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ILAC Discussion Paper:

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# Access to Justice for Vulnerable Groups in Times of COVID-19 – Libya

Author: Ylva L. Hartmann



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**International Legal Assistance  
Consortium Discussion Paper**

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# Access to Justice for Vulnerable Groups in Times of Covid-19 Libya

May 2021

This is one of three reports focusing on access to justice for vulnerable groups in times of COVID-19. The other two reports deal with Tunisia and Palestine respectively.

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# List of abbreviations

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<b>ABA</b>	American Bar Association
<b>ABA ROLI</b>	American Bar Association Rule of Law Initiative
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>COVID-19</b>	Coronavirus Disease 2019
<b>DCAF</b>	Geneva Centre for Security Sector Governance
<b>DCIM</b>	Libya's Directorate for Combatting Illegal Migration
<b>IDLO</b>	International Development Law Organization
<b>IDP'S</b>	Internally Displaced People
<b>ILAC</b>	International Legal Assistance Consortium
<b>PILPG</b>	Public International Law and Policy Group
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNFPA</b>	UN Population Fund
<b>UNICEF</b>	United Nations Children's Fund
<b>UNSMIL</b>	United Nations Support Mission in Libya
<b>SIDA</b>	The Swedish Institute Development Institute

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## Disclaimer

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# Executive Summary

The COVID-19 crisis has caused significant difficulties in ensuring equal access to justice for all. In Libya, the pandemic has added another layer of complexity to accessing and delivering justice in an already unstable and conflict-ridden context. Despite these difficult circumstances, the Libyan legal community has remained resourceful. It has managed to navigate in a fragmented judicial system and stay in contact with the most vulnerable, which requires both acumen and courage.

This discussion paper provides insights into the increasing justice gap experienced by vulnerable groups during the pandemic in Libya. It builds on a series of in-depth interviews and a written survey directed at legal professionals in Libya – practitioners who work to uphold the rule of law under very difficult circumstances. The opinions and perspectives reflected in the report come directly from the Libyan respondents.

Despite the justice system's difficulties in delivering justice before COVID-19 – due to armed conflicts and instability – it still represented consistency and a level of predictability in justice issues. The Supreme Judicial Council's decree of 15 March 2020 to temporarily suspend all judicial proceedings due to COVID-19, which put on hold the minimum level of justice delivery, was perceived as symbolic of the general sense of impunity in the country.

The data show that the pandemic has amplified existing social inequities and justice gaps; this represents a setback to Agenda 2030 Sustainable Development Goal number 16 on peace, justice and strong institutions. People who have been particularly affected include those subjected to domestic violence, those pursuing alimony and divorce cases, people on the move – internally displaced people, migrants and refugees – and people in detention. All respondents highlighted that women and girls had been disproportionately impacted in their access to justice during the pandemic.

The study data reflect the situation of 'official' courts, prisons and institutions, rather than the unofficial institutions that remain outside the control of the governments (in the east, the west and the south), where obstacles to access to justice are likely even more important. In the absence of properly functioning courts during COVID-19, lawyers and civil society actors focused on spreading information and awareness raising on legal rights and remedies available to vulnerable groups.

When judicial services resumed in October 2020, after a three-and-a-half months complete closure initiated in mid-March 2020, followed by subsequent partial resumption and the judicial annual recess, there were significant delays

and backlogs of cases. It remained challenging for parties to be informed or notified of the rescheduled dates for cases and court appearances. Decisions were therefore often handed down in absentia. Also, many people were unable to comply with the new deadlines, due to lack of access to courts and information, and thus were unable to file appeals. This was despite individual judges showing flexibility regarding timeframes and protocols.

All respondents stressed the importance of digitalising the judiciary, improving the digital infrastructure and literacy of both courts and the wider legal profession as a first step. If done cautiously, considering vulnerable groups' realities, digitalisation is expected to improve access to justice during pandemics and similar crises, and could better uphold the rule of law in a generally unstable Libya.

### Key recommendations to Libyan authorities

Gender-based violence and women and girls' rights

- **Improve women and girls' access to justice and protection against gender-based violence:**
  - **Update and adopt the draft legislation on gender-based violence**, in consultation with national and international stakeholders, and ensure its due implementation.
  - **Amend Law 10 of 1984 to abolish child marriage** and work holistically towards its factual abolishment.
  - **Spread information on rights upon divorce**, such as entitlements to use the marital home, alimony, child support or custody rights.

Legal aid

- **Improve vulnerable groups' access to legal aid and assistance:**
  - **Invest in the Department of People's Legal Defence** and work to expand the role of public lawyers.
  - **Encourage the Libyan Bar Association to provide legal aid** and liaise with civil society legal aid initiatives.
  - **Inform the public, and in particular vulnerable groups, on the availability of legal aid.**

## Digitalisation

- Develop the **digitalisation of the justice system**:<sup>1</sup>
  - **Map legal and practical conditions for digitalisation**, including digital literacy/infrastructure.
  - **Priority should be put on online access to case status**, case updates and court decisions.
  - **Improved linkages and contact between the different courts and between courts and other governmental departments** should also be prioritised.

This is one of three reports focusing on access to justice for vulnerable groups in times of COVID-19. The other two reports deal with Tunisia and Palestine, respectively.

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<sup>1</sup> The United Nations Support Mission in Libya and the United Nations Development Programme Policing and Security Joint Programme are developing a remote court hearings system. This is expected to start work sometime in 2021.



# Introduction

COVID-19 has added another layer of complexity to justice delivery in Libya and has put further constraints on access to justice, in particular for vulnerable groups. Armed conflicts, fragmentation of power and territory control make ensuring access to justice and the rule of law extremely difficult.

Since the civil war in 2011, Libya has been divided by competing political and military forces in the west, the east and the south. The west was ruled by the Government of National Accord – based in Tripoli, western Libya – while the House of Representatives controlled eastern and central parts of the country. Various armed groups and militias (*thuwars*) of different sizes and types also competed over control of territory and law enforcement, making administration of justice extremely difficult. In 2020, efforts were made to negotiate a reunification of the west, the east and the south through UN-mediated talks – the Libyan Political Dialogue Forum. These culminated in an unexpected agreement on 5 February 2021. On 10 March 2021, Libyan delegates from the west, the east and the south voted and formed a Government of National Unity. This will rule until the elections that are set to take place on 24 December 2021.

In June 2020, the UN Human Rights Council established an Independent Fact-Finding Mission on Libya to monitor and document alleged violations and abuses of international human rights law and international humanitarian law. The establishment of this Fact-Finding Mission, as well as the International Criminal Court's investigation in Libya, reflects the scale and gravity of alleged human rights abuses in the country.

This study focuses on vulnerable groups' access to justice for *everyday justice needs* – disputes encountered by regular people in their daily lives – during the pandemic in Libya. The impact of the COVID-19 pandemic has exacerbated entrenched and unresolved political divisions, which have taken their toll on legislative and judiciary powers over many years, decreasing the likelihood of people solving their justice needs.

The report draws on 13 in-depth interviews conducted with lawyers and a written survey with nine respondents from the legal community in Libya between October and December 2020.<sup>2</sup> Respondents came from the following cities: Tripoli, Benghazi, Misrata, Sebha, Jalu, Derna and Al-Khoms. The data

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<sup>2</sup> Due to time and connectivity constraints, the sample selection was limited. The discussion paper does not intend to provide exhaustive nor representative views of all legal professionals, but rather spotlights key areas based on practical experiences, to better understand vulnerable groups' everyday justice problems and their access to justice.

gathering was conducted by the American Bar Association – Rule of Law Initiative (ABA-ROLI) and the Public International Law and Policy Group (PILPG), both International Legal Assistance Consortium (ILAC) member organisations. The opinions and perspectives reflected in the report come directly from the Libyan respondents.

# 1 Impunity as a rule, not the exception

Regrettably, impunity forms a natural part of the administration of justice in Libya. This holds true, both for the period of the rule of President Muammar Gaddafi and in the time since his fall from power in 2011. On 26 February 2011, the UN Security Council referred the situation in Libya since 15 February 2011 to the Prosecutor of the International Criminal Court and decided that the Libyan authorities should cooperate fully with and provide any necessary assistance to the court and the prosecutor. Based on that decision, the International Criminal Court launched an investigation into alleged crimes against humanity and war crimes in Libya, starting 15 February 2011.<sup>3</sup>

In 2013, ILAC conducted an assessment of justice sector institutions in Libya, while also addressing transitional justice and connected challenges, such as the prosecution of low-profile cases, vetting and gender equality.<sup>4</sup> Since Gaddafi's ousting, the human rights situation has deteriorated: extrajudicial killings, torture, sexual and gender-based violence, deplorable conditions of detention, and arbitrary arrests and detention of migrants are but examples of alleged violations of human rights in Libya reported in 2020.<sup>5</sup>

The general sense of impunity in Libya has been aggravated by the COVID-19 pandemic, as the functioning of the justice system, one of the few yet fragile symbols of the rule of law in the country, has been disrupted. According to the interviewees, vulnerable groups have been unable to access justice and bring their complaints before the courts, while perpetrators have been able to commit offences – including violent ones – with increasing impunity.

To date, judges and prosecutors throughout the country have been subject to intimidation and direct threats not to take on cases related to violations committed by armed groups and militias. This has led to severe delays in investigating and prosecuting all criminal cases. These armed groups and militias are operating with total impunity, while according to some of the respondents, some of the militias are themselves affiliated with government institutions.

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<sup>3</sup> International Criminal Court, Situation in Libya, ICC-01/11, situation referred to the ICC by the United Nations Security Council in February 2011.

<sup>4</sup> International Legal Assistance Consortium, "ILAC Rule of Law Assessment Report: Libya 2013", Stockholm, 2013.

<sup>5</sup> Statement of Mr Mohamed Auajjar, Chair of the Independent Fact-Finding Mission on Libya, at the 45<sup>th</sup> Human Rights Council Session, 5 October 2020.

## **Transitional justice processes at a standstill**

Since Muammar Gaddafi was ousted, there have been attempts to embark on transitional justice processes to deal with past and ongoing abuses.<sup>6</sup> The Transitional Justice Law (Law 29) was adopted in 2013, and included the creation of a Fact-Finding and Reconciliation (Truth-seeking) Commission. The fragmentation of power in the country, along with ensuing armed conflicts and tensions, has undermined any genuine political will to embark on transitional justice processes. COVID-19 is the most recent obstacle. The pandemic has made it even more difficult to work on transitional justice. Interviewees affirmed that progress in establishing transitional justice mechanisms and processes had been almost at a standstill due to COVID-19. Some hope that the new Government of National Unity will be more successful in achieving transitional justice.

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<sup>6</sup> For more information on transitional justice processes in Libya, see Azza K. Maghur and Salah El-Marghani, “Transitional Justice Evolutions, Challenges and Way Forward in Libya”, American Bar Association Rule of Law Initiative, February 2021.

## 2 Access to justice and vulnerable groups during the pandemic

Respondents were united in their concerns about the decreased access to justice of vulnerable groups during the pandemic. The responses were restricted to ‘official’ courts, prisons and institutions, rather than the unofficial institutions that remain outside the control of the governments (in the east, the west and the south), where obstacles to access to justice are likely even more important.

Most respondents pointed to women and girls as being particularly affected during the pandemic. Gender inequality and underreporting of gender-based offences were significant concerns even before the pandemic in Libya. Prior to COVID-19, UN Women reported that globally, “243 million women and girls aged 15–49 have been subject to sexual and/or physical violence perpetrated by an intimate partner in the previous 12 months”.<sup>7</sup> Violence against women and girls, and particularly domestic violence, has only intensified since the outbreak of the pandemic.<sup>8</sup>

In Libya, women face discrimination in multiple aspects of their lives, in part due to widespread acceptance of pre-defined and traditional gender roles. The legal culture surrounding both justice providers and justice seekers is weak in terms of them reporting cases of domestic violence, child marriage or alimony cases. During the pandemic, women and girls’ ability to access courts to seek remedy for violations has been even more limited.

The data collected showed that vulnerabilities often intersect, cumulating individuals’ experiences of discrimination and marginalisation in their access to justice. Individuals can simultaneously fall under several different categories, increasing their vulnerability.

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<sup>7</sup> UN Women, “COVID-19 and ending violence against women and girls”, 2020.

<sup>8</sup> Ibid.

## **Single mothers and their children**

Prior to the pandemic, child custody, alimony and divorce cases, labelled as 'personal status cases', were required to be disposed of quickly. District court judges were mandated to issue quick orders to provide women and children with alimony or to provide accommodation in cases where families had no shelter. The suspension of the work of all courts for three-and-a-half months in mid-March 2020, followed by subsequent partial resumption and the judicial annual recess, led to the judiciary's reopening only on 1 October 2020. This resulted in an accumulation of personal status cases, which was particularly difficult for many women. Several fell into financial hardship because of outstanding alimony, leading to, for instance, loss of housing or their ability to buy food. Respondents reported that there was a lack of knowledge among women on their rights upon divorce: often women did not know that they were entitled to use of the marital home, child support or that they had custody rights.

Generally, in Libya, alimony is paid monthly by the father, who is required to deposit payments at the court treasury office. A failure to deposit the funds will lead to a deduction from his salary. With the closure of the judicial system, judges were no longer able to issue these orders; nor was the court treasury office open to administer alimony payments. The closure of the court treasury office had a direct and immediate impact on the women and their children, who relied on these payments to survive. In June 2020, the judiciary ordered the reopening of the courts for one hour per day, twice a week, to allow the administration of alimony payments. Some respondents raised concerns about judges taking a more lenient approach towards husbands required to pay alimony, considering the men's economic situation – which was often rendered more precarious due to the pandemic.

This situation reinforced the already difficult situation of women who had left or been expelled from their family home in Libya, leading to their inability to independently support themselves and their children. Children were particularly affected because of not receiving the protection of the court when it came to accommodation orders or alimony payments. Under Libyan law, children under the age of 18 have no standing before the courts and must be represented by legal guardians. Any disputes as to guardianship or representation were also left unresolved during the closure of the courts.

## People on the move

During COVID-19, people on the move have found themselves at the crossroads of three interlocking crises; a health crisis, a socio-economic crisis and a protection crisis.<sup>9</sup> In October 2020, the International Organization for Migration reported that 316,415 Libyans were internally displaced, mainly due to the internal armed conflict.<sup>10</sup> In Libya, the total population of migrants ranges from 700,000 to 1 million people,<sup>11</sup> while the UN High Commissioner for Refugees (UNHCR) has registered approximately 43,000 asylum seekers.<sup>12</sup> Many are trapped in Libya with no way of either proceeding to their planned destination – Europe – or going back to their countries of origin. The data collected for this study were scarce on people on the move. The great majority of respondents indicated migrants as one of the most vulnerable groups, even before COVID-19, and that the situation had worsened during the pandemic. However, they did not have much detail on these groups' situation. Internally displaced people (IDPs), migrants and refugees live through different experiences between and among the groups and knowledge about their situations is relatively limited.

Migrants and internally displaced persons are particularly victimised by armed groups, criminal gangs, smugglers and traffickers. The UN reports that migrants and asylum seekers are especially vulnerable to “unlawful killings, torture and other ill-treatment (. . .) rape and other forms of sexual and gender-based violence, slavery and forced labor, extortion and exploitation”.<sup>13</sup>

Internally displaced persons were reported to face the same difficulties in accessing justice during the pandemic as prior to COVID-19. They were requested to file civil lawsuits in their hometowns, where it was often difficult to return.<sup>14</sup> Some IDPs lost their identity cards when they were forced to relocate. Only their municipalities of origin may issue identity cards, but IDPs' fear of returning effectively prevented them from obtaining replacement cards.

Most refugees and migrants used to support themselves through daily work.

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<sup>9</sup> See, for instance, UN Policy Brief, COVID-19 and People on the Move, June 2020.

<sup>10</sup> International Organization for Migration, “Libya IDP and Returnee Report”, Round 33, September–October 2020.

<sup>11</sup> International Organization for Migration website, Libya Brief (accessed 2021-02-02).

<sup>12</sup> United Nations High Commissioner for Refugees, Country information on Libya, accessed 2021-02-02.

<sup>13</sup> United Nations Support Mission in Libya and Office of the High Commissioner for Human Rights, “Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya”, pg. 4, 20 December 2018.

<sup>14</sup> For more information on the return prospects of IDPs, see the International Organization of Migration's periodic “Libya IDP and Returnee Reports”.

This work was stopped by restrictions and curfews imposed during COVID-19. It is estimated that more than 60 percent of migrants have lost their jobs during the pandemic in Libya.<sup>15</sup> Because of their living conditions, many were unable to take precautions against the virus. The opportunity for migrants and refugees to access courts and judicial authorities was already limited before the pandemic, in part due to it being impossible for them to apply for asylum in Libya and obtain legal status to stay. There is no functioning asylum system in the country and Libya is not a state party to the 1951 UN Convention relating to the Status of Refugees.<sup>16</sup> Deteriorating living conditions and the temporary suspension of judicial proceedings during COVID-19, made it even more difficult for migrants and refugees to access the courts.

One respondent was involved in broadcasting two radio programmes per week to the migrant and refugee communities, which he described as being the “hardest hit” during the pandemic. Many respondents affirmed that migrants and refugees had little knowledge of Libyan legislation and potential legal protections, such as limitations on the period of pre-trial detention or the right to legal counsel in felony cases/more serious crimes, provided for in the Code of Criminal Procedure.

## **People in detention**

Arbitrary detention is a critical concern in Libya. There are more than 8,850 people deprived of their liberty and in judicial police custody, with this imposed arbitrarily at 28 official prisons in Libya under the authority of the Ministry of Justice; an estimated 60–70 percent are in pre-trial detention.<sup>17</sup> Additionally, there are some 10,000 people detained in detention centres under the authority of militias/armed groups. Some of these groups are affiliated with the Ministry of Interior or the Ministry of Defence. International monitors, including the United Nations Support Mission in Libya (UNSMIL), continue to receive credible reports of arbitrary and unlawful detention, torture, enforced disappearances, extra-judicial killings, denial of visits from families and lawyers, and deprivation of access to justice.

Overcrowding is rampant in government-controlled prisons in Libya, and

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<sup>15</sup> Arabic News, “Migrant daily workers in Libya lose their job due to COVID-19 restrictions”, 9 September 2020.

<sup>16</sup> Amnesty International, “Rule of Law or Rule of Militias”, 5 July 2012.

<sup>17</sup> According to the data provided by one of the persons providing background information for this study.



detention conditions are reported to be deplorable.<sup>18</sup> Many detainees are migrants intercepted at sea trying to get to Europe, fleeing armed conflicts and persecution.<sup>19</sup> It is understood that those migrants who are held across the approximately 25 detention centres managed by Libya’s Directorate for Combatting Illegal Migration (DCIM) are “held for long periods in conditions of chronic overcrowding, poor sanitation, insufficient access to healthcare and lack of food ... suffer[ing] from disease, malnutrition and physical and sexual violence”.<sup>20</sup>

Persons in detention are particularly vulnerable to virus infections and pandemics; prisons are by their nature more prone to foster transmission of diseases, since detained and incarcerated persons are concentrated in small spaces. In March 2020, as a response to the COVID-19 pandemic, the Public Prosecutor’s Office issued a decree to release 466 detainees of different nationalities in Tripoli to decongest the prisons. Neither pre-trial detainees nor people meeting the rules for conditional release were included. However, these precautionary measures adopted during the pandemic were only applied in official state-run prisons. Many prisoners detained in unofficial or military prisons, over which the judiciary has no control, remained incarcerated. Some respondents expressed concern over the lack of commitment of the authorities to adopt precautionary measures in prisons during the pandemic.

Respondents indicated that many people who were being held in pre-trial detention were unable to access the court system to obtain bail or provisional release during the pandemic. One respondent criticised the automatic extension of pre-trial detention, without referring defendants to court. Another respondent was concerned with the difficulty to communicate with clients in detention, since many prisons were not equipped with telephones or other means of communication.

## **Weak legislation and protection**

Both domestic violence and child marriage were pointed out by respondents as needing better, more comprehensive, regulation in national law. Beyond legislation, many individuals need outright protection from these practices. These issues were made further visible during the pandemic. Many respondents affirmed that there was a negative perception of women filing

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<sup>18</sup> Sherine El Taraboulsi-McCarty, Ghada Al-Bayati, Victoria Metcalfe-Hough and Sarah Adamczyk, “Protection of Displaced Libyans: Risks, Responses and Border Dynamics”, 8 August 2019.

<sup>19</sup> Global Detention Project, *Libya Overview*, 14 January 2021.

<sup>20</sup> *Ibid.*

complaints at police stations. It was considered a taboo to bring what many perceived to be 'family matters' to the police or the courts. Some respondents noted that women had begun to break this taboo, but still in very small numbers.

### ***Domestic violence***

Intra-marriage violence against women is regulated in Article 17 of Law No. 10 of 1984, which establishes that a man should refrain from causing physical or psychological harm to his wife. Yet a comprehensive law criminalising domestic and gender-based violence, and ensuring protective measures, is still absent in Libya.<sup>21</sup> In 2017, draft legislation regulating gender-based violence was elaborated by several Libyan activists, but it has yet to be adopted to offer adequate legal protection for victims of domestic and gender-based violence. The UNSMIL, UN WOMEN and the UN Population Fund (UNFPA) are currently providing technical assistance to the drafters, aiming to revise the draft legislation in light of international and regional standards. According to the UNSMIL, the revised legislation on gender-based violence is expected to be submitted to the current House of Representatives during September 2021.

One of the main issues highlighted by the respondents was an increase in domestic violence in Libya during COVID-19. This type of violence is by its nature underreported and there is also a lack of statistics on domestic violence in the country. A questionnaire conducted by UN Women in March 2020 in Libya, revealed that 46 percent of respondents expressed fear of increased outbursts of anger by their partners, potentially resulting in violent behaviour.<sup>22</sup> In November 2020, more than one-fifth of Libyans reported having noticed an increase in domestic violence during the pandemic.<sup>23</sup>

Respondents confirmed that COVID-19 lockdowns had aggravated the effects of domestic violence, in part due to the limited ability to turn to the courts and the police. The significant role played by the courts in granting shelter orders for victimised women was severely hampered because of the suspension of work at the courts.

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<sup>21</sup> Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), Concluding observations, Libya, 6 February 2009, CEDAW/C/LBY/CO/, para. 23.

<sup>22</sup> UN Women Policy Brief, "Gender-sensitive prevention, response and management of COVID-19 outbreak in Libya", 2020.

<sup>23</sup> Voluntas Policy Advisory, "COVID-19 behavior assessment in Libya", November 2020, pg. 22.

### *Child marriage*

The lack of legal protection for children against marriage was raised by some respondents as a great concern. The minimum legal age of marriage in Libya is 20 years, according to Article 8 of Law No. 10 of 1984 on ‘Marriage and Divorce Provisions and the Effects Thereof’. However, if there is consent of a parent or guardian, a girl or boy under 20 can get married, with a court authorisation.<sup>24</sup> It is therefore legally possible to get married when underage. Some respondents highlighted that girls were in an increased position of vulnerability to child marriage during the COVID-19 pandemic. UNICEF has reported that the risk of child marriage has increased during COVID-19. Reasons such as school closures and increased financial pressure on families are both known factors that push girls towards marriage.<sup>25</sup>

Child marriage – marriage before the age of 18 – is a serious violation of the rights of a child, including the right to equality on grounds of sex and age, the right to marry and found a family, the right to life, the right to the highest attainable standard of health, the right to education and development, and the right to be free from slavery.<sup>26</sup> Girls are disproportionately affected by child marriage, which often results in a life in certain sexual and economic servitude, and increases the risk of domestic violence and sexual abuse.<sup>27</sup>

Respondents in this study feared an increase of child marriage and noted that victims were less able to rely on institutions or travel to the courts to seek remedy during the pandemic. Already before the pandemic, there had been limited information on child marriage in Libya.<sup>28</sup> It was difficult to retrieve more in-depth knowledge on how the situation had developed during the pandemic, except to note that the risks had increased.<sup>29</sup>

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<sup>24</sup> Girls not Brides, Country information on child marriage in Libya, 2020.

<sup>25</sup> UN Children’s Fund (UNICEF), “COVID-19 – A threat to progress against child marriage”, March 2021.

<sup>26</sup> As established in the following human rights treaties ratified by Libya: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on Elimination of All Forms of Discrimination against Women; and the Convention on the Rights of the Child.

<sup>27</sup> UNICEF, “Child marriage and the law – Legislative reform initiative paper series”, Division of Policy and Practice, April 2007, pg. 33–34.

<sup>28</sup> Girls not Brides, Country information on child marriage in Libya, 2020.

<sup>29</sup> UNICEF, “Libya Country Office Humanitarian Situation Report No. 3”, July–September 2020.

## **Vulnerable groups' legal representation**

Vulnerable groups' access to legal representation was reported to have substantially decreased during the pandemic. Often already at an economic disadvantage before COVID-19, vulnerable individuals sank further into poverty as the pandemic progressed. This resulted in an increased inability to access necessary legal representation. Many interviewees underlined that the effect of poverty on access to justice was most evident in the context of migrants, who have disproportionately faced economic hardships during the pandemic, in addition to the challenges brought about by displacement.

Lawyers in Libya are divided into 'public' and 'private' lawyers. Law No. 4 of 1981 established the Department of People's Legal Defence, which has branches and offices throughout the country. Accordingly, public lawyers in Libya provide legal assistance to individuals at the cost of the state, in cases where the accused have been remanded in custody, and in urgent cases involving alimony and visitation rights. When these cases did not progress because of the COVID-19 court closures and disruptions, the provision of legal assistance also stalled.

The work of the public legal defence offices faces obstacles both in terms of difficult access to areas controlled by armed groups, as well as under-resourcing. Presently, it is up to victims to contact the public lawyers. If the public lawyers and the Department of People's Legal Defence had the resources and ability to do more outreach and proactively engage with communities, access to their legal services would substantially improve.

The data collected indicated that lawyers maintained remote contact with their clients not in detention during the pandemic, mainly by using modern communication tools – including web-based applications like WhatsApp, Facebook Messenger, Zoom and similar platforms. Some respondents also conducted face-to-face meetings with clients, while following rules and measures related to social distancing. Many online platforms can operate multi-lingually – an aspect that Libyan lawyers used to their advantage while communicating with local groups that spoke different languages. However, the effectiveness of online tools and social media networks remained limited given frequent internet and electricity interruptions.

In the absence of properly functioning courts during the pandemic, lawyers and civil society actors in Libya focused on spreading information and awareness raising regarding the legal rights and remedies available to vulnerable groups. Many respondents underlined the important role of civil society to facilitate vulnerable groups' access to legal assistance, and awareness

raising on legislation and accessible procedures. One respondent participated in a radio programme to inform the public on different legal issues. Some of the sessions targeted different migrant groups and minorities, the purpose being to collect real-life case studies and talk about the different procedures available to them. The aim was also to convey grievances to the authorities. Social media was also used to conduct awareness-raising campaigns on legal issues. However, the majority of respondents stressed the importance of using the television and radio, as well as municipal and social councils, as vital information channels.

Interviews with respondents additionally revealed the impact of the COVID-19 pandemic on lawyers themselves. Often while expressing concern for vulnerable groups, responses revealed the larger impact on lawyers, who were unable to advocate for and adjudicate the concerns of these groups. From a practical point of view, many who were practising as private lawyers were unable to earn a living while the courts were closed.

**The respondents suggested several solutions to improve access to legal information and assistance:**

- Establish a platform where lawyers and litigants can follow their cases. Access to case status should also be facilitated through a helpline.
- The Ministry of Justice should make legal information available online. This should include information regarding ways of filing complaints and whether such complaints are subject to the statutes of limitation or not.
- Create an electronic database of all court decisions, including Supreme Court decisions, to complement the databases of the Geneva Centre for Security Sector Governance (DCAF). Some of the Supreme Court decisions are published on the court's website already but the database is not exhaustive; <https://bit.ly/3rgtR91>. DCAF maintains two databases in Libya, one with security sector legislation (<https://security-legislation.ly/>), and one on the Libyan criminal justice system (<https://lcjs.security-legislation.ly/en>).
- Train young lawyers on how to provide legal aid to victims of gender-based violence.
- Provide awareness/educational programmes on rights and remedies through radio, television, and via the publication of newspapers and flyers.
- Create a telephone hotline or help desks at courts to assist lawyers and citizens to obtain information about cases.
- One respondent wanted to develop a multi-language legal assistance mobile application to improve peoples' knowledge of their rights and lawyers' outreach and contact with justice seekers, as mobile access and ownership is high in Libya. Through a mobile application, it is possible to reach large segments of the population who cannot afford to employ a lawyer. Also, in cases of gender-based violence, obstacles of social stigma can more easily be overcome with a mobile application.
- Civil society can facilitate contact between justice seekers and lawyers through their offices, if equipped with communication tools to conduct online meetings.

### 3 Justice delivery during the pandemic

Lacking a constitutional regulation on emergency measures, the Government of National Accord, in western Libya, and the Interim Libyan Government, in eastern Libya, have resorted to ad hoc and extraordinary measures during the pandemic, often based on conflicting legislation. The Government of National Accord has relied on the 1955 Emergency Law, which has provided it with limited extraordinary powers. It has repeatedly tried to expand these powers. The Interim Libyan Government has resorted instead to the Mobilization Law of 1991, which is aimed at preparing for war. Both laws have been used to impose curfews, limit movement between cities, close shops and places of assembly, and prohibit gatherings of large groups.

The Supreme Judicial Council is one of few unified bodies (before the formation of the Government of National Unity in March 2021) with authority over the entire country. As a further response to the spread of COVID-19 in Libya, it issued decree number 32 on 15 March 2020, partially suspending the work of the judicial authorities. Then, on 29 March 2020, it issued decree number 35, fully suspending the judicial work. This suspended work at all courts, Public Prosecutor's Offices and other judicial bodies for a period of three-and-a-half months. There was a resumption of judicial work on 1 July 2020; this coincided with the Libyan judicial annual recess, with limited and alternating coverage by judges.

Only by 1 October 2020 was the resumption of judicial work fully operational. This resulted in a backlog of cases in both criminal and civil matters: one respondent noted that around 6,000 family law cases in the city of Benghazi alone accumulated in the period from March to June 2020. The already fragile Libyan judicial system has undoubtedly been affected by the COVID-19 pandemic.

Before the COVID-19 outbreak, courts in the country functioned poorly due to the civil war, with some courts even subject to constant armed attacks. In some parts of the country, particularly in the south, courts were not functioning at all. Throughout Libya, legal procedure was controlled by or subject to influence from armed groups, militias and *de facto* ruling authorities, who primarily represented their own interests. Interviewees affirmed that judges and other officers of the court had been subject to intimidation, threats and violence by armed groups, mainly in the south, during the pandemic.

## **Lack of information on hearings**

The resumption of the judicial system on 1 October 2020, did not resolve the access to justice issues experienced by vulnerable groups in Libya. One challenge is the backlog of cases that has resulted from the suspension of judicial proceedings, as it now takes longer to get a judgment. In some cases, this is particularly difficult, such as when granting shelter to survivors of domestic violence, alimony or cases of people in pre-trial detention.

Another challenge is the rescheduling of hearings resulting from the suspension of judicial proceedings, which is communicated by courts via schedules in the court houses and online. It has often been difficult for the parties to learn of the rescheduled dates for cases and court appearances. According to interviewees, acquiring this information has been particularly difficult for vulnerable groups, who are often more disconnected from courts and alternative forms of communication, such as social media. The backlog of cases, rescheduling of hearings and ensuing difficulties of communicating with the case parties have all led to decisions often being handed down *in absentia*. In practice, this has meant that parties have then been unable to comply with the deadlines for filing an appeal against these decisions, being unaware that they have even been rendered.

One interviewee reported that some exceptions had been made for people who had missed court dates or other deadlines due to being infected by COVID-19. Individual justices have also adopted a flexible approach to parties whose cases have been delayed or rescheduled because of court closures. While the judiciary has tried to raise awareness of rescheduled appearances via social media, the effectiveness of this solution is undermined by internet connectivity and power disruptions, and the fact that people in Libya seldom use social media to any great extent. Respondents reported that appeal judges had to be flexible. One interviewee stated that, “Judges are the ones who should apply the law in a humanitarian manner and appeals became admissible if delays were due to COVID-19”.

An additional challenge is the physical distance between courts and litigants. Some respondents suggested that this could be alleviated by, for instance, the College of Judges convening in locations close to the litigants or by establishing special trial chambers with a mandate to dispose of cases expeditiously.



## **Digitalisation of the judiciary – digital access to case status information should be prioritised**

Many respondents affirmed that if litigants who were unable to access justice through conventional courts had digital access to case statuses/updates and online litigation tools, judicial processes could continue, at least to some extent. This could also lead to a better and more continuous delivery of justice during armed conflict and instability. The United Nations Support Mission in Libya (UNSMIL) and the United Nations Development Programme Policing and Security Joint Programme are currently developing a remote court hearings system. This is expected to start work some time in 2021. A great majority of respondents supported remote litigation in Libya. They highlighted the usefulness of this tool in relation to urgent matters, such as granting shelter orders for people who were subject to domestic violence.

At the same time, remote hearings have posed significant obstacles to the right to legal assistance and a fair hearing.<sup>30</sup> Any efforts to digitalise the courts should start with online access to case status and case updates, digital submission of and access to case documents, and outreach to vulnerable groups. Regular power outages might be an annoyance when attempting to access hearing dates, but they could significantly undermine fair trial rights if they occur during an actual court proceeding. Further, virtual hearings require much more elaborate and costly technical equipment than simply publishing information about case statuses and case law, for instance.

The importance of improving the digital infrastructure and literacy both of courts and the wider legal profession, to improve access to justice, was stressed by all respondents. Improving the linkages and contact between the different courts, and between courts and other governmental departments, were also emphasised as key solutions and priorities in commencing the digitalisation of the judiciary.<sup>31</sup>

Many actors and researchers have already developed some initial guidance on how to prioritise to safeguard fair trial rights when moving hearings online. Remote hearings can be better considered for non-criminal cases and some

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<sup>30</sup> Incarcerations Nations Network, “Is Virtual Justice Really Justice?”, September 2020; Fair Trials, “Safeguarding the right to a fair trial during the Coronavirus pandemic: Remote Criminal Justice Proceedings”, March 2020; Equality and Human Rights Commission of England, Scotland and Wales, “Inclusive Justice: A System Designed for All”, 22 April 2020; Lisa Bailey Vavonese, Elizabeth Ling, Rosalie Joy and Samantha Kobot, “How Video Changes the Conversation, Social Science Research on Communication Over Video and Implications for the Criminal Courtroom”, September 2020.

<sup>31</sup> Enhanced coordination and cooperation between all rule of law and transitional justice institutions was already recommended in ILAC, “Rule of Law Assessment Report: Libya 2013”, 2013.

procedural criminal hearings, for instance, which do not affect substantive rights.<sup>32</sup> Additionally, the organisation Fair Trials has developed a set of criteria to determine if a hearing should be heard remotely. Such a decision should be based on:

- the length of delays and their impact on defendants (including the length of pre-trial detention),
- the nature of the hearing (complexity, need to call witnesses, risk of deprivation of liberty),
- the availability and quality of equipment and systems, and
- the existence of impairments or other factors that could negatively affect the defendant's ability to participate effectively.<sup>33</sup>

## **Customary and tribal justice mechanisms**

While COVID-19 has disrupted the regular operation of courts in Libya, the use of alternative and tribal justice has not remained stagnant. Libya has a long history of customary and tribal practices that continue to form part of the Libyan legal ecosystem. Customary and tribal justice mechanisms in Libya resolve disputes in the absence of more formal processes. While the official state system of justice generally operates in urban areas, traditional justice mechanisms are more active in remote or rural areas. In some rural areas, these are virtually the only justice mechanisms in place, in particular in the east of Libya.

Following the closure of the courts, 'social councils', local leaders and mediators became increasingly active during COVID-19 – for instance, using 'wise men' or tribal adjudication of disputes. Adjudicated disputes have included petty misdemeanours and offenses such as physical assaults, insults, threats, minor damage to property, betrayal of trust, bad cheques, invasion of agricultural property or lands, traffic accidents, debts, ownership disputes, divorce, alimony, child custody, and inheritance.

Alternative or tribal justice has also managed to calm tense situations between tribes during COVID-19. It was reported as being successful in disposing of cases of murder<sup>34</sup> and credited with preventing reprisals against (or displacement of) the family of the perpetrator. In addition to alternative justice

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<sup>32</sup> Incarcerations Nations Network, "Is Virtual Justice Really Justice?", September 2020.

<sup>33</sup> Fair Trials, "Safeguarding the right to a fair trial during the Coronavirus pandemic: Remote Criminal Justice Proceedings", March 2020.

<sup>34</sup> In areas where customary/tribal justice prevails, the tribal 'court' may have jurisdiction over criminal matters and request for compensation arising from murder.

mechanisms, Libyan lawyers have also informally met with tribal leaders on an ad hoc basis to enhance access to justice for local communities.

The potential of customary and tribal dispute mechanisms to enhance access to justice in Libya is limited by gender stereotypes, whereby men are given privileged status over women.<sup>35</sup> In customary and tribal settings, women lack agency and leadership, and are often associated with stereotyped roles such as victims or peacemakers. Women may even be considered as offenders having been victims of rape.<sup>36</sup> At the same time, women are often particularly prone to seek justice in customary and tribal settings. They are closer to home, less expensive and more accessible for women, who often bear a heavy labour burden for their families.<sup>37</sup> The matters dealt with are also often key issues for women – such as inheritance, family law, and access to and ownership of land.<sup>38</sup> This shows the potential of customary and tribal justice, if it respects women’s rights and agency, to improve women’s access to justice.

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<sup>35</sup> United States Institute of Peace and Najla Elmangoush, “Customary Practice and Restorative Justice in Libya: A Hybrid Approach”, June 2015, pg. 11.

<sup>36</sup> Ibid.

<sup>37</sup> IDLO Report, “Accessing Justice: Models, Strategies and Best Practices on Women’s Empowerment”, 2013, pg. 11.

<sup>38</sup> Ibid. pg. 15.

## 4 Conclusion

In a conflict-ridden context such as Libya, everyday justice continues to be of central importance to the functioning of the state, and the safety and welfare of the population. The closing down of the courts during the pandemic was perceived as symbolic of the general sense of impunity in the country.

Despite the difficult circumstances, the Libyan legal community has continued its work. All respondents of this study expressed that it was vital to start digitalising the justice system, to avoid the impact of reduced access to justice, which is disproportionately shouldered by Libya's most vulnerable groups, during crises.

The collected data showed that few legal needs have been specific to COVID-19, but that the pandemic has widened an already existing justice gap for many vulnerable categories of people. People subject to domestic violence or involved in alimony and divorce cases, people on the move – internally displaced people, migrants and refugees – and people in detention have all been especially affected.

Also, for many years, Libya has been left without sufficient support to deal with heavy refugee and migrant flows. This has resulted in countless tragedies in the Mediterranean Sea and extremely poor living conditions for migrants within the country. The international community, and the European Union, in particular, have a responsibility to support Libya in finding solutions. This is even more important now, with a newly elected Government of National Unity – which has great potential to increase the rule of law and access to justice throughout the whole of Libya.

## 5 Recommendations

Ensuring access to justice and tackling the devastating setbacks produced by COVID-19 cannot be handled by the Libyan authorities and legal community alone. Necessary actions include embarking on robust transitional justice processes, in order to deal with grave past and ongoing abuses of human rights and international humanitarian law.<sup>39</sup> The international community needs to take an active role to support both work on access to justice and transitional justice. This is particularly considering the large number of migrants and refugees residing in Libya, making it even more difficult for the Libyan institutions to uphold the rule of law. Support must entail both humanitarian assistance and rule of law work, such as institution building, increasing legal protection and representation of migrants, as well as raising awareness on the legal protection provided by Libyan legislation (in terms of, for example, limitations on periods of pre-trial detention and right to legal representation in felony cases).

This paper also highlights people in detention as a particularly vulnerable group. The data are not that comprehensive, but it is fair to say that people in detention are inherently vulnerable to virus infections and pandemics. Prisons are in their nature more prone to fostering transmission of diseases, since detained and incarcerated persons are concentrated in small spaces. Guidance on how to prevent, control and protect people in detention against COVID-19 has been developed by different organisations.<sup>40</sup> Reducing overcrowding is one key factor, whereby a structural approach is needed, including on criminal justice policy and legislation. This might include considering non-custodial measures as alternatives to imprisonment, severely restricting pre-trial detention and granting amnesties to non-risk groups. During crises like COVID-19, good detention conditions become even more important. Key issues include improving healthcare in detention, but also ensuring the distribution of protective equipment to detainees and prison employees, as well as ensuring independent monitoring of detention conditions.

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<sup>39</sup> For recommendations on transitional justice processes, see: Azza K. Maghur and Salah El-Marghani, “Transitional Justice Evolutions, Challenges and Way Forward in Libya”, American Bar Association Rule of Law Initiative, February 2021.

<sup>40</sup> See: World Health Organization, “Interim guidance on COVID-19 in places of detention”; International Committee of the Red Cross, “Preparedness and response in detention”; and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic”, 20 March 2020.

Measures to ensure or improve access to justice require long-term strategies, commitment and funding if they are to be successful. These also encompass changing institutional and societal structures, such as patriarchal norms, which requires long-term commitment. This not only includes formal institutions and justice actors, but also customary and tribal justice actors. Women's rights and protections need to be improved when they turn to customary and tribal justice. Measures that have worked in other settings include peer-to-peer exchanges with other traditional leaders from the same region who have demonstrated good practice in ensuring women's rights.

By using the lessons learned to date from the COVID-19 pandemic, the recommendations below suggest some first steps towards enhancing access to justice for vulnerable groups.

## **Recommendations to Libyan authorities**

Gender-based violence and women and girls' rights

- **Improve women and girls' access to justice and protection against gender-based violence:**
  - **Update and adopt the draft legislation on gender-based violence**, in consultation with national and international stakeholders, and ensure its due implementation. This should include resourcing protective measures for survivors such as healthcare, shelters and psychosocial support, as well as legal aid.
  - **Amend Law 10 of 1984 to abolish child marriage** and work holistically towards its factual abolishment. Action should involve those affected by child marriage, families, communities, authorities and customary leaders.
  - **Spread information on rights upon divorce**, such as entitlements to use the marital home, alimony, child support or custody rights. Television and radio, as well as municipal and social councils, should be used to channel information.

Legal aid

- **Improve vulnerable groups' access to legal aid and assistance:**
  - **Invest in the public legal defence function and work to expand the role of public lawyers**, in particular by improving their outreach and proactive contact with

marginalised groups and justice seekers, including granting access to people in detention.

- o **Encourage the Libyan Bar Association to provide legal aid** and liaise with civil society legal aid initiatives.
- o **Support legal aid networks that provide pro bono legal aid and legal representation**, especially to vulnerable groups. This should include innovative ideas to spread information on rights and procedures, with a particular focus on vulnerable groups.

#### Digitalisation

- Develop the **digitalisation of the justice system**:
  - o **Map legal and practical conditions for digitalisation**, including digital literacy/infrastructure.
  - o **Priority should be put on online access to case status**, case updates and court decisions, including all Supreme Court decisions, while respecting the right to privacy and cybersecurity.
  - o **Improving linkages and contact between the different courts and between courts and other governmental departments** should also be prioritised.

This Discussion Paper assesses how the COVID-19 pandemic has affected access to justice for vulnerable groups in Libya. The pandemic has added another layer of complexity to accessing and delivering justice in an already unstable and conflict-ridden context. Despite these difficult circumstances, the Libyan legal community has remained resourceful. It has managed to navigate in a fragmented judicial system and stay in contact with the most vulnerable, which requires both acumen and courage.

The study shows that few legal needs have been specific to COVID-19. Yet, the pandemic has widened an already existing justice gap for many vulnerable categories of people. People who have been particularly affected include those subjected to domestic violence, those involved in alimony and divorce cases, people on the move – internally displaced people, migrants and refugees – and people in detention. By using lessons learned from the COVID-19 pandemic, the study recommends first steps towards enhancing access to justice for vulnerable groups. This should be a task of top priority to the newly elected Government of National Unity.

The Discussion Paper builds on a series of in-depth interviews and a written survey directed at legal professionals in Libya, conducted by the American Bar Association Rule of Law Initiative and the Public International Law and Policy Group. It was made possible by core funding provided by the Swedish International Development Cooperation Agency (Sida).

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