

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the right to privacy and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on the right to privacy pursuant to Human Rights Council resolutions 50/17, 52/4, 46/16, and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Law 19 of 2001 on the Reorganisation of Non-Governmental Organisations (Law 19/2001)**, as well as **Decree 286/2019 regulating the operation of the Civil Society Commission, and Regulation 3/2016 concerning the Control of Opening Accounts for Non-profit Organisations and Institutions**. Many provisions of Law 19/2001, Decree 286/2019 and Regulation 3/2016 are contrary to Libya's international human rights obligations, including the right to the freedom of association, as protected by Article 22 of the International Covenant on Civil and Political Rights (ICCPR), and enshrined in Article 34 of Libya's Constitutional Declaration of 2011.

The reversion to Law 19/2001 may obliterate civic space in Libya. We underscore the extent to which ongoing conflict, insecurity, and the activity of non-state armed groups, including those designated by the United Nations Security Council, do not per se provide a basis for restricting and limiting the work of civil society. Civil society and human rights defenders remain an essential partner in the restoration of security, the protection of rights, and the delivery of humanitarian aid. We respectfully encourage your Excellency's Government to consult broadly with all sectors of civil society to develop a new comprehensive CSO law, which ensures an enabling environment for civil society, and which complies with Libya's Constitution, domestic legislation, and international human rights obligations and best practices.

In the framework of the forthcoming elections in Libya, and the key role CSOs can play in facilitating and overseeing elections, we would also like to remind your Excellency's Government that civil society is critical for achieving fair and peaceful elections. CSOs play a vital role in securing a broader political process, supported by all segments of society, by raising awareness and observing elections. CSOs further safeguard the openness and transparency of elections, promoting the engagement of marginalised or disadvantaged groups, and increasing electoral awareness. Civil society actors can also, through election monitoring, provide an extra layer of scrutiny and acceptance of the results.

Background

From the information received, we understand that:

- *Law 19 of 2001 on the Reorganisation of Non-Governmental Organisations*: Enacted during the Gaddafi regime, the provisions of this law contain restrictions on the registration and operations of CSOs in Libya.
- *Constitutional Declaration of 2011*: After the 2011 Revolution, Libya adopted a new Constitutional Declaration, which protects the right to freedom of association (Article 15) and requires the enactment of a new CSO law (Article 15).
- *Transitional Justice Law 29 of 2013*: Article 6 of the Transitional Justice Law 29 of 2013 declared all laws issued by the former regime without a legitimate or constitutional basis as ‘unjust legislation’ and void, and ordered a remedy to these laws’ adverse effects on the rights of individuals and the society.
- *Supreme Court of Libya ruling of 23 December 2013 (Constitutional Challenge Case 01 of the Judicial Year 57)*: The Supreme Court of Libya underlined that: ‘it is established that international conventions adhered to by the Libyan State are directly applicable once ratified by the State’s legislative power. They have supremacy over internal legislation. In case of contradiction between the provisions of the international conventions and those of internal legislation, the provisions of the international conventions have priority of application’.
- *The Central Bank of Libya’s Regulation 3 of 2016*: The Central Bank of Libya issued Regulation 3 Concerning the Control of Opening Accounts for Non-profit Organisations and Institutions, which contains restrictions on the ability of CSOs to access to financial resources.
- *Decree 286 of 2019 regulating the operation of the Civil Society Commission*: Decree 286/2019 regulates the work of the Civil Society Commission (CSC), which is the government body responsible for registering and monitoring CSOs in Libya. Decree 286/2018 provides the CSC with broad powers over the legal status and work of CSOs. Many CSOs have been registered under Decree 286/2019.
- *18 July 2022*: The Urgent Matters Department of the South Benghazi Court temporarily suspended Decree 286/2019.
- *Decree 138 of 19 February 2023*: Decree 138/2023 established the Committee for the Study of the Registration of Civil Associations and charged this Committee with implementing Law 19/2001 and assuming responsibilities previously held by the CSC, including registration requests from CSOs.

- *Supreme Judicial Council's legal opinion on 8 March 2023:* The Department of Law of the Supreme Judicial Council issued a legal opinion that CSOs registered under executive decrees, rather than legislation, are null and void.
- *Circular 5803 of 13 March 2023:* Circular 5803/2023 instructs Government departments to revoke licenses given to any CSO established since 2011.
- *Ministerial Circular 7 issued on 21 March 2023:* Ministerial Circular 7 allows for the continuation of the work of local and international CSOs, provided CSOs regularise their status under Law 19/2001, through the procedures approved by the Committee for the Study of the Registration of Civil Associations (since replaced by the Committee to Support and Organise the Work of Civil Society Organisations).

Relevant international human rights law

Libya acceded to the ICCPR in 1970. Article 22 of the ICCPR protects the right to freedom of association and provides that any restriction on the exercise of this right must meet three conditions:

1. First, it should be prescribed by law, in language that is sufficiently clear and accessible, and that does not allow for arbitrary application.
2. Second, it should serve a legitimate public purpose as recognised by international standards, namely national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.
3. Thirdly, the restrictions must be a necessary and proportionate means of achieving that purpose within a democratic society, with a strong and objective justification.

Under Article 2 of the ICCPR, States have a responsibility to take deliberate, concrete, and targeted steps towards meeting the obligations recognised in the Covenant, including by adopting laws or other measures as necessary to give domestic effect to the rights stipulated in the Covenant. States are obliged to ensure that the domestic legal system is compatible with the State's treaty obligations and duties.

We also recall that freedom of association is protected by Article 15 of Libya's Constitutional Declaration of 2011, which states: 'The state shall ensure freedom of establishing political parties, associations and other civil society organisations, and shall adopt a statute for their regulation'. Furthermore, Libya is a State party to the International Labour Organization's Freedom of Association and Protection of the Right to Organise Convention of 1948 (no. 87), ratified on 4 October 2000, which establishes the right of workers to establish organisations without previous authorisation; the right of workers to draw up their constitutions and rules, elect their representatives, organise their activities and formulate their programmes in full freedom and without interference by the public authorities; and the prohibition of administrative dissolution of such associations.

Incompatibility of Law 19/2001 with international human rights law

For the reasons detailed below, Law 19/2001 would be contrary to the right to freedom of association as protected by Article 22 of the ICCPR. If Libya reverts to Law 19/2001, this could have grave consequences for civic space in Libya. Given the multitude of issues discussed below, we urge your Excellency's Government to repeal Law 19/2001 in its entirety, and consult broadly with various actors, including civil society, to develop a new comprehensive CSO law, which complies with Libya's Constitution and international human rights obligations.

Restrictions on CSOs scope of work

Article 1 of Law 19/2001 defines a CSO as one that seeks to provide social, cultural, sports, charity, or humanitarian services. Article 1 also states that CSOs must operate within the law, morals, and public order. Article 13 prohibits a CSO from exceeding the purpose for which it was established.

Laws should contain a broad definition or understanding of an 'association'. An 'association' refers to any group of individuals or any legal entity brought together to collectively act, express, promote, pursue, or defend a field of common interests.¹ Members of associations should be free to determine their structure and activities and make decisions without state interference, in compliance with the right to freedom of association.² Articles 1 and 13 of Law 19/2001 contain restrictive and vague language, which could be deliberately used or misused to limit the work of CSOs that Government authorities do not agree with. We also note that article 1 may exclude CSOs that are not engaged in service provision, such as research and advocacy organisations. This definition could also exclude CSOs seeking to monitor the integrity of voting processes in the context of elections.

Restrictions on registrations

Article 6 of Law 19/2001 requires CSOs to obtain legal status under Law 19/2001. Article 41 states that individuals who perform any activity for an association before it has obtained legal status shall be subject to imprisonment and/or a fine.

We recall Human Rights Council resolution 22/6, which calls upon states to ensure that procedures governing the registration of CSOs are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal, avoid requiring re-registration and are in conformity with international human rights law.³ It is best practice to establish procedures that are simple, expeditious, non-burdensome, or even free of charge. An authorisation regime requiring the authorities to pre-approve an association should not be applied. Instead, and at most, authorities should apply a notification regime.⁴ Law 19/2001 would not comply with these standards.

¹ Special Representative of the Secretary-General on human rights defenders, A/59/401, para. 46.

² Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai A/HRC/20/27, para 64. See also African Commission on Human and Peoples' Rights (ACHPR), *Guidelines on Freedom of Association and Assembly*, para. 23.

³ Human Rights Council Resolution, Protecting Human Rights Defenders, A/HRC/RES/22.

⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, para 59. See also, African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly*, para. 13

We would also like to underline that the right to freedom of association equally protects associations that are not registered, and members of not registered associations should be free to carry out any activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions.⁵

We also note that article 2 of Law 19/2001 requires CSOs to have at least 50 founding members and to have headquarters to form a legal entity. Article 2 of Law 19/2001 would thus be contrary to Article 22 of the ICCPR, which clearly states that no restrictions may be placed on the exercise of the right to freedom of association other than those which are necessary and proportionate. Furthermore, it would also be contrary to the African Commission on Human and Peoples' Rights' Guidelines on Freedom of Association and Assembly, which state: 'No more than two people shall be required in order to establish an association'.⁶ We note that article 2 of Law 19/2001 could exclude the majority of organisations currently operating in Libya, having a devastating impact on Libyan civil society.

Restrictions on access to resources

Article 14 of Law 19/2001 requires CSOs to obtain Government approval before receiving donations or grants from foreign entities, and article 15 requires CSOs to obtain a permit before they can engage in fundraising. These provisions seem to violate Article 22 of the ICCPR, which states that no restrictions may be placed on the exercise of the right to freedom of association other than those which are a necessary and proportionate means of achieving a legitimate public purpose as recognised by international standards. As stated in the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the right of associations to freely access human, material and financial resources – from domestic, foreign, and international sources – is inherent in the right to freedom of association and essential to the existence and effective operations of any association.⁷ This right includes funding from domestic, foreign and international entities, whether individuals, corporations, civil society organisations, governments or international organisations.⁸ The Special Rapporteur has urged all States to ensure that associations – registered and unregistered – can fully enjoy their right to seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorisation or other undue impediments.⁹ The Special Rapporteur also called on States to create and maintain an enabling environment for the enjoyment of the right of CSOs to solicit, receive and utilise resources, to ensure that any restrictions are in accordance with international law, and to repeal laws and regulations that impose restrictions contrary to human rights standards.¹⁰

⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, para 56.

⁶ African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly*, para 9.

⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Clement N. Voule, Access to Resources, A/HRC/50/23, para 9. See also A/HRC/23/29; and Human Rights Council Resolution 32/31.

⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Clement N. Voule, Access to Resources, A/HRC/50/23, para 11. See also African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly*, para. 37-38.

⁹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Clement N. Voule, Access to Resources, A/HRC/50/23, para 64.

¹⁰ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Clement N. Voule, Access to Resources, A/HRC/50/23, para 64.

In interpreting Article 22 of the ICCPR, the Human Rights Committee has affirmed that ‘the right to freedom of association relates not only to the right to form an association but also guarantees the right of such an association to freely carry out its statutory activities’,¹¹ including using equipment received as foreign aid.¹² The Human Rights Committee has recognised that funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with Article 22. In several concluding observations to States on the implementation of the ICCPR, the Human Rights Committee has raised concerns regarding restrictions on access to foreign funding for CSOs,¹³ and has repeatedly stressed that legal provisions restricting foreign funding must not risk the effective operations of CSOs.¹⁴

We consider it best practice that legislation does not require prior state approval for the receipt of resources, both domestic and foreign.¹⁵ Although states have the responsibility to combat money laundering and terrorism, this should not be used as a pretext to undermine the credibility of non-governmental organisations or hinder their work.¹⁶ Moreover, as clearly established by the Financial Action Task Force (FATF) any regulation of money laundering in the context of counter-terrorism should adopt a risk-based approach consistent with FATF Recommendation 8. Such regulation requires meaningful engagement with civil society in identifying the sub-categories of CSOs which may be at risk in the sector. We also note that many CSOs in Libya provide food, health care, human rights monitoring, and oversight, and that these restrictions on access to resources would severely limit the ability of CSOs to continue to provide essential services.

Interference with internal governance and privacy of CSO members and burdensome reporting obligations

Articles 20 – 21 and 28 – 29 of Law 19/2001 strictly regulate CSOs internal governance. This includes requiring CSOs to be governed by a congress and a people’s committee, specifying the number of members and criteria for membership, when they should meet, and their competencies, rights, and duties. Article 10 requires CSOs to record the name, title, age, nationality profession and address of each member in a special register, and record the minutes of meetings of their congress and people’s committee and any decisions they issue in a special register. CSOs must provide one week’s notice to the Government of all meetings of the CSO’s congress and include a meeting agenda, and the Government can attend all congress meetings. Article 25 provides that the executive branch of the Government can convene an irregular meeting of the CSO’s congress ‘whenever necessary’. Article 27 requires CSOs to notify the Government of every meeting of the CSO’s congress and the agenda for the meeting at least one week in advance, and it requires CSOs to send all meeting minutes and resolutions to the Government within 15 days of the meeting.

¹¹ Belyatsky et al. v. Belarus (CCPR/C/90/D/1296/2004).

¹² Korneenko v. Belarus (CCPR/C/105/D/1226/2003) and Korneenko et al. v. Belarus (CCPR/C/88/D/1274/2004).

¹³ See, for example, CCPR/C/VNM/CO/3, CCPR/C/BLR/CO/5, CCPR/C/HUN/CO/6, CCPR/C/BGD/CO/1, CCPR/C/AZE/CO/4, CCPR/C/RUS/CO/7 and CCPR/C/ISR/CO/4.

¹⁴ See also CCPR/C/VEN/CO/4 and CCPR/C/ETH/CO/1.

¹⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Clement N. Voule, Access to Resources, A/HRC/50/23, para 11. See also African Commission on Human and Peoples’ Rights, *Guidelines on Freedom of Association and Assembly*, para. 37-38.

¹⁶ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/23/39, para 23. See also, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/61/267, para 11.

Articles 30 and 31 provide that the government can deem any resolution or action by the CSO's congress or people's committee to violate the CSO's statutes, it can suspend the resolution and request a court order to annul it. Article 32 allows the Government to take control of a CSO's management by dismissing its executive body and appointing an interim steering committee, if the CSO commits a 'violation that requires such measures' or if the CSO's congress is unable to meet 'for any reason'.

While States may have a legitimate interest in establishing reporting requirements for CSOs to ensure compliance with the law, these requirements 'should not inhibit associations' functional autonomy and operation',¹⁷ by adding costly and protracted burdens. The need to dedicate more time and resources to administrative requirements is highly detrimental to the activities of many organisations and may have a negative impact on their budgets and ability to carry out their mandates and activities.¹⁸ Authorities must also respect association members' right to privacy as stipulated in Article 17 of the ICCPR. Authorities should not be entitled to: condition any decisions and activities of individuals in their capacity as association members; reverse the election of board members; condition the validity of board members' decisions on the presence of a Government representative at the board meeting or request that an internal decision be withdrawn; request associations to submit annual reports in advance; and enter an association's premises without advance notice.¹⁹ Independent bodies may have a legitimate interest in examining an association's records, but such a procedure should not be arbitrary and must respect the principle of non-discrimination and the right to privacy as it would otherwise put the independence of associations and the safety of their members at risk.²⁰

Prohibition on access to international networks

Article 14 of Law 19/2001 prohibits CSOs from belonging to, participating in, or joining any entity outside of Libya, without first obtaining government approval. We reiterate that members of CSOs should be free to determine their statutes, structure, and activities and make decisions without State interference.²² Article 14 would thus constitute a limitation on the freedom of association, which is not a necessary and proportionate means of achieving a legitimate public purpose within a democratic society. Therefore, it violates Article 22 of the ICCPR.

Dissolution of organisations

¹⁷ Human Rights Council Resolution A/HRC/RES/22/6.

¹⁸ See African Commission on Human and Peoples' Rights (ACHPR), *Guidelines on Freedom of Association and Assembly*, para. 48; See also A/HRC/23/39, para 38.

¹⁹ A/HRC/20/27 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para 65.

²⁰ A/HRC/20/27 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para 64.

Article 35 of Law 19/2001 provides that the Government can issue a decree to close a CSO's headquarters for any reason, for three months, and this period may be extended if preceding a merger or dissolution. Article 36 provides the Government with the ability to dissolve a CSO on several broad grounds, including if the CSO allegedly commits a grave violation of public orders or morals, if the CSO is unable to achieve the purposes it was established for, or if it is deemed to be in the public interest to dissolve the CSO. Law 19/2001 does not require the CSO to be notified of an apparent violation or given an opportunity to correct it, and there is no means to appeal a dissolution decision.

The suspension or involuntary dissolution of a CSO are severe restrictions on the freedom of association and should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued, and used only when lesser measures would be insufficient. Moreover, such drastic measures should only be taken by independent and impartial courts, and appeal recourses against such court decisions should be available.²¹

Imposing criminal penalties on members of associations

Article 41 provides criminal penalties for individuals, including three months' imprisonment and a fine of 500 Dinars, for offences that are vaguely defined. For example, criminal penalties are to be applied to anyone who knowingly writes, submits, or maintains a piece of writing or record that they are required by law to submit or maintain, containing incorrect information, intentionally provides a statement without the competence to do so, or intentionally conceals a statement that they are required to submit.

We reiterate that restrictions on the exercise of the right to freedom of association must be a necessary and proportionate means of achieving a legitimate public purpose as recognised by international standards. Imposing criminal penalties on individuals, including depriving an individual of liberty, is a severe form of punishment. Article 41 seems to be contrary to the fundamental principle that the punishment must be commensurate with the crime. We also note that the African Commission on Human and Peoples' Rights' Guidelines on Freedom of Association and Assembly state that: 'States shall not impose criminal sanctions in the context of laws governing not-for-profit associations'.²²

We would also like to remind Your Excellency's Government of the 'principle of legal certainty' under international law,²³ which requires criminal laws to be sufficiently precise, so it is clear what types of behaviour and conduct constitute a criminal offense and what would be the consequence of committing such an offense. This principle recognises that ill-defined and/or overly broad laws are open to arbitrary application and abuse.²⁴ Moreover, the law must be formulated with

²¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, para 75 - 76. See also, African Commission on Human and Peoples' Rights (ACHPR), *Guidelines on Freedom of Association and Assembly*, para. 62.

²² African Commission on Human and Peoples' Rights (ACHPR), *Guidelines on Freedom of Association and Assembly*, para. 55.

²³ ICCPR article 15 (1), 9(1); UDHR article 11.

²⁴ Report of the Special Rapporteur on counter-terrorism and human rights to the General Assembly, Report on Security Council resolutions concerning terrorism on the promotion and protection of human rights since 9/11, A/73/361, para 34.

sufficient precision so that the individual can regulate his or her conduct accordingly. The vagueness of the offences under Law 19/2001 also increases the risk that they may be applied in a manner that is contrary to the principle of international law, *nullum crimen sine lege* (no crime without law).

Incompatibility of Decree 286 of 2019 with international human rights law

We would also like to bring to your Excellency's Government's attention to provisions of Decree 286/2019, which appears to be incompatible with the right to freedom of association, for similar reasons as those discussed above. If Decree 286/2019 is applied, this would be in violations of Libya's obligations under Article 22 of the ICCPR. Decree 286/2019 gives extensive powers to the governmental body, the Civil Society Commission, including regarding decisions to register/approve CSOs and their activities, and suspend and cancel the registration of CSOs, without going through a judicial process.

We also note the following aspects of Decree 286 that seem to impose unjustified restrictions on the right to freedom of association, and which would not meet the requirements of legality, necessity, and proportionality:

- *Prior authorisation process as opposed to a notification regime:* Decree 286 provides the CSC with wide discretion to accept or reject the registration application of a CSO and there is no clear guidance on the criteria the CSC applies. This seems contrary to established best practice requiring a "notification" process by which associations automatically obtain legal personality as soon as they have notified authorities of their existence.²⁵
- *Broad grounds for de-registering local CSOs:* Decree 286 provides the CSC with the power to de-register a CSO on several grounds, including if the CSO: commits a single violation of law; receives any funds or donations without the CSC's authorisation; or the General Assembly of the CSO does not convene for two years. As underlined above, de-registration would be a disproportionate penalty and cannot be deemed "necessary in a democratic society," it would be contrary to the best practices requiring that such sanctions should be a last resort and applied for cases of serious legal violations, and subject to appeal to an independent judicial authority.
- *Undue restrictions on local CSOs' access to funding:* Decree 286 requires CSOs to seek permission from the CSC ten days before accepting funding from any entity. The CSC can suspend the CSO activities if the CSO does not comply. CSOs must also obtain permission from the CSC before they may open a bank account or collect donations in public places.
- *Limitation on local CSO activities:* Decree 286 prohibits CSOs from directly or indirectly engaging in political activity and from exceeding the objectives in their statute.
- *Burdensome work permit requirements for international CSOs:* Decree 286 requires international CSOs to obtain a work permit from the CSC before it may operate in Libya. To apply for a permit, an international CSO

²⁵ Special Rapporteur, UN Doc. A/HRC/20/27, para. 58. OSCE Guidelines, para. 154.

must submit burdensome paperwork, including extremely detailed information about the CSO's internal operations. The various documents must be certified by the Ministry of Foreign Affairs of the CSO's home country, translated into Arabic and authenticated by the Libyan Embassy in the CSO's home country, and if translated in Libya, they must be certified by the Libyan Foreign Ministry.

- *Broad grounds for cancelling international CSOs work permits:* Decree 286 gives the CSC the power to cancel an international CSO's work permit for several reasons, including for a violation of Decree 286, or violations of any other 'legislation and laws and decisions and regulations in force in Libya', or a violation of activities, programs and projects to be implemented in accordance with the work permit. The CSC may also cancel the international CSO's work permit if it advertises it in an incorrect way.
- *Limitation on international CSOs activities:* Decree 286 requires international CSOs to notify the CSC at least two weeks prior to implementing any activity and must provide detailed information about the time and place of the activity and the beneficiaries. International CSOs must also notify the CSC prior to providing grants to local CSOs. International CSOs must also notify the CSC of leasing property, purchasing cars, contracting for telecommunications services, and the days and hours worked each week. International CSOs are prohibited from carrying out any act that violates public order or morals or activities related to political, military and security matters. International CSOs also must not communicate with political parties and entities inside Libya. International CSOs must also obtain the CSC's approval before they can enter into employment contracts.
- *Oversight and control of international CSO's financial transactions:* Decree 286 requires international CSOs to obtain approval from the CSC before they receive funds, transfer funds outside of Libya, grant funds or any monetary or in-kind support to any organisation in Libya, open a bank account, or change the person authorised to sign organisational checks.
- *Interference with international CSO members' right to privacy:* Decree 286 requires international CSOs to maintain, at their headquarters in Libya, all records and documents related to their activities in Libya, and allow the CSC access to these documents at any time.
- *Burdensome reporting requirements for international CSOs:* Decree 286 requires international CSOs to submit extensive reports to the CSC every quarter (while local CSOs are required to report annually).
- *Restricting support to local CSOs by International CSOs:* Decree 286 prohibits international CSOs from issuing grants to local CSOs not registered with the CSC.
- *Imposing legal liability of international CSOs:* Decree 286 provides that international CSOs can be sued if the CSC determines they did not satisfy their administrative and financial obligations.

- *Short timeframe for adjustment to new regulations:* Decree 286 provides local CSOs with three months (and international CSOs with two months) to comply with Decree 286 or their presence in Libya will be considered illegal.

Incompatibility of The Central Bank of Libya's Regulation 3 of 2016 with international human rights law

We also note Regulation 3 of 2016 Concerning the Control of Opening Accounts for Non-profit Organisations and Institutions (Regulation 3/2016). We understand that Regulation 3 was issued to give effect to Libyan laws and regulations regarding anti-money laundering and the countering of terrorism financing. We stress that United Nations Security Council Resolution 2253, which addresses the obligation on States to prevent and suppress the financing of terrorism mandates States to implement such measures in accordance with international law. Operative paragraph 5 of Resolution 2253 requires the criminalisation of terrorist financing be done 'in a manner consistent with [State] obligations under international law including international humanitarian law, international human rights law and international refugee law'. We also note that the General Assembly has clarified in its preambular paragraph 3 appended to Resolution 60/228 on the UN Global Counter-Terrorism Strategy, that any measures taken pursuant to the Strategy: 'must comply with [State] obligations under international law, including the Charter of the United Nations and relevant international conventions and protocols, in particular human rights law, refugee law and international humanitarian law'. However, Regulation 3/2016 provides what could be considered unnecessary restrictions on CSOs in accessing financial resources crucial for their work. These restrictions appear to be in breach of the right to freedom of association under Article 22 of the ICCPR.

We note that Regulation 3/2016 requires CSOs to obtain approval from the Banking Control Department and fulfil all statutory requirements before they are eligible to open a bank account and before they are able to receive funds from outside Libya or transfer funds out of the country. We also note that CSOs are prohibited from withdrawing amounts more than 1,000 Dinars at a time, and that they must submit donors' data if they wish to receive a transfer of funds over 5,000 Dinars. We also note that if the donor is not a Libyan citizen, the CSO must also submit the donor's residency permit and passport.

We reiterate that unnecessary and disproportionate funding restrictions that would impede the ability of associations to pursue their statutory activities would constitute an interference with Article 22 of the ICCPR.²⁶ The enforcement of Regulation 3/2016 could significantly hinder the ability of CSOs to perform their crucial functions. States must provide guidance to financial institutions to prevent their policies and practices from unduly restricting CSO's access to and use of funding.²⁷

Final observations

Enabling and protecting civic space, including the right to freedom of association, is key to Libya's transition towards democracy, sustainable peace, and

²⁶ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Clement N. Voule, Access to Resources, A/HRC/50/23, Para 9.

²⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Clement N. Voule, Access to Resources, A/HRC/50/23, Para 45.

stability. Freedom of association is vital for the realisation of a wide range of other rights, including civil, political, economic, social, and cultural rights. These rights are essential components of democratic societies, enabling them to respond to the needs, grievances, rights, and desires of their populations.²⁸ States cannot invoke indeterminate and vague counter-terrorism purposes as a basis to restrict the exercise of fundamental human rights.

We remind Your Excellency's Government that States have the primary responsibility and duty to protect, promote, and realise all human rights and fundamental freedoms by taking necessary measures to create the social, economic, political, and other conditions and legal guarantees required to ensure that all persons under their jurisdiction, individually or collectively, can enjoy these rights and freedoms in practice.

For these reasons, we encourage Your Excellency's Government to repeal Law 19/2001, as well as other restrictive regulations and decrees, including Decree 286 of 2019, and to refrain from adopting such provisions which restrict, rather than protect, the right to freedom of association. We strongly urge your Excellency's Government to consult broadly with all sectors of civil society to develop a new law to enable CSOs and other associations, including unregistered associations. We encourage Your Excellency's Government to hold extensive, multistakeholder consultations with CSOs, journalists, human rights defenders, and other relevant actors, including minority groups and women's organisations, in the process of redrafting legislation on the regulation of CSOs, so that its scope and content comply with Libya's international human rights obligations and best practices. Such consultations are also part of the FATF Recommendations.

It is imperative that Your Excellency's Government seek ways to streamline the regulatory framework applicable to civil society, in line with international human rights standards, ensuring that compliance with administrative duties does not become an impossible burden for these organisations or a disincentive to the exercise of the right to freedom of association. In that regard, newly adopted laws should 'not request all previously registered associations to re-register so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities'.²⁹

We remain at your disposal to provide further technical assistance on the issues addressed in this communication, should Your Excellency's Government deem it necessary and request it.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all information brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please indicate what measures will be taken to ensure that the legal framework applying to local and international CSOs in Libya complies

²⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément N. Voule, The essential role of social movements in building for the better, A/77/171, para 1.

²⁹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, para 62

with Your Excellency's Government's obligations under international human rights law, in particular Article 22 of the ICCPR, United Nations Security Council Resolution 2462, and FATF Recommendation 8.

3. Please indicate what measures Your Excellency's Government have taken or will take to ensure broad consultation with civil society, including minority associations and women's groups, in developing the legal framework for CSOs in Libya.

This communication, as a comment on legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a copy of this letter has been sent to the House of Representatives and the Libyan National Army. We stress that this letter does not in any way imply the expression of any opinion concerning the legal status of any country, territory, city or area, or of its authorities and is without prejudice to the United Nations position on these matters.

Please accept, Excellency, the assurances of our highest consideration.

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ana Brian Nougères
Special Rapporteur on the right to privacy