya", RSF. 17 July 2019, <https://rsf.org/en/libya-eleven-tv-channels-banned-eastern-libya>. Accessed on : 13 February 2023.

<sup>50</sup> "Peace process and legitimacy of elections in Libya threatened by lack of accountability and rule of law", CIHRS & Libya Platform. 12 Oct. 2021, <https://cihrs.org/peace-process-and-legitimacy-of-elections-threatened-by-lack-of-accountability-and-rule-of-law/?lang=en>. Accessed on : 13 February 2023.

<sup>51</sup> "7 things to do in 7 months: A human rights roadmap to elections", LFJL. <https://www.libyanjustice.org/lfjl-libya-roadmap-to-elections-7-things-to-do-in-7-months/guarantee-ever-yones-freedom-of-expression-and-promote-free-media>. Accessed on : 13 February 2023.

<sup>52</sup> Ibid, 40.

<sup>53</sup> "New Presidential Council should respect and protect the freedom of the press and facilitate the work of journalists", LOFIM. 20 Feb. 2021. <https://lofim.org.ly/2021/02/20/على-المجلس-الرئاسي-الجديد-احترام-حرية-الصحافة>. Accessed on : 13 February 2023.

privacy and without judicial basis. These unlawful practices particularly endanger journalists<sup>54</sup>.

#### - Foreign journalists

In addition to the security threats to which all journalists are exposed, foreign journalists encounter substantial difficulties to work in Libya as a result of lengthy, complicated and burdensome visa procedures<sup>55</sup>. These measures prevent journalists from working freely and independently and constitute a critical barrier to media work.

All interviewed foreign journalists confirmed that, in order to obtain a visa from the Foreign Media Department (FMD) at the Ministry of Foreign Affairs, they have to pay for an intermediary or use other personal contacts. According to one of them: “There is a big issue of visa access and accreditation. This system is controlled by executive and security authorities.” She adds: “All the time spent on administrative processes is time taken away from journalistic work. I think it is on purpose, it is another obstacle to slow down your work. (...) Very few journalists have the capacity to face such barriers”.

In addition to weighing it on the visa request decision, they deploy significant means to follow and escort foreign journalists once they are in the country<sup>56</sup>. One interviewee explained: “There is a “minder” that follows you, and if you do not follow the rules, then they will make him face the consequences.” To be able to work in Libya, journalists must also request several permits, such as a permit to film and to interview someone. Many media workers also complain of harassment by security bodies, especially if they are carrying a microphone or camera. One journalist describes “the constant surveillance, fear of confiscation of my material and discovery of my sources” as “psychological violence”.

According to foreign journalists we spoke to, ease of access to Libya depends on the political context and on whether militias need the press to support a narrative. One of them explained: “Covering the attack against Tripoli in 2019 was very easy,

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<sup>54</sup> "CHRNA and 27 Libyan organisations : A statement regarding the inspection of personal devices at security checkpoints in Libya", Defender Center for Human Rights (DCHR). 28 July 2020, <https://defendercenter.org/4829>. Accessed on : 13 February 2023.

<sup>55</sup> Ibid, 33.

<sup>56</sup> "Libya - Tripoli's new rules put journalists' lives in danger", RSF. 10 July 2018, <https://rsf.org/en/libya-tripoli-s-new-rules-put-journalists-lives-danger>. Accessed on : 13 February 2023.

militias were helping us. However, once, even with all the permits, I was not allowed to film a military parade, I think because they were trying to promote a narrative of stability”. She added: « It is only a matter of political will, because if there is an official event that authorities want to promote, they will call you individually and give you a visa in a matter of days. Of course, if you come, they make sure you do not leave your hotel room to do other work”. According to another Western journalist we spoke to : « getting a press visa in Libya is all about exchanges of favours, you have to give them something ».

## Grave violations of human rights committed against media workers

Within the context of recurrent attacks on independent voices and widespread impunity, media workers have been especially targeted throughout the country. They have faced military trials, raids on their homes and workplace, arbitrary arrests, enforced disappearances with risks of torture, as well as assassinations.

Under Article 19 of the ICCPR, Libyan authorities have a responsibility to protect journalists. General Comment 34 of the HRC stipulates that “states parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression” and that “all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress”<sup>57</sup>. In the revised Declaration of Principles of Freedom of Expression in Africa, the ACHPR further specifies in its Principle 20(4) that “States shall take effective legal and other measures to investigate, prosecute and punish perpetrators of attacks against journalists and other media practitioners, and ensure that victims have access to effective remedies”<sup>58</sup>.

### ☐ Widespread impunity

Grave human rights violations are a regular occurrence in Libya, largely committed by armed groups and militias affiliated to official or *de facto* authorities. There are recurring cases of torture and ill-treatment, killings, enforced disappearances, and arbitrary arrests, notably against media workers. Armed groups

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<sup>57</sup> Ibid, 20.

<sup>58</sup> "Declaration of Principles on Freedom of Expression and Access to Information in Africa", African Commission on Human and People's Rights. Oct-Nov. 2019, [https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression\\_ENG\\_2019.pdf](https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf). Accessed on : 13 February 2023.



throughout the country have paralyzed the national judiciary through intimidation and violence<sup>59</sup>.

Armed groups benefit from state treasury and have been empowered to play the role of security and law enforcement institutions without any vetting and judicial or legislative oversight<sup>60</sup>. Law 38 of 2012 provided a blanket amnesty for any “acts made necessary by the 17 February revolution”. It represented a serious impediment to the establishment of the rule of law as it allowed perpetrators to commit human rights violations in the name of the revolution.

This precarious security environment has fostered self-censorship and polarisation in the media<sup>61</sup>. One journalist working in Libya told us: “The situation is very bleak. The number of violations appears low because people self-censor and refuse to speak about what they were subjected to”. She added: “There is no justice to protect anyone, including journalists, so we work under constant threat”. It is estimated that 83 journalists have fled the country since 2014<sup>62</sup>.

#### ☐ **Arbitrary arrest and detention**

Journalists are regularly arrested on the basis of Penal Code provisions, often for publishing content against social value, for defamation, or for revealing confidential information. The legal basis for the arrest is frequently unclear. In September 2021, for instance, journalist Fawzi Hamza spent ten days in pre-trial detention for a defamation complaint<sup>63</sup>.

The years 2021 and 2022 saw a steep increase in the number of arrests. Between September and December 2021, at least 16 bloggers, journalists and

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<sup>59</sup> Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya, including on the effectiveness of technical assistance and capacity-building measures received by the Government of Libya (A/HRC/37/46). 21 Feb. 2018, <https://reliefweb.int/report/libya/report-united-nations-high-commissioner-human-rights-situation-human-rights-libya-0>. Accessed on : 13 February 2023.

<sup>60</sup> “Libya: Ten years after uprising abusive militias evade justice and instead reap rewards”, Amnesty International. 17 Feb. 2021, <https://www.amnesty.org/en/latest/news/2021/02/libya-ten-years-after-uprising-abusive-militias-evade-justice-and-instead-reap-rewards-2/>. Accessed on : 13 February 2023.

& “Libya: GNU must not legitimise militias”, Amnesty International. 6 Aug. 2021, <https://www.amnesty.org/en/latest/news/2021/08/libya-government-of-national-unity-must-not-legitimise-militias-and-armed-groups-responsible-for-harrowing-abuses/>. Accessed on : 13 February 2023.

<sup>61</sup> Ibid, 15.

<sup>62</sup> Ben Salah, N. “Tunisia, land of exile for Libyan journalists”, *Nawaat*. 6 May 2022. <https://nawaat.org/2022/05/06/تونس-أرض-منفى-الصحافيين-الليبيين/>. Accessed on : 13 February 2023.

<sup>63</sup> As documented by the Libya Platform, a coalition of Libyan human rights organisations.

media professionals were either arbitrarily arrested or disappeared<sup>64</sup>. Between November 2021 and March 2022, the Tripoli-based Internal Security Services (ISS) arrested at least seven young men, including at least one journalist, in what became known as the “Tanweer case”. On 24 November 2021, at least 7 civilians, including two journalists, were also arrested in Sirte, during a campaign of arrests launched by the Benghazi Internal Security Agency (ISA).

Authorities also often arrest journalists on the basis that they do not have the necessary permits – a disproportionate and illegitimate sanction according to international standards. On 25 February 2021, reporter Ziad al-Werfalli was arrested by diplomatic guards of the Prime Minister for covering his press conference without a licence<sup>65</sup>.

Journalists covering protests are particularly vulnerable. On 26 March 2022, the eastern-based Internal Security Agency (ISA) arrested journalist Ali Al-Refawi, while covering a protest in Sirte<sup>66</sup>.

It is estimated that at least 33 civilians are currently imprisoned in military courts for exercising their right to freedom of expression, including at least five journalists<sup>67</sup>. In May 2020, photojournalist Ismail Bouzriba Al-Zway was sentenced to 15 years of prison, in absentia, by a military court in Benghazi, for supporting terrorism and communicating with media outlets allegedly supporting terrorism. He was eventually amnestied in September 2021, and had to sign a pledge not to talk about his detention conditions<sup>68</sup>.

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<sup>64</sup> "Libya: Terrorization of civil society on moral and religious grounds highlights impunity of armed radical groups", CIHRS. 18 March 2022, <https://cihrs.org/libya-terrorization-of-civil-society-on-moral-and-religious-grounds-highlights-impunity-of-radical-armed-groups/?lang=en>. Accessed on : 13 February 2023.

<sup>65</sup> Ibid, 60.

<sup>66</sup> "Libyan journalist Ali al-Rifawi detained since March after reporting on corruption", Committee for the Protection of Journalists. 21 April 2022, <https://cpj.org/2022/04/libyan-journalist-ali-al-rifawi-detained-since-march-after-reporting-on-corruption/>. Accessed on : 13 February 2023.

<sup>67</sup> Documentation provided by the LOFIM.

<sup>68</sup> "Libya: Photojournalist Ismail Al-Zoui sentenced to 15 years of prison after unfair trial", CIHRS. 3 Aug. 2020, <https://cihrs.org/libya-photojournalist-ismail-al-zoui-sentenced-to-15-years-of-prison-after-unfair-trail/?lang=en>. Accessed on : 13 February 2023.

& "Journalist released in eastern Libya, but not yet really free", RSF. 16 Sep. 2021, <https://rsf.org/en/journalist-released-eastern-libya-not-yet-really-free>. Accessed on : 13 February 2023.

## ☐ **Enforced disappearances and abductions**

Enforced disappearances are recurrent in Libya, and associated with torture and ill-treatment. They are often used by armed groups as a tool to get rid of perceived critics without any consequences.

Journalist and human rights defender Mansour Mohamed Atti was kidnapped by individuals affiliated with the LAAF, in June 2021, in Ajdabiya<sup>69</sup>. He was eventually released in August 2022<sup>70</sup>. On 23 October 2021, photojournalist Saddam Hussein al-Saket was kidnapped by gunmen while he was covering a sit-in of migrants in Tripoli. His location remained unknown until he was released on 31 January 2022.

## ☐ **Assassinations, extrajudicial killings and violent attacks**

LOFIM documented the killing of 30 journalists, media workers and bloggers between 2011 and 2021<sup>71</sup>. Militias also routinely deploy extrajudicial killing during arbitrary detention, against journalists who cover sensitive subjects or express critical ideas. In 2014 alone, 9 journalists were killed. The LCFP has also documented 40 cases of attempted murder of journalists between 2014 and 2019<sup>72</sup>. None of these killings have been prosecuted.

On 6 March 2022, a blogger and former member of the Internal Security Services, Al-Tayeb Al-Shariri, was shot dead in Misrata by members of the Misrata Joint Operations forces after speaking out online about being detained by these forces<sup>73</sup>.

Raids, looting and violent attacks are also regularly reported. In April 2020, the premises of the Libyan Center for Freedom of the Press (LCFP) and Radio Nass was raided by armed groups, allegedly to investigate why men and women both

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<sup>69</sup> "Libya: The kidnapping of a human rights defender raises concerns and threatens the credibility of scheduled elections", CIHRS. 21 June 2021, <https://cihrs.org/libya-the-kidnapping-of-a-human-rights-defender-raises-concerns-and-threatens-the-credibility-of-scheduled-elections/?lang=en>. Accessed on : 13 February 2023.

<sup>70</sup> Zaptia, S. "UNSMIL welcomes release of illegally held trio including former LPTIC head Gergab", Libya Herald. 15 April 2022, <https://www.libyaherald.com/2022/04/unsmil-welcomes-release-of-illegally-held-trio-including-former-lptic-head-gergab/>. Accessed on : 13 February 2023.

<sup>71</sup> Why do journalists' killers escape accountability in Libya?", LOFIM. 13 Sep. 2022, <https://lofim.org.ly/2022/09/23/لماذا-يفلت-قتلة-الصحفيين-من-العدالة-في->. Accessed on : 13 February 2023.

<sup>72</sup> Ibid, 37.

<sup>73</sup> Ibid, 61.

frequented the premises. On 24 December 2022 in Tripoli, photojournalist Al-Moatasem Al-Harari was expelled and assaulted by security personnel, while he was covering the celebration of the 71st anniversary of Libya's independence<sup>74</sup>.

## Gender-based violence against women journalists

Libyan women journalists are subjected to multitude forms of gender-based violence, especially if they share dissenting opinions or information deemed sensitive or contravening social norms. They are subjected to physical assaults, abductions, and violent intimidations. For instance, on 12 February 2022, Mabrouka Al-Mismari, correspondent for Channel 218 in Benghazi, was beaten up by young men who warned her that the LAAF leadership was a red line not to be crossed<sup>75</sup>.

Libyan authorities have failed to protect women from such violence. These killings and assaults, within the context of a larger pattern of attacks on women in the public sphere, have had a chilling effect on women's ability to express themselves freely.

Online, they are exposed to smear campaigns, incitement to violence, threats and gender-related slurs. "There are organised companies targeting women", claimed a female journalist we spoke to. This online violence is all the more disturbing that it can easily turn into violence offline. According to one of the female journalists interviewed, "the goal of online violence against women is to shut us down, to erase our voice, to prevent us from having a say in public debate and a place in society".

Noura Eljerbi is a journalist and editor-in-chief of *Tahra*, an online platform dedicated to countering hate speech and disinformation. She explained that she has

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<sup>74</sup> "New attack on a photojournalist indicates the continuation of violations against journalists", LOFIM. 26 Dec. 2022, <https://lofim.org.ly/2022/12/26/اعتداء-جديد-على-مصور-صحفي-مؤشر-على-استم>. Accessed on : 13 February 2023.

<sup>75</sup> "Summary of the human rights situation in Libya during the year 2022", DCHR. 13 Feb. 2023, <https://defendercenter.org/6888>. Accessed on : 13 February 2023.

been subjected to very severe online violence, including daily harassment and repeated threats against her family and friends. Noura left Libya in 2017, for personal reasons, but then, confronted with continued online violence and threats against her family, she realised she could not go back.

Women throughout the country also have to abide by highly patriarchal views, for instance with regards to travelling and gender segregation. A Western woman journalist interviewed stated: “I think they gave me more space because they did not see me as a threat, they did not think I could do proper work”.

Interviewees report pressures from their family and social circle to abandon their work or move away from investigative work or sensitive topics. According to Rana Akabani, Libyan-Syrian journalist and director of the North Africa Media Academy (NAMA): “men are allowed to speak for themselves, while, when women speak, they are endangering their entire family, who also becomes a target”. Within the media field itself, female journalists interviewed for this report reported that harmful gender stereotypes and security conditions prevented them from reaching decision-making roles.



## Hate speech

- **Hate speech according to international standards**

“Hate speech” is usually understood as offensive discourse targeting a group or an individual based on inherent characteristics that may incite to discrimination and violence, and is often linked with disinformation<sup>76</sup>. The UN Secretary General described hate speech as “an attack on (...) the very essence of our human rights norms and principles” and historically “a precursor to atrocity crimes, including genocide”<sup>77</sup>.

A broad or unclear definition of hate speech may be weaponized to justify suppressing free speech. There is currently no consensual definition of hate speech under international human rights law, but various international bodies have taken steps towards a unification of international standards.

Under the ICCPR, freedom of expression, including hate speech, can be restricted under Articles 18 and 19 on different grounds, such as respect for the rights of others, public order or national security, and only if they meet the test of legality, legitimacy, necessity and proportionality set out in Article 19(3). Under Article 20 (2), States are obliged to “prohibit” by law expression that constitutes “incitement” to discrimination, hostility or violence. Incitement requires to identify intent, causality and the likeliness of acts of discrimination or violence.

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<sup>76</sup> “What is hate speech?” United Nations.

<https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech>. Accessed on : 13 February 2023.

& United Nations Strategy and Plan of Action on Hate Speech, United Nations. Sept. 2020, [https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20PoA%20on%20Hate%20Speech\\_Guidance%20on%20Addressing%20in%20field.pdf](https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20PoA%20on%20Hate%20Speech_Guidance%20on%20Addressing%20in%20field.pdf). Accessed on : 13 February 2023.

<sup>77</sup> Ibid, 72.

Article 4 of the CERD takes a broader approach, considering “all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts” an offence punishable by law and stipulates that States “shall declare illegal and prohibit (...) propaganda activities, which promote and incite racial discrimination”. Article 20(2) further prescribes that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. However, in Article 5(d)(viii), States Parties are also obligated to guarantee the right of everyone to equality before the law with regards to freedom of opinion and expression. Furthermore, in 2013, the Committee on the Elimination of Racial Discrimination clarified in its General Recommendation n°35 that Article 4 entailed strict compliance with freedom of expression guarantees and that “the criminalization of forms of racist expression, under compliance with Article 19(3) of the ICCPR, should be “reserved for serious cases, to be proven beyond reasonable doubt, while less serious cases should be addressed by means other than criminal law, taking into account, inter alia, the nature and extent of the impact on targeted persons and groups”<sup>78</sup>.

In an attempt to provide a unified framework, the UN Strategy and Plan of Action on Hate Speech in 2019 defined hate speech as “any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender”, or “other identity factors” such as language, economic or social origin, disability, health status, and sexual orientation<sup>79</sup>.

The UN Strategy’s guidelines stipulate that, aside from incitement to commit genocide, only hate speech that constitutes incitement to discrimination, hostility or violence and that is found to be extremely severe according to all six criteria of the “Rabat threshold test” should be criminalised: (a) the social and political context; (b) the status of the speaker; (c) the intention of the speaker; (d) the content and form of the speech; (e) the extent of its dissemination; and (f) the likelihood of harm, including imminence<sup>80</sup>.

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<sup>78</sup> General recommendation No. 35 : Combating racist hate speech, UN Committee on the Elimination of Racial Discrimination (CERD), CERD/C/GC/35. 26 Sept. 2013, <https://www.refworld.org/docid/53f457db4.html>. Accessed on : 13 February 2023.

<sup>79</sup> Ibid, 72.

<sup>80</sup> Ibid, 72.

Under this framework, moderately severe hate speech may be restricted by law if it respects the conditions set under Article 19(3) of the ICCPR. Less severe forms of incitement or hate speech, which do not meet all six criteria, should be sanctioned with civil or administrative law-based restrictions, or addressed through other public policy actions nurturing media literacy, tolerance and critical thinking. The least severe forms of hate speech – such as blasphemous, defamatory or shocking speech, disinformation – should not be subjected to legal restrictions under international law.

With regards to the written media specifically, the Rabat Plan of Action advocates for self-regulation as the least restrictive solution for promoting ethical standards in the media, while broadcast media requires some amount of State intervention to allocate resources<sup>81</sup>. In a self-regulation model, the regulatory body is composed of media representatives and funded by the publishing industry and/or by journalists<sup>82</sup>. They approve and commit to an internal code of conduct, based on which the regulatory body may receive complaints. States can help create a legal basis for self-regulation bodies, without compromising on their independence.

- **Hate speech in Libyan legislation**

Libyan legislation does not address hate speech as such. In the Penal Code, Article 203 prescribes the death penalty for anyone “who commits an act for the purpose of inciting civil war (...), fracturing national unity, or dividing citizens”. Article 318 appears to punish “incitement to hatred or contempt” against religious groups, “in such a manner as to disturb public security”, with up to a year in prison. Article 317 and 319 sanction public incitement to commit an offence or to disobey the law. These provisions remain overly broad and do not define key terms such as “incitement” and “hatred”.

The Anti-Cybercrime Law also includes provisions which may fall under hate speech, but which fail to meet international standards. Articles 29 and 30 respectively sanction “anyone who publishes or distributes information that incites

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<sup>81</sup> “The Rabat Plan of Action”, United Nations. 5 Oct. 2012, <https://www.ohchr.org/en/documents/outcome-documents/rabat-plan-action>. Accessed on : 13 February 2023.

<sup>82</sup> “Self-regulation and 'hate speech' on social media platforms”, Article 19. March 2018, [https://www.article19.org/wp-content/uploads/2018/03/Self-regulation-and-%E2%80%99hate-speech%E2%80%99-on-social-media-platforms\\_March2018.pdf](https://www.article19.org/wp-content/uploads/2018/03/Self-regulation-and-%E2%80%99hate-speech%E2%80%99-on-social-media-platforms_March2018.pdf). Accessed on : 13 February 2023.

racial, regional or sectarian strife that aims to discriminate between specific people” and “anyone who threatens, humiliates or attacks someone because of their ethnic, religious or sectarian affiliation or colour”. Definitions of key terms are also missing here, as well as a reference to a clear framework delineating requirements that must be met for all legitimate restrictions on freedom of expression, in line with Article 19(3). Article 29 also fails to distinguish between the liability of publishers and distributors.

- **Libyan media regulation with regards to hate speech**

The GNU established the General Authority for Monitoring Media Content (GAMMC) through Decision n°752 of 23 December 2021. The GAMMC defines its main objective as “playing a distinct educational, training and research role in order to monitor and improve the quality of the Libyan media content and to combat hate speech, incitement and misinformation”<sup>83</sup>.

While the creation of the GAMMC responds to a critical need for public policy measures addressing various forms of hate speech, it was created by the Council of Ministers and does not benefit from clear and strong guarantees of structural and operational independence. The Prime Minister appoints its leadership (Art.4) and forms its Evaluation Council (Art. 5). Furthermore, the GAMMC is given broad and imprecise powers that may adversely affect freedom of the press through censorship and restrictions of access to media licences (Article 3). In parallel, the exact standards that form the basis upon which the GAMMC monitors media content are not precisely defined. The notions of “hate speech” and “misinformation” are not clearly defined on the basis of international human rights law. Protecting the rights to freedom of expression, equality and non-discrimination are not included as objectives.

Under Decision n°811, audiovisual media institutions are obligated to sign on to a Code of conduct in order to obtain their licences, adding another entry requirement to the media profession<sup>84</sup>. Drafted at the initiative of the LOFIM, the

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<sup>83</sup> General Authority for Monitoring Media Content - About Us, <https://gammc.ly/about/>. Accessed on : 13 February 2023.

<sup>84</sup> Resolution No. 811 of 2022 regarding licensing conditions and controls of media activity, Council of Ministers of the Government of National Unity. 15 Sept. 2022. <https://lawsociety.ly/legislation/اقرار-رقم-811-لسنة-2022-م-بشأن-اعتماد-الشروط>. Accessed on : 13 February 2023.

Code would have benefited from remaining a purely self-regulated tool developed and endorsed by media professionals, in line with international standards<sup>85</sup>.

According to Libyan-Syrian journalist Rana Akabani : « The GAMMC is a step in the right direction, but it is limited by the impunity crisis, we are not able to enforce laws. We need to address the root of the problem : give tangible and stable support to independent media outlets and promote a culture of free press”. Mohamed al-Najem, Director of the Libyan Centre for Freedom of the Press (LCFP) explains : « It might mean more governmental interference, and they also have limited ability to enforce their decisions. In general, the Libyan government makes commitments about freedom of the press that it does not respect in practice ». Noura Eljerbi was also more critical : « I have a hard time believing that they are really trying to combat hate speech and defend free media. In addition to a lack of independence, they were created in December 2021, and around the same time, a campaign of hate speech and incitement was launched against civil society activists, human rights defenders and journalists, supported by security and religious institutions, on public platforms. They lost legitimacy to me when they did not take a stand against it ».

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<sup>85</sup> “LOFIM welcomes the adoption by the GAMMC of the Media Professional Code of Conduct”, LOFIM. 10 Feb. 2022. <https://lofim.org.ly/2022/02/10/الليبية-للإعلام-المستقل-ترحب-باعتقاد/>. Accessed on : 13 February 2023.

## Legal vacuum and civil society initiatives to address it

- **Impact of the lack of legal framework**

The lack of a coherent legal framework has hindered Libya's ability to guarantee, protect and fulfil its international obligations with regards to the right to freedom of the press. The media regulation sector in Libya after 2011 can be characterised as confusing and inconsistent. At the constitutional level, freedom of the press and information is not adequately protected. The outdated Publication Act, which should have been invalidated by the Constitutional Declaration, continues to be implemented. Within this void, executive authorities have not prioritised legal development. According to a female journalist, "the legal vacuum shows that the media is not a priority concern for Libyan authorities". Instead, they have chosen to legislate through an accumulation of executive decisions and decrees which often restrict freedom of expression and do not comply with international human rights law. As a result, media regulation standards and processes in Libya remain untransparent and challenging to understand. Several interviewees reported a lack of clarity with regards to media regulation.

In this void and confusion, media outlets and professionals are left unprotected and vulnerable to become hostage to the political conflict. According to a Libyan journalist who wished to remain anonymous: "the legal void is exploited by militias and political groups to hold the media hostage". Hassan Al-Amin, founder of Libya Al-Mostakbal Centre for Media and Culture, also shared that "no legal framework means no regulation and no protection".

A lack of legal framework means the media sector's ability to develop and adapt to contemporary needs is hindered, as well as the development of an independent and pluralistic media landscape. The legal void combined with pervasive impunity, political polarisation and foreign intervention on the media has only contributed to weakening freedom of the press and media literacy, and to promoting partisanship and media capture.

- **The civil society draft law on media**

In response to these challenges, and the disengagement of Libyan authorities, Libyan civil society has mobilised to develop the required legal framework. In December 2018, journalists, press freedom activists and experts, gathered under the umbrella of the Libyan Organization for Independent Media (LOFIM), and agreed on the need for civil society to prepare and advocate for a media law in compliance with international standards. A Publications Law review committee was formed and met consistently between 2019 and 2021 in order to produce a Draft Law on Media. The draft was endorsed by a number of Libyan human rights organisations, and presented by LOFIM to media workers through several workshops throughout Libya. The proposed draft was shared with the President of the Presidential Council of the GNA in October 2021 and with members of the House of Representative (HoR) in July 2022. While its adoption in a context of political conflict and institutional fragmentation is challenging, the draft does provide a very valuable contribution to the debate on freedom of press and a basis for further reflection and advocacy.

- **Analysis of the draft**

The draft starts in Article 1 by listing precise definitions of a large number of key terms, in line with international standards, notably the principle of legality. The media, as well as the activity of journalism, is defined in a very inclusive way that is consistent with the protection of freedom of expression. The obtention of a press card is not mentioned as a requirement, as per international law.

Article 3 provides for a strong legal framework strictly founded on the protection of the rights to freedom of opinion, expression and information, as



guaranteed in international conventions, which can only be restricted by law and under limited conditions, in line with Article 19(3) of the ICCPR. Prior censorship is prohibited. Freedom of information and the confidentiality of sources is protected under Article 6 and 7. Taking into consideration the Libyan context, this framework could have also benefited here from another provision clearly stipulating that criticism of public officials, religious figures or tenants of faith is strictly protected by the right to freedom of expression.

The draft stipulates the creation of a Supreme Media Council (SMC). A number of guarantees are provided for its institutional, financial and organisational independence (Article 11). These could be strengthened by giving oversight to a parliamentary body over the President's nomination of the Head of the SMC, by making the SMC accountable in front of a parliament, and by guaranteeing stable and adequate funding. Its main task is to ensure freedom of opinion and expression, freedom of information and pluralism of the media (Article 10). It is also envisioned as a mediator or filter that can receive complaints related to media content, before it reaches a judiciary process. The SMC can apply a range of sanctions, while still providing for a right of appeal and judicial oversight (Article 33 and 34). Its decisions are also made publicly available (Article 19.5).

The regulatory model set out under this draft would seem to follow the proportionate and gradual approach recommended under the UN Strategy on Hate Speech and in the Rabat Plan of Action, which only advocates for a judicial response for the most severe forms of hate speech. However, it is not a fully self-regulatory model, and the text does not make explicit the basis upon which the SMC will make its assessments. For instance, including a reference or reformulation of the Rabat threshold test would have strengthened the draft's compliance with international standards.

The Code of Professional Conduct is described as the main reference for media work (Article 9), however, it is not clearly indicated who will draft this Code. In order to be as close as possible to a model of self-regulation and to promote self-ownership with regards to professional standards, the Code should be drafted and approved by media professionals themselves, in a transparent and accountable manner.

Although the list of information required to establish a print or electronic media does not appear overly restrictive, discriminatory or burdensome (Art. 36), the

draft could benefit from clarifying that the procedure is a purely administrative requirement, with no possibility for authorities to refuse it.

Article 61 sanctions false information with a fine, under the condition that it may cause public harm. In order to be fully compliant with international standards, the draft could distinguish between disinformation and misinformation<sup>86</sup>. Under Articles 62 and 63, the draft could also benefit from incorporating a definition of defamation that includes the intention to cause harm and a proof of knowledge of falsity or recklessness<sup>87</sup>.

Hate speech is given a concise definition: “Every direct or indirect call made to the public to exercise violence against individuals or groups on discriminatory grounds based on race, gender, language, religion, nationality, social, regional or tribal origin, political or other beliefs or calls of *takfir* (apostasy) or treason which may cause harm to those against which it is targeted” (Article 1). This definition conforms with international law, notably Article 20(2) of the ICCPR, and identifies intent, causality and the likeliness of harm. The text could have been further strengthened by incorporating discriminatory grounds based on “other identity factors”. Article 65 further stipulates a fine or imprisonment for “anyone who directly calls for war, violence, or hatred between races, religions, or populations, or publishes in bad faith what undermines public peace or stirs up tribal and regional strife”. In order to be fully compliant with international standards, the text could have expanded on the meaning of “hatred” and could have given more guidance on how judicial authorities can apply sanctions proportionally to the severity of the hate speech, as set out in the Rabat Plan of Action.

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<sup>86</sup> Report on Disinformation, UN Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion, A/HRC/47/25. 13 April 2021, <https://www.ohchr.org/en/calls-for-input/report-disinformation>. Accessed on : 13 February 2023.

<sup>87</sup> “Defining Defamation: Principles on Freedom of Expression and Protection of Reputation”, Article 19. Third Edition, 2017. [https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-\(online\)-.pdf](https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-(online)-.pdf). Accessed on : 13 February 2023.

## Perspectives from journalists and civil society

In the course of preparing this report, we reached out to a range of journalists and activists working in the media field to understand their perspective on freedom of the press in Libya. We interviewed 23 people, including 10 women and 5 foreign journalists.

Several key points can be extracted from these interviews :

- All interviewees agreed that Libya was unsafe for journalists and that working independently was extremely challenging. One of them explained : « You have to put yourself under the protection of one or more security groups ».
- All of them also highlighted pervasive accountability, as well as institutional fragmentation and political legitimacy crisis as core issues that need to be addressed for freedom of the press to be truly protected.
- All of the Libyan women interviewed highlighted specific and heightened difficulties for female journalists, in relation to the security context and discriminatory views and practices at work and within society. Several of them shared the assessment that women journalists tend to diminish their voice to protect themselves, but more often to protect their family and friends.
- Foreign journalists all agreed with the assessment that Libya was akin to a media blackhole. One of them specified : « A lack of information contributes to a lack of understanding of the country, which appears disconnected from Western interests »
- About half of the interviews also linked the issue of freedom of the press with the broader issue of close civic space. One interviewee explained : « There is a vilification of the press, associated with the vilification of civil society ».

- With regards to recommendations, all Libyan journalists supported the assessment that a legal framework for media work was critically needed. However, several of them also highlighted the importance of building media literacy and education about diversity and critical thinking to counter hate speech, as well as the need for more media plurality and diversity. In order to allow independent media outlets to develop, Rana Akabani, director of North Africa Media Academy (NAMA), shared her opinion that independent media outlets need long-term financial support – at least three years. Five individuals also shared the view that Libyan journalists need more education on international standards relating to freedom of the press.
- When asked about their understanding of the media regulatory framework, none of the Libyan journalists provided the same answer, which may be illustrative of the lack of clarity and consistency of Libyan laws and regulations.

## Recommendations

### For executive and legislative authorities :

- Establish a constitutional framework that protects the rights to freedom of expression and the press, freedom of information, the right to privacy as defined in international law. Restrictions on freedom of expression should be adequately defined in line with Article 19(3) of the ICCPR. This framework should also explicitly state that prior legislation contravening the rights to freedom of expression such as the Promotion of Freedom Act and the Publications Act shall be abolished.
- Prepare and adopt, in consultation with civil society actors and media practitioners, a law on media that is fully compliant with international law and that sets forth a regulatory framework that guarantees media pluralism and diversity. Its provisions on hate speech should follow the standards set by the UN Strategy and Plan of Action on Hate Speech as well as the Rabat Plan of Action. The law should also clearly state that criticism of public and security officials, and religious leaders and ideas is strictly protected under freedom of expression. Furthermore, there should be no licensing or registration system for the media, no undue permit requirements and no entry requirements to access the media profession.
- Repeal or review all legal provisions in Libyan legislation that unduly restrict freedom of expression, notably relevant Penal Code provisions, the Counter-Terrorism Law, the Anti-Cybercrime law, and Law 15 of 2012 on prohibiting media discussion of religious opinions.

- Establish electoral laws and regulations that guarantee all candidates equal access to the media and allow all journalists to cover the election without discrimination.
- Repeal or review all executive decisions that do not meet international standards with regards to media regulation, notably Decision 811 of 2022.
- Stop obstructing Libyan and foreign media activity through unlawful requirements, arbitrary bans, expulsions and laborious and discretionary visa procedures, and ensure that no state entity or group affiliated with the state restricts media practitioners' right to express their views.
- Take strong action to safeguard the rights of media workers, especially women, to put an end to the impunity enjoyed by perpetrators of violations against media practitioners and the ensuing self-censorship.
- Develop a range of public policy actions as part of a strategy to address hate speech, notably :
  - Develop a public education curriculum and information campaigns that promote the value of pluralism, foster critical thinking and media and information literacy.
  - Train media professionals and relevant public officials, security bodies, legal professionals, teachers and religious leaders on freedom of expression and the right to equality and non-discrimination.
  - Promote civil society initiatives on human rights education and inter-group dialogue.
  - Empower women, minorities and vulnerable groups to exercise their right to freedom of expression.

#### **For Libyan and international civil society :**

- Review the draft law on media prepared by the LOFIM and its partners, share your comments, endorse the draft and participate in campaigning, advocacy and outreach efforts to build a wider base of support for its implementation.
- Develop and support actions to improve and promote media education and literacy, inter-group dialogue, and critical thinking, with a view to counter hate speech and disinformation.

- Support and invest capacity in the documentation of violations of freedom of the press and the provision of legal aid with a view to deliver accountability and redress to victims.
- Support training about international standards on freedom of expression for media professionals.
- Persist in advocating for states and relevant international institutions to support accountability for violations and crimes under international law committed in Libya, including by rebuilding domestic accountability mechanisms, advancing security sector reform and supporting international accountability mechanisms.