

CHECK AGAINST DELIVERY

Statement by Ms. Elham Saudi
UN Security Council Briefing on Libya
24 January 2022

Madam President, Excellencies, Ladies and Gentlemen,

Good morning. My name is Elham Saudi. I am a Libyan woman, a mother, a lawyer, and a human rights defender who has been working for peace and justice in Libya for over ten years. Today, I address you as Director of Lawyers for Justice in Libya, an independent non-governmental organization dedicated to strengthening the rule of law and human rights in Libya.

In 2012, LFJL travelled across Libya speaking with thousands of Libyans about their aspirations for their country's constitution and transition to a stable democracy. In 2021, ten years on, we performed another consultation. Much remained the same: a desire for peace, a determination to achieve lasting reconciliation and a constitution that protects human rights and prevents a return to dictatorship. Some things changed. Perceptions of justice have become more urgent: accountability for war crimes and human rights violations is now a paramount demand.

When LFJL last briefed this Council in 2019, it was during the war in Tripoli. Since then, those hostilities have ended, a fragile ceasefire has been adopted, a unity government has been appointed and a road map to elections has been drafted – all under the auspices of the United Nations (UN).

This progress may be invaluable, but it is also reversible as long as impunity prevails for crimes and violations of a decade of wars fought outside of any conventions. This impunity empowers those that the Security Council often calls “spoilers” and has enabled the failure of those elections that are enshrined in this Council's resolutions and to which the 2.8 million Libyans who registered to vote aspired.

My briefing today focuses on three main areas: (i) the electoral process (ii) the accountability deficit and (iii) the renewal of the mandate of the UN Support Mission in Libya (UNSMIL).

The Electoral Process

Libya's elections were intended to restore legitimacy to Libyan politics. If we are to ensure a legitimate outcome, the process must itself be considered legitimate. Elections must be rooted in a clear, unpoliticized, and thus incontestably legitimate legal basis, and a constitutional basis that provides for continued progress after election day.

Earlier this month, the Special Advisor to the Secretary-General said that “it is possible and needed to have an electoral event” before the end of June. Focusing on the dates for the elections, instead of a clear process to facilitate them, risks once again compromising due process for the sake of perceived political expediency.

A mediation process that learns the lessons from Libya's last few years should focus on creating milestones including the requirements of an electoral law, a code for conducting the elections, and a constitutional basis that appropriately sequences presidential and legislative elections in line with a broader roadmap for the newly elected authorities to conclude Libya's transitional period effectively. If the Special Advisor's mediation process can get those right, then the election dates will naturally follow and they will be elections that are far easier to manage, protect, and successfully deliver.

The Accountability Deficit

Accountability is far too often portrayed as an obstacle to practical politics, but the last year of Libya's electoral process has shown why accountability is in fact a prerequisite to political progress.

Poorly defined, and fundamentally weak, vetting criteria applied to candidates in the delayed elections, resulted in individuals implicated in corruption, war crimes, crimes against humanity and human rights violations,

including persons who have been indicted by the International Criminal Court (ICC) or who have command responsibility over persons indicted by the Court, being accepted as candidates.

In its October 2021 report, the UN Independent Fact-Finding Mission on Libya (FFM) concluded that there are reasonable grounds to believe that war crimes and crimes against humanity have been committed in Libya. The lack of accountability for such crimes enshrines impunity, prevents sustainable peace, and hinders any political progress.

Individual criminal accountability can break this circle of impunity and deter future crimes. The Council recognized this when it referred the situation in Libya to the ICC. Prosecutor Khan made clear in his recent address to the Council that the situation in Libya is a priority for his office precisely because it is a UNSC referral. However, with that referral, Madam President, comes a responsibility for the Member States and the UN itself to support – financially, logistically and politically – the Office of the Prosecutor.

Beyond the ICC, recent developments demonstrate the impact of states exercising universal jurisdiction over universal crimes. Where states put in place the legal and institutional frameworks to prosecute crimes against humanity irrespective of where, by whom, and against whom, they are committed, it helps make the world a smaller place for perpetrators, and often is the only avenue available to victims. This is the case for Libya, and LFJL appreciates the efforts undertaken by some states to investigate international crimes committed in Libya.

The Chair of the FFM stated that those responsible for crimes and violations in Libya include all parties to the conflict – and that includes third states, foreign fighters and mercenaries. This has also been confirmed by reports from NGOs. There is, therefore, an imperative on states to consider all perpetrators, whether from Libya or not and whether operating from Libya or outside it.

This Council also showed a commitment to accountability by establishing the Sanctions Committee. Sanctions have so far been the only direct consequence for a few alleged perpetrators of human rights violations. However, unless applied transparently and consistently, including by sanctioning third states for breaching the arms embargo by supplying Libyan parties with arms, sanctions can be perceived as arbitrary and insufficient. Additionally, when deployed in isolation instead of within a wider strategy or policy, sanctions do not provide victims with redress or reparation, nor do they provide accountability for gross human rights violations and serious international crimes.

Given Libya's accountability deficit, and the wider challenges created by a decade of conflict, Libya's civil society has had to fill many vacuums. This comes at a high cost. The systematic crackdown on civil society by all parties in Libya, including by the current Government of National Unity, has seen civil society organizations, and especially those working on human rights and peacebuilding, harassed and prevented from carrying out their work. Members of civil society have been threatened, disappeared, tortured, and killed in retaliation for their work or public presence. The Council, as well as Member States who have been supporting Libyan parties, must demand the protection of Libya's civil society.

Madam President, particularly targeted are women human rights defenders and women exercising their right to participate in political or public life. They face reprisals both offline and online with systematic and coordinated smear campaigns against them that cause them to retreat from public life. We welcome the recent open debate on protecting participation: addressing violence targeting women in peace and security processes. It is an important first step and we look forward to seeing concrete steps by the Council to implement recommendations made in that debate.

I deeply hope that the next civil society representative who briefs the Council will be able to take their rightful seat at this table and speak out without having the threat of reprisals be a factor in their decision to do so.

UNSMIL's Mandate

The Council is due to review UNSMIL's mandate today. UNSMIL plays an important role in mediation and the political process. However, as the independent strategic review of UNSMIL recommended, the approach and

structural mechanism of UNSMIL should consider not only the political track, but “also economic, security, humanitarian and human rights priorities, mindful of the interlinkages between them.”

Mainstreaming human rights involves more than tokenistic meetings with civil society or the insertion of “appropriate language” to a political deal forged behind closed doors. It is about applying a human rights-based approach that ensures any process protects, enshrines and promotes the human rights of every Libyan, and ensures inclusivity including by empowering victims with an active role. Without mainstreaming human rights, UNSMIL sacrifices the rights of Libyans in pursuit of unsustainable and short-sighted notions of political progress.

Therefore, it is vital to the prospects of Libya’s fragile ongoing political processes that structural mechanisms applying more comprehensive and transparent oversight of UNSMIL’s activities, to hold it accountable to the Libyan people and this Council, are worked into future iterations of its mandate.

Recommendations

Madam President, as we look ahead to another challenging year in Libya, we call on the Security Council and Member States to:

1. Support an electoral process that is rooted in a legitimate legislative and constitutional framework and that identifies and pursues the key steps needed to create a secure and conducive environment for Libya’s elections.
2. Demand accountability of all parties to the conflict, including third states, foreign fighters and mercenaries, including by providing all necessary financial, logistical and political support to the ICC and by facilitating domestic universal jurisdiction investigations in Member States.
3. Apply sanctions fairly, transparently, and consistently in accordance with human rights standards and due process and in coordination with other accountability mechanisms to contribute to judicial accountability and redress for victims.
4. Protect women and civil society. Demand that Libyan authorities ensure an enabling environment for women and civil society, in particular, human rights defenders and peacebuilders, including by supporting Libya’s efforts to create a national action plan on women, peace and security.
5. Adopt and implement the recommendations of the independent strategic review of UNSMIL to strengthen UNSMIL’s effectiveness and ensure it can deliver its mandate fully across all tracks, especially the human rights and international humanitarian law track, including by providing UNSMIL with the resources, capacities and support needed.

Madam President, I would like to end not with my words, but with those of a representative of the families of the victims of the mass graves discovered in Tarhuna whom we recently interviewed. He said, “Can you imagine seeing people killed in front of your eyes? Then you cannot sleep for days... If the law is not applied, then revenge becomes the only answer, and then blood will reach to our knees. If there is justice, then peace will prevail, and the cycle of revenge will stop.” It is for them and for every victim and family in Libya, Madam President, that this Council must act.

Thank you.