

Victims' Voices: The UN Independent Fact-Finding Mission on Libya



محامون من أجل العدالة في ليبيا



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THE VICTIMS' VOICES SERIES

LFJL's work is rooted in a rights-based and victim-centred approach: we believe that all engagement and policies must be founded on a framework of human rights and ensure that individuals and communities can participate fully as a fundamental part of leading dignified lives. Libyans must be central to efforts to strengthen respect for human rights, accountability, and the rule of law in the country. Victims are crucial as key stakeholders in Libya and they will have unique perspectives. In that spirit, we are publishing the Victims' Voices series to highlight perceptions of victims and their families on key transitional justice and accountability mechanisms.

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1. INTRODUCTION

The United Nations (UN) Independent Fact-Finding Mission on Libya (the FFM) was established by a resolution of the UN Human Rights Council on 22 June 2020.¹ Its mandate is to establish the facts and circumstances of the situation of human rights throughout Libya; collect and review relevant information; document alleged violations and abuses of international human rights law and international humanitarian law by all parties in Libya since the beginning of 2016, including any gendered dimensions of such violations and abuses; and preserve evidence with a view to ensuring that perpetrators of violations or abuses of international human rights law and international humanitarian law are held accountable. In the implementation of its mandate, the FFM is tasked with working in cooperation with the Libyan authorities, the League of Arab States, the African Union and the UN Support Mission in Libya (UNSMIL).²

The impetus for the establishment of the FFM was the tremendous scale, frequency and intensity of violations of international human rights and international humanitarian law in Libya and persistent impunity, which has continued to embolden state and non-state actors alike to commit an ever-increasing array of violations.

While the FFM was established almost one year ago, it has only recently become operational. The set-up of its secretariat was delayed because of operational challenges associated with Covid-19 and the financial situation affecting the UN. Limited resources and a complex security situation make for a difficult investigatory environment for the FFM. The political environment is also challenging for the FFM; Libyan governance structures remain in flux with new interim executive authorities only recently agreed as part of an ongoing political dialogue process, with elections planned for late December 2021.

LFJL decided to issue this paper because it sees the FFM as a critically important instrument for Libya. The FFM has the potential to refocus attention on the need to address the egregious international human rights and international humanitarian law abuses in the country, as a necessary precondition for long-term peace and stability. Our focus on victims and victim participation is reflected in our view of the central importance of the FFM engaging closely with victims and the most affected communities throughout its work. Victims' views, concerns and experiences of harm and impunity are crucial for the FFM's understanding of how international human rights and international humanitarian law violations have affected the lives of ordinary Libyans in all parts of the country. Also, given the extremely broad mandate of the FFM, victims' views are important vectors to help identify FFM priorities and areas of focus. This is a first attempt to highlight some of the perspectives that victims have in relation to the FFM, and to consider in some detail how best to engage victims safely, taking into account the complex security environment and the marginalisation that many victims experience.

¹ UN Human Rights Council, 'Technical assistance and capacity-building to improve human rights in Libya,' UN Doc. A/HRC/RES/43/39, 6 July 2020.

² Ibid, paras. 43(a), (b).

2. METHODOLOGY³

This report benefits from the results of two population surveys carried out by LFJL. A first survey, conducted between 1 October 2020 and 31 January 2021 concerned Libyans' perceptions of justice and accountability (the Perceptions of Justice Survey).⁴ It considered individuals' perceptions of justice, amnesties and apologies and their priorities for accountability, truth and reparations. The Perceptions of Justice Survey benefited from interviews with 385 Libyans. Respondents constituted a roughly equal sample of women and men, of all ages and backgrounds, including civil servants, civil society activists, human rights defenders, teachers, lawyers, journalists, medical staff, businesspersons, students, housewives, labourers, and a small number of security sector officials. Interviewees represented diverse communities in 26 locations across the country including over 80 tribal affiliations⁵ and representation of particularly vulnerable segments of society. About 58% of respondents had been directly impacted by human rights abuses or were family members of victims of such abuses (50%), including enforced disappearance, torture, killings, sexual and gender-based violence and forced displacement. Additionally, 36 in-depth interviews were conducted with community leaders, victims' group representatives, victims and families of victims, grassroots civil society activists, academics, lawyers. The Perceptions of Justice Survey combined qualitative and quantitative methods, including open questions and questions providing options, but also space to detail views.

A second survey, related specifically to Libyans' perceptions of the FFM, was conducted between January and March 2021 (the FFM Survey). Fifty-one respondents participated in the FFM Survey and included a roughly equal number of women and men ranging in age from 18 to 70+ years-old, representing the main ethnic groups and different parts of the three main regions of the country. More than 96% of respondents indicated that they had some direct experience of human rights violations. Respondents were asked particularly about their knowledge of the FFM's mandate, what role they believed the FFM could usefully play in the current context and

what its priorities should be and why. Additionally, the FFM Survey sought to obtain information about how respondents wished to engage with the FFM, what challenges might hinder such engagement and how these might be addressed. Also, additional interviews were carried out with Libyan civil society groups who have been actively considering how to engage with the FFM.

The report also benefits from LFJL's knowledge and experience of fostering grassroots victim participation and engagement in the Libyan context over the past ten years. Additionally, it takes into account the growing international standards and best practice related to victim participation in societies with complex and challenging security environments that are emerging from conflict and/or large-scale human rights abuses.

LFJL expresses its gratitude to all those who contributed information to this paper. The identity of some interviewees, as well as the places and dates of interviews, have been withheld to protect the personal safety of those concerned in a context where some of the respondents may be targeted and attacked by state and non-state actors across the country.

³ This report is based on surveys carried out with Libyans about violations committed against Libyans. Thus, it does not cover violations against migrants, which will be captured in future surveys and research by LFJL. For information on crimes against migrants in Libya, please refer to: Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations on the initial report of Libya*, UN Doc CMW/C/LBY/CO/1, 8 May 2019, para. 26.

⁴ LFJL will issue a detailed report on Libyans' perceptions of justice and accountability in 2021.

⁵ Those interviewed were 73% Arab, 11% Black Libyan/including Tawergha, 5.4% Amazigh; 6% Tebu, 3% Tuareg, and 4 Mashashian (insecurity prevented access to the Nafusa Mountain region and the Mashashian community).

3. FINDINGS

3.1 WHAT TO FOCUS ON?

a) The FFM's Mandate and the Context of Violations

The FFM is tasked with investigating violations and abuses of international human rights law and international humanitarian law committed by state and non-state actors since the beginning of 2016. As part of the mandate, it is tasked with considering any gendered dimensions of violations and abuses, including, but not solely, with respect to sexual and other gender-based violence.

Having regard to the scale of violations and abuses since 2016, this is a broad mandate. In the mandated period, Libya has been engulfed by political divisions, power struggles and armed conflict. Human rights abuses and violations by all sides have been gross and systematic and have been perpetrated with near absolute impunity. These have included unlawful and arbitrary detentions, abductions and enforced disappearances, torture and cruel, inhumane or degrading treatment, unlawful killings, including extrajudicial killings, sexual or gender-based violence and grave violations of children's rights.⁶ Attacks on minority groups including black Libyans have been particularly egregious and have involved torture, kidnapping, enforced disappearances, sexual violence and extortion. Also, journalists, human rights defenders, protesters, women's groups, lawmakers, state officials, members of the judiciary, prosecutors and others have been targeted with attacks, intimidation, harassment, violence and unlawful detention, contributing to a sense of lawlessness. Added to this are the international humanitarian law violations associated with the armed conflict, fostered by regular thwarting of the arms embargo and the illegal financing of alleged perpetrators by third state actors.⁷ These include attacks on hospitals, ambulances, medical staff, schools, detention centres and other civilian infrastructure and the unlawful killing of civilians. However, just as important are the violations of basic economic, social and cultural rights. Despite Libya's wealth and resources, individuals are regularly denied access to basic services, including health services, education, water and electricity. This is due to a serial governance deficit, fuelled by corruption including financial crimes and embezzlement of public funds, the absence of the rule of law and constant insecurity.

6 UN Security Council, Children and armed conflict, Report of the Secretary-General, UN Doc A/75/873-S/2021/437, para 94, available at: https://www.un.org/ga/search/view_doc.asp?symbol=S/2021/437&Lang=E&Area=UNDOC

7 UN Security Council, 'Final Report of the Libya Panel of Experts,' UN Doc S/2021/229, 8 March 2021.

b) The FFM in the Context of Other Accountability Mechanisms

The FFM is not the only international accountability mechanism in Libya, nor is it the first fact-finding investigation to have been established concerning Libya. An earlier Commission of Inquiry on Libya operated between February 2011 and March 2012⁸ and was mandated to investigate human rights violations committed in the context of the 2011 uprising, the ensuing armed conflict, and the period following the end of the hostilities. The UN Office of the High Commissioner for Human Rights (OHCHR) Investigation on Libya operated between March 2015 and January 2016.⁹ It was tasked to investigate violations and abuses of international human rights law committed in Libya since the beginning of 2014. Its findings were published in February 2016.

The UN Security Council Sanctions Committee and its Panel of Experts on Libya, established in 2011, have also been mandated to gather, examine and analyse information and to make recommendations related to the implementation of the UN sanctions regime in place for Libya.¹⁰

Additionally, following the February 2011 referral by the UN Security Council of the situation in Libya to the Prosecutor of the International Criminal Court, the Office of the Prosecutor has been investigating the situation in the country. It has issued arrest warrants against alleged perpetrators of international crimes, including Saif al-Islam Gaddafi; Abdullah Al-Senussi (former head of the Military Intelligence); Al-Tuhamy Mohamed Khaled (former head of the Libyan Internal Security Agency, who died in February 2021 in Cairo due to illness); and Mahmoud Mustafa Busayf Al-Werfalli (commander in the Al-Saiqa Brigade, affiliated with the Libyan Arab Armed Forces, who was assassinated by unknown armed men in Benghazi in March 2021).¹¹

8 UN Human Rights Council, 'Report of the International Commission of Inquiry on Libya,' UN Doc A/HRC/19/68, 8 March 2012.

9 UN Human Rights Council, 'Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings,' UN Doc A/HRC/31/CRP.3, 23 February 2016.

10 UN Security Council, Resolution 1973 (2011), UN Doc S/RES/1973, 17 March 2011.

11 See, Office of the Prosecutor, 'Twentieth Report of the Prosecutor of the International Criminal Court to the UN Security Council pursuant to Resolution 1970 (2011),' 10 November 2020, available at: <https://www.icc-cpi.int/itemsDocuments/201110-icc-prosecutor-report-unsclibya-eng.pdf>.

It is usual for a fact-finding mission to focus on those most responsible for the most serious or egregious abuses and violations of international human rights and international humanitarian law. Here, one might focus on those abuses which are most notorious, which shock the conscience, such as, in the most recent period, the aerial bombardment of the Tajoura migrant detention centre and the discovery of mass graves in Tarhuna. Whilst these and other emblematic crimes require urgent investigation and accountability, we are conscious that they are already likely to receive attention from international institutions and potentially other investigations. We would recommend that in focusing on the extraordinary, the FFM take steps to avoid duplication of work with regard to other mechanisms, and also to avoid masking the human rights violations that ordinary Libyans continue to face on a daily basis. Overwhelmingly, a strong interest has been expressed in accountability for the violence of the everyday; the kidnappings and extortion that plague daily life; the corruption that denies equal access to basic services and undermines public faith in governance and impedes the rule of law, the demeaning of women and minorities which contributes to the acceptability of discrimination and unequal access to redress. In addition to a focus on the most emblematic and notorious abuses, victims are looking to the FFM to offer authoritative and expert mapping and credible analysis of the patterns of these systemic violations and abuses, including structural issues underpinning them.

c) The Results of Our Research

Whilst the mandate of the FFM concerns violations from 2016 onward, most Libyans have not fully enjoyed their human rights for many decades, and the work of the FFM should take this into account. Furthermore, the FFM should also take into account that Libyans desire peace and stability and have a right to good governance which is a necessary precondition for the enjoyment of human rights. A major concern of respondents was the dysfunction of state institutions which impedes the ability of the state to guarantee human rights within the country. The criminal justice system is dysfunctional, with judges routinely receiving threats for carrying out their mission of delivering justice to victims.¹²

Respondents of the Perceptions of Justice Survey also made clear that a truth process must reveal the roots, reasons and motives behind the conflicts and violence in Libya. For ethnic minorities, fact-finding and truth processes are particularly important to uncover the impact of sustained discrimination and exclusion on those communities and the abuses suffered as a result. Similarly, it is important for truth processes to identify not only the direct perpetrators but also those who

12 Office of the High Commissioner for Human Rights, 'Abuse Behind Bars, Arbitrary and Unlawful Detention in Libya,' April 2018, available at: https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf.

ordered, aided and abetted the abuses and those who should have known about the abuses and omitted to give clear orders to stop them.

What Violations Should the FFM Focus On?

The Impact of Poor Governance on the Ability of the State to Respect, Protect and Fulfil Human Rights and to Afford Security

Human rights violations and abuses, including those amounting to War Crimes and Crimes Against Humanity are not being effectively investigated and prosecuted, largely because of the absence of political will, inadequate resources and frequent threats made against criminal justice sector actors by armed groups. Further, Libyan law does not recognise or define Crimes Against Humanity or War Crimes.¹³ Respondents reported that they were fearful of approaching justice institutions to report crimes, because of their lack of trust in the authorities, the absence of security and the real risk of reprisals from militias affiliated with the authorities. Respondents also believed that reporting crimes was futile, because of the absence of the rule of law.

The absence of justice for human rights violations has affected victims in multiple and profound ways relevant to the FFM's approach to its mandate. Some have faith that justice will ultimately prevail. For many others experience ongoing psychological harm as a result of abuses which results in ongoing feelings of alienation from society, as one respondent indicated: "I feel apathy towards everything," "I trust no one in my community," "I live in constant fear and this prevents me from doing anything that can help;" or another: "I feel ashamed and helpless because ... justice is not served for my mum and siblings." For others, it is the lack of stability in the country which affects daily life and undermines trust in the criminal judicial system and a sense of safety and well-being. As one respondent explained: "I don't feel safe or relaxed. I live in fear and feel that my rights are undermined and that the state does not support me." Some fear that not only will their demands for justice continue to go unanswered, but that there will be retaliations. For some, these feelings of disillusionment are compounded by severe economic worries.

The ability of the FFM to engage with victims' disillusionment, to restore some sense that their voices are being heard and that their views and perspectives matter, is highly important. Because of the absence of justice and the prevailing sense of impunity, respondents overwhelmingly (over 88%) said that it was important for the FFM to identify the individuals or groups believed to be responsible for crimes with a view

13 Crimes Against Humanity were mentioned in law no. 59 of 2013 on the Abu Salim Massacre, however the law did not define Crimes Against Humanity or War Crimes according to the definitions in international law and standards.

to other international, regional or national judicial bodies holding these individuals to account and providing redress to the victims and their families.

Discrimination

Groups perceived as having supported the Gaddafi regime during 2011 (such as the Tuareg, Tawergha, Tebu and Mashashia) remain at particular risk of human rights violations and abuses and forced displacement. A Tuareg activist - a respondent to the Perceptions of Justice Survey - stressed the importance of fact-finding to ensure the dignity of victims and expressed concern about “losing the facts” about past human rights abuses. He explained that “We have to build a concrete base so we can start to move on. We need to talk about everything and everyone, in order and with priorities.” Many members of the Tawergha community remain displaced from their homes.

Gender based violence as a particular form of discrimination is endemic in Libya. Many women, including activists and politicians, have experienced harassment and intimidation, including in its online forms, in response to their public political and human rights activism and advocacy for women’s rights and gender equality. While Libya has ratified the Convention on the Elimination of All Forms of Discrimination against Women and other international instruments that prohibit discrimination on the basis of sex, significant discrimination against women in both law and practice continues to have a serious impact on the rights of women in Libya. In addition to significant incidence of domestic and honour-motivated violence, there are many reports of women having been abducted by various militia groups and being subjected to sexual violence. Rape and other forms of sexual violence has been perpetrated against women and girls, as well as men and boys.¹⁴ Migrant women have also frequently faced sexual violence and exploitation both in and outside detention facilities.¹⁵ Personal status laws continue to discriminate against women with respect to marriage, divorce, transmission of nationality and inheritance.

Corruption

Corruption is a major problem in Libya and underpins most international human rights and international humanitarian

¹⁴ Defender Center for Human Rights, ‘Gender based violence inside the displacement camps in Libya,’ available at: <https://www.defendercenter.org/5449>. See also: Prime Time Zone, ‘Shaving the hair of a Jordanian girl in Benghazi after she was kidnapped and raped, and my rights reveal shocking details! (video) | A homeland tweeting outside the flock,’ 8 June 2021, available at: <https://primetimezone.com/world/gulf-news/shaving-the-hair-of-a-jordanian-girl-in-benghazi-after-she-was-kidnapped-and-raped-and-my-rights-reveal-shocking-details-video-a-homeland-tweeting-outside-the-flock/>

¹⁵ UN Security Council, ‘Report of the Secretary General to the Security Council on Conflict-Related Sexual Violence,’ UN Doc S/2021/312, 23 March 2021.

law violations. As one respondent explained: “corruption is everywhere.” Corruption also fuels impunity. As one respondent explained: “The security organs do not reveal the identities of criminals because they are associated with them.”

Kidnappings and Extortion, Disappearances and Extrajudicial Killings

When respondents were asked about violations which have not received enough attention in Libya, a top response was kidnappings of Libyans by armed groups and others working with them. Criminal activity, including killings, kidnappings for ransom, carjacking and extortion remain prevalent in Libya, particularly in the east and south of the country. As one respondent to the FFM Survey explained: “I myself fell victim of kidnapping in the south of Libya by mercenaries working for armed groups inside Libya. These groups have committed all sorts of violations from killings to torture to forced displacement and they have not been held to account. They enter and exit the Libyan borders without any measures taken to bring them to justice. This is not known for everyone, just for the people in the south.”

Hundreds of people have gone missing or have been forcibly disappeared since 2011 for their real or perceived political opinion, identity, tribal affiliation or skin colour.

Arbitrary Detention and Torture

More than 30% of respondents to the FFM Survey indicated that they or a member of their family or community had experienced arbitrary detention, torture in detention or the enforced disappearance of a loved one. Addressing these crimes, and particularly the situation of persons who remain arbitrarily detained in Libyan prisons, was a key priority for many respondents. Thousands of people are victims of indefinite, prolonged, unlawful or otherwise arbitrary detention, often held without charge in official and unofficial places of detention.¹⁶ This is exacerbated by inadequate laws on detention, which do not provide a limit for the duration of pre-trial detention; courts and judges can extend pre-trial detention periods indefinitely for periods of 45 days at a time until the end of investigations.¹⁷ Further, for crimes against the state including security or terrorism related charges, Libyan law affords the police the power to detain for seven days without presenting the detainee to a judge or allowing them to have contact with their family or a third person. Conditions of detention are typically inhumane. There is a lack of independent complaints mechanisms and torture and ill-treatment are common.

¹⁶ Office of the High Commissioner for Human Rights, ‘Abuse Behind Bars, Arbitrary and Unlawful Detention in Libya,’ April 2018, available at: https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf.

¹⁷ Article 123 of the 1953 Code of Criminal Procedures.

Armed Conflict Violations

There have been direct and indiscriminate or disproportionate attacks against civilians and civilian objects. This has been fuelled by easy access to weapons; despite the UN arms embargo and the civilian casualty toll, the flow of advanced weapons into the country has continued.

What Parts of the Country Should be Prioritised by the FFM?

When asked which parts of the country the FFM should prioritise, most respondents mentioned the south of the country, given the prevailing instability and insecurity stemming in part from cross-border ethnic militias vying for control of strategic and economic assets, including trade routes,¹⁸ and the marginalisation experienced by residents. Many mentioned Sabha and its surrounding areas. Others mentioned the importance of scrutinising the situations in Derna, Tawergha, Tarhuna, Misrata, Ajdabiya and Benghazi and surrounding areas.

3.2 HOW TO ENGAGE VICTIMS IN THE FFM PROCESS?

The FFM issued a call for submissions of relevant information and materials with a deadline of 30 June 2021. It is welcome that the FFM invited submissions in this way, and we hope that the FFM will continue to be open to receiving submissions throughout its mandate. Additionally, however, it is important for the FFM to plan its operations so as to be able to seek out information from a wider array of sources than those who would be best placed and most likely to respond to public calls for information, including for example those who do not have access to online platforms.

Most respondents we spoke with had not heard of the FFM. Respondents wanted more information about the mandate of the FFM and how to contact it. This also aligns with the responses from the Perceptions of Justice Survey. Nearly 90% of respondents to the Perceptions of Justice Survey indicated that they wanted to know more about justice processes and to have the opportunity to be involved.

While some respondents to the FFM survey expressed some reticence, wondering whether the FFM would have the capacity to meet its objectives, almost 75% were pleased that the FFM had been established and looked forward to learning more about it. This also aligns with the Perceptions of Justice

18 See, e.g., Jérôme Tubiana and Claudio Gramizzi, *LOST IN TRANS-NATION: Tubu and Other Armed Groups and Smugglers along Libya's Southern Border*, Small Arms Survey, 2018, available at: <http://www.smallarmssurvey.org/fileadmin/docs/U-Reports/SAS-SANA-Report-Lost-in-Trans-nation.pdf>.

Survey, where respondents overwhelmingly highlighted truth investigations as the most urgent task to build the path for sustainable reconciliation in Libya, with about 90% of respondents calling for the discovery and revealing of the complete truth about past and ongoing abuses and crimes.

About 67% of respondents explained that if they were to be contacted by the FFM, they would be willing to discuss the crimes their families had suffered.

As part of its mandate, the FFM must take all possible measures to protect the safety of victims, witnesses, cooperating persons and sources. Many victims are concerned about engaging with justice-seeking processes broadly defined and have called for better security.

When asked what measures the FFM should be taking to make them feel safer and more at ease in communicating with it, respondents had mixed responses. Some were unsure about what measures would make them more comfortable; there was a sense of unease – perhaps stemming from prior experiences with justice mechanisms – that may be difficult for the FFM to break through. In this regard, some focused on the need for the FFM to be transparent about its work and credible and effective in its mission as the clearest way for victims to feel safe in communicating with it. In many respects this emphasises the importance of the FFM treating victims and their communities not simply as objects of their investigations but as subjects with rights and with dignity, who need to be informed, consulted and brought on board if the FFM is to have any impact.

Others focused on the need for the FFM to develop private channels of communication and to maintain full confidentiality and provide security and protection. This focus clearly stems from the general sense of insecurity that most Libyans experience, and for many of them, the deep-seated fear and distrust that comes from having suffered human rights violations directly or having observed the suffering of family, friends and others in their communities. Clearly, the FFM may have only limited means to afford protection itself, and it is important for it to be clear about what it might be in a position to do and the inevitable limitations of what it can afford, so that victims can decide whether to engage or not with full knowledge of what that may entail. This is also about recognising victims' autonomy and agency; it is important for the FFM to clearly explain such matters so that individuals can decide with full knowledge whether they wish to engage and, if so, to what extent.

Also, many of the respondents to the FFM survey underscored the importance of putting in place psychological support for those engaging with justice processes. Others also insisted on the importance of providing those who suffered most with material and moral compensation and other forms of reparation. This underscores the importance of the FFM

taking into account that many of the individuals they will seek to engage with may be suffering from trauma and may also have urgent physical, psychological or other needs. Whilst the mandate of the FFM may be limited in these regards, identifying referral pathways for psychosocial and other types of support, among other matters will be important for the work of the FFM.

3.3 SHARING INFORMATION WITH OTHER PROCESSES

A part of the FFM's mandate is to "preserve evidence" for the purpose of "ensuring that perpetrators ... are held accountable." The FFM's work may also be relevant to other accountability and documentation processes concerned with truth-seeking, transitional justice, reparations and institutional reform. Indeed, uncovering the truth was a key priority listed by respondents to the FFM Survey. It was also a focus for respondents to the Perceptions of Justice Survey. As one respondent indicated: "We can disagree on what to do next on punishments on reconciliation, amnesty, but truth has to be known and justice is linked to the truth."

To fulfil this part of its mandate, the investigations that the FFM undertakes and the evidence it collects (such as evidence of violations and abuses of international human rights and international humanitarian law, including evidence identifying individuals alleged to have perpetrated crimes), may be useful for judicial proceedings by others, such as prosecutors in Libya or third countries, international or regional courts, or by civil society organisations bringing cases in domestic jurisdictions.

Taking into account the security concerns and the fears expressed by respondents, the FFM should only be sharing such information with other bodies with the prior, explicit and informed consent of those who provided the information. The FFM should always operate under the principle of "do no harm." It should exercise caution in sharing any information, and in particular the personal details of witnesses and other informants, unless there is specific, informed consent, and the FFM is assured that the recipients will maintain the privacy, dignity and safety of those who provided the information.

In this respect, the FFM should avoid encouraging those they speak with to sign blanket consent clauses which authorise the mechanism to communicate any statements to any relevant justice processes. Instead, the FFM should be seeking individuals' further consent to pass on any information to other bodies, at the time when the FFM is considering passing on such information. Because of the evolving security situation and general feelings of mistrust, a blanket consent would not be adequate "informed" consent to pass on details to another justice or truth body.

Nevertheless, the challenges to addressing consent within the difficult security environment should not deter the FFM from coming up with workable solutions to preserve the evidence it collects so that it can be of use to later truth-seeking and justice processes. It is important for the legacy of the FFM for its fact-finding work to benefit later processes.

3.4 HOW LIBYAN CIVIL SOCIETY CAN SUPPORT VICTIMS' ACCESS TO THE FFM

Libyan civil society and international human rights organisations can play a key role in supporting victims' access to the FFM and will be important partners for the FFM. Civil society will have the closest proximity to victims within their communities and may be in a good position to provide certain information about the FFM to victims' groups with whom they are already in contact. Because of their unique points of access, they might also be called upon to assist victims to contact the FFM or vice versa.

Because of the sensitive subject matter, civil society groups should ensure that they have robust security protocols in place for how they safeguard the confidentiality of information. They too should take care to ensure that they foster victims' dignity, autonomy and empowerment in any dealings with the FFM: victims have no duty to engage with the FFM. They should be provided with sufficient information so that they can decide whether they wish to engage and if so, how.

Given the limited personnel and other resources at the disposal of the FFM and difficulty of accessing all parts of the country, it is natural that the FFM may seek to rely on civil society to facilitate access to victims and others who may wish to engage with the FFM. In developing its operating procedures, the FFM is encouraged to go well beyond the largest organisations who might be easiest for the FFM to engage with initially. Grassroots civil society groups operate in different ways depending on the communities they support, and the areas of the country in which they are active. It will be important for the FFM to seek to engage with the very small, local community groups which will be most connected to victims in particular areas, to women's associations, minority groups and to many others.

4. CONCLUSIONS

It is vital for the FFM to have a good appreciation of the context of international human rights and international humanitarian law violations. A big part of this context is the long history of rights violations, the absence of functioning institutions and the deep sense of impunity not only for past atrocity crimes but for the ongoing abuses that pervade Libyans' daily lives. It is important for the FFM to capture these perceptions in its work as they pervade all aspects of life in the country.

Many victims and their communities are sceptical about truth-seeking bodies given their distrust of institutions and disillusionment, given the overriding impression they have that their main concerns remain unaddressed. Nevertheless, the FFM can play a pivotal role if it manages to engage sensitively with victims' deep sense of frustration, recognises and fosters victims' voices and autonomy and engages them in a manner that respects their dignity and privacy. If the FFM could make victims see that their voices matter and are being heard, this could go a long way to counter their disillusionment.

There will be many violations for the FFM to focus on and it will not be possible for it to focus on everything. It is important that the FFM takes into account the recommendations of past fact-finding investigations and commissions of inquiry.¹⁹ It is also important for it to look not only at the most notorious violations, but the patterns of discrimination and marginalisation and the dysfunctional systems that have allowed those violations to take hold.

¹⁹ UN Human Rights Council, 'Report of the International Commission of Inquiry on Libya', UN Doc A/HRC/19/68, 8 March 2012; UN Human Rights Council, 'Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings', UN Doc A/HRC/31/CRP.3, 23 February 2016, UN Security Council, UN Doc S/RES/1973, 17 March 2011.

ABOUT US

Lawyers for Justice in Libya is a Libyan and international independent non-governmental organisation and UK-registered charity. We work on and in Libya with a growing network of lawyers, activists and grassroots communities across and outside the country. Our vision is of a Libya which embodies the values and principles of human rights and the rule of law and is a society committed to justice. We seek justice in Libya through advocacy and outreach, accountability, transitional justice initiatives and capacity building, underpinned by our own independent research. Our work is rooted in a rights-based and victim-centred approach: we believe that all engagement and policies must be founded on a framework of human rights and ensure that individuals and communities can participate fully as a fundamental part of leading dignified lives.

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محامون من أجل العدالة في ليبيا



LAWYERS FOR JUSTICE IN LIBYA