

UNDP Libya Human Rights Scoping Exercise

Assessment of the National Council for Civil Liberties and Human Rights

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Assessment of the National Council for Civil Liberties and Human Rights

1. Background

The Libyan people have suffered a heavy heritage of human rights violations. The outbreak of the Libyan revolution in February 2011 has been followed by accusations of human rights violations by belligerents. This has added to the 42 years heritage of human rights violations, entrenched discrimination and oppression of the previous regime. As a country categorized for nearly half a century as ‘not free’ in terms of political rights and civil liberties the Libyan sought political, economic and civil freedom.

In September 2011, United Nations Support Mission in Libya (UNSMIL) was established by a Security Council Resolution (2009) with a mandate to lead UN efforts in promoting and protecting human rights. The overarching aim of UNDP as regards human rights is to contribute to the creation of an enabling environment for democratic governance and sustainable human development by linking human rights and development.

Libya’s interim authorities, the National Transitional Council (NTC) have repeatedly expressed their high commitment to human rights in the Constitutional Declaration issued on 3 August 2011, as well as in the declaration of liberation in 23 October 2011, a major step was taken by the NTC in Law 5/2011 through establishing the National Council for Civil Liberties and Human Rights (NCCLHR) a Libyan National Human Rights Institution (NHRI). The 2012 elections of the General National Congress shifted the endorsement of the Constitutional Declaration and the notion that ‘human rights and basic freedoms shall be respected by the State’ to the General National Congress (GNC).¹ While the connection between the GNC, and specifically the Human Rights Committee, and the NCCLHR exists, their respective roles and relationships requires further clarification. As human rights are new to Libya so to is the functioning of a NHRI.

The NCCLHR presently has a legislative mandate to “promote the protection of public freedoms and human rights, enhance their values, spread awareness concerning them, contribute to their exercise, observe and deter violations of these public freedoms and human rights, encourage and support civil society organizations that are concerned with protecting them.”² While there exists a specific human rights mandate, the NCCLHR’s broader mandate towards their protection could include research, documentation and training in human rights issues as well as managing complaints of alleged violations. Thus, the NCCLHR is strategically placed as the institution most accessible to the Libyan public in the area of human rights whether in the form of filing a complaint, advising or providing training, making it an important institution during Libya’s democratic transition.

Libya has made great strides towards a democratic transition, evidenced by the elections of the GNC and recently the Constitutional Drafting Assembly. Given the legacy of brutal rule institution building is at the heart of a transition to a democratic system. It is a guarantee to prevent the retreat to past practices or abuses. It is only an independent NCCLHR – in both status, perception and public confidence – that will protect the rights and liberties of post-revolution Libya. Moreover, an independent NCCLHR will complement but support the executive and legislative branches during the democratic transition and beyond.

As the NCCLHR is embryonic, it is important to ensure that lays a solid foundation for development and legitimacy amongst national and international stakeholders. New NHRIs face a number of early challenges that are common to all NHRIs, particularly as regards the implementation of the Paris

¹Constitutional Declaration, Interim National Council (3.8.2011)

²Law No. 5 (2011), art. 1.

Principles and understanding amongst national stakeholders. Thus, the NCCLHR would greatly benefit from the practices of other NHRIs, specifically those in the region. Participation in regional networks (ANNHRI and NANHRI) as well as clarity across all stakeholders of the Paris Principles and how to achieve accreditation from the International Coordinating Committee is imperative. It is anticipated that the NCCLHR will seek International Coordinating Committee accreditation in October 2014. Moreover, in May 2015 Libya will take part in the Universal Periodic Review (UPR) before the UN Human Rights Council. A strong NHRI that has taken on board regional and international advice will be key in proving post-revolution Libya's commitment to human rights.

2. Organisational Analysis

2.1 Leadership

As noted, Paris Principle 3 emphasises the importance of independence through appointment and dismissal of members. The quality of members, leadership and staff is vital to the NCCLHR's reputation and ensuring that the Council has the confidence of the communities it serves. Law No. 5 lays out the composition of NCCLHR Members,

*The Council consists of the President and Vice President, and nine independent members, who are active in the field of Civil Liberty Protection and Human Rights, and or who are distinguished contributors in the field. A decision from the National Transitional Council is issued with regards to having four of the members be females, in addition to having two of them be under 35 years of age, with a membership of three years with the Council, renewable once.*³

However, there is no subsequent legislation outlining the method or criteria for appointment, resignation or dismissal (for wrong doing) of members. Law No. 185 names the 11 members to be appointed.⁴ Since its foundation, only five of the original members remain, none of them being female. As stated in the Annual Report 2013, the NCCLHR faces the challenges of threats and instability. In interviews it came to light that many of the NCCLHR Members themselves received direct physical threats for their participation as members. This may account for some of the resignations. The lack of procedures for the appointment, resignation and dismissal for wrongdoing has led to a very limited number of sitting NCCLHR Members. Importantly, those that are sitting with the Council are effective and continue to ardently pursue the mandate of the NCCLHR.

2.2 Strategic Planning

In the latter half of 2013, working in conjunction with the Danish Institute for Human Rights (DIHR), the NCCLHR released its Strategic Plan 2014-2016. Within this Strategic Plan the NCCLHR lays out its ambition "to impact effectively and positively on the protection of human rights by the Libyan public authorities, on the respect of human rights by the business in Libya, on the promotion of human rights by civil society and on the human rights awareness of citizens."⁵ Within that Strategic Plan, the NCCLHR outlines three main key result areas,

1. **Key Result Area 1 - Building the Capacity and Image of the NCCLHR**
 - a. strengthening of the organisational functions and departments of the NCCLHR
 - b. International Coordinating Committee for NHRI A-Rating
 - c. establish 'human rights dialogue forum'
 - d. image building
 - e. funding strategy
2. **Key Result Area 2 - Mandated Tasks of the NCCLHR**
 - a. detention centres
 - b. complaints handling
 - c. monitoring and reporting
 - d. law reform

³Law No. 5, art. 2.

⁴Law No. 185 (2011), art. 1 On Forming of the National Council for Civil Liberties and Human Rights.

⁵NCCLHR Strategic Plan 2014-2016 (Nov. 2013).

- e. education and awareness raising
- 3. **Key Result Area 3 - Sector Wide Approach to Implementation of Human rights**
 - a. business
 - b. health

As noted by the Strategic Plan the development of a national action plan requires the NCCLHR to be operating at adequate capacity. At present, there are key structural limitations on the NCCLHR that prevent it from progressing in its work. The DIHR is working with the NCCLHR in April 2013 to develop a work plan for meeting its strategic objectives.

2.3 Organisational Structure

In line with the Strategic Plan, the NCCLHR seeks to have an enabling organisational structure for fulfilling its mandate. To that end, the Strategic Plan outlines the steps to be taken towards achieving such organisational structure. Meetings with the NCCLHR evidence the overlap of substantive areas that will inhibit workflow for the NCCLHR. For example, there is a department of international cooperation, international relations unit and an international agreements unit. There is also a department of civil society, civil society unit and a training department. The NCCLHR has produced internal regulations that outline the roles of substantive committees, executive arm of Council and identifies the key departments. However, the internal regulations do not define the functional roles of the various departments. Through the special committees, the NCCLHR opted to thematise areas of particular importance taking into account the Libyan context and priority human rights areas. Another point to note in the organisational structure is the fact that the Executive Director also serves as a Member of the Council. The Executive Director should be a senior official who is responsible for the operations of the NCCLHR and is accountable to the Members but not a Member themselves. In turn, the Member of the Council should lead the NCCLHR and are accountable to the GNC for overall performance through annual reports and special reports.

2.4 Human Resources

At present, the NCCLHR is developing its system of human resources management. There is no clear manual or procedures but there is a will amongst the NCCLHR to develop formal procedures. This is a clear desire to promote equality and fair hiring practices while ensuring individuals chosen are appropriately suited to the positions available. While not directly explicit in their bylaws, the NCCLHR is staffed by a majority of women illustrating it as a progressive institute. During job recruitment particular attention should also be paid towards minority inclusion.

3. Funding and Financing Analysis

In addition to general funding deficits, the NCCLHR faces a severe crisis of independence as regards financing structures. The establishing law states that,

Article 10

The Council shall have an independent budget that includes revenues and expenditures, and its fiscal year begins and ends with the beginning and ending of the state's fiscal year.

Article 11

The Council's resources consist of the following: 1. Allocations provided by the Council in the state's budget 2. Unconditional donations, grants and subsidies that the Council decides to adopt⁶

Old regulatory legislation outlines that where no auditing procedures are stated, the Ministry of Finance and the Financial Comptroller's Department is responsible. Thus, there is clear exercise of political control over the purse strings of the NCCLHR contravening not only the spirit of Law No. 185 but also international customs as regards NHRIs generally and the Paris Principles.

⁶Law no. 185, article 10, 11.

In their Strategic Plan, the NCCLHR outlines transparent methods of revenues and expenditures involving a neutral auditor to preserve the Council's independence. Moreover, such methods would encourage accountability to public and state bodies as well as civil society organizations. The NCCLHR believes that it is a misunderstanding of the nature and importance of independence that has led to these financing structures.

In addition to these structural limitations on the Council, they face the same funding difficulties that all bodies dependent on the state budget face. With the Libyan state nearing bankruptcy due to the cessation of oil exports in 2013, the NCCLHR competes with other entities for its budget and finds itself relying on outside resources. At present, the NCCLHR states that it only has funds to continue functioning for three more months at which time it will be entirely reliant on independent sources of funding. Much of this comes through international NGOs or institutions but requires further coordination. The Council's ability to raise additional funds not only coincides with Law No. 185, article 11 but also their Strategic Plan 2014-2016.

The interaction between the Council and the GNC-HRC remains unclear regarding funding, budget reports and accountability.

4. Role Analysis

The roles and responsibilities of actors working with the NCCLHR remain unclear. There are no clear defining documents outlining their interaction with the GNC or state ministries. Consequently, action occurs almost entirely on personal relationships.

As an entity, the NCCLHR faces severe challenges of independence due to limiting legislation and the financing structures outlined above. Moreover, the NCCLHR encounters difficulty in building its image as a non-state body across national stakeholders and civil society due to a lack of understanding of NHRIs. Specifically, some state representatives view the NCCLHR as a sort of 'Ministry of Human Rights' and an extension of the executive branch while some members of civil society view the NCCLHR as being run by the Libyan Government and not representative of minorities.

Coordination with the GNC occurs through the Human Rights Committee (GNC-HRC). While the GNC itself faces severe challenges in operating in a political unstable environment it has a good relationship with the NCCLHR. However, there is a lack of clarity regarding the relationship in terms of roles and responsibilities. This may stem, in part, from the Rules of Procedure, which governs the GNC-HRC. Article 16 (31) establishes the GNC-HRC as a permanent committee while Article 17 outlines its role as,

The permanent committees that have respective ministries, executive councils or other authorities, have jurisdiction to study and follow-up on all topics and subject matters that are within the jurisdiction of the ministries and councils within its jurisdiction, it can do the following:

- 1- *Studying and providing of opinions regarding draft laws to be presented to the GNC to discuss and decide upon them.*
- 2- *Monitor the performance and rates of delivery and comparing them to what is provided for in the plans and budgets. It also prepares summaries of reports and recommendations that are prepared in that regard to distribute/circulate to the GNC periodically.*
- 3- *Study and suggest the policies and draft laws and decisions in accordance with its jurisdiction.*
- 4- *Examine complaints under its jurisdiction, it has to study the complaint and coordinate with the appropriate ministry or authority responsible to reach a resolution. If this is not possible for any reason, the committee*

*must forward a report to the GNC to take whatever steps they deem suitable.*⁷

The Rules and Procedures do not differentiate between state and non-state bodies leading to the misunderstanding of the NCCLHR as a ‘Ministry of Human Rights.’ Moreover, the allowance for receiving complaints through the GNC as well as the NCCLHR necessarily creates confusion over their roles. In effect, the GNC has assumed oversight over the NCCLHR and receives reports from the NCCLHR when they are requested.

Coordination with the Ministry of Justice operates almost entirely on the personal relationships between the NCCLHR and individuals within the various Ministries. Notably, the Ministry of Defence and Interior have units that focus on human rights but meetings were not obtained with them.

The NCCLHR has good relationships with around 50 active CSOs. The determination of what CSOs they coordinate with occurs on an ad hoc basis but there are internal criteria used to filter CSOs. Under Qaddafi, independent CSOs were illegal and thus there has been a massive influx of CSOs operating in the past two years. Those that coordinate with the NCCLHR have been determined by them to be active and the NCCLHR has been working towards developing not only their relationship together but also their capacity. Importantly, the NCCLHR views civil society as key to their success in Libya and includes them heavily in any activities.

5. Capacity Analysis

5.1.1 Substantive Capacity

Following criticisms of the 2012 Annual Report, the NCCLHR undertook urgent human rights training for Council employees and civil society. According to their Annual Report 2013 they note that 29 Council staff and 40 CSO members underwent basic human rights training. The report also notes that 49 out of 67 NCCLHR total have received human rights training.

While the substantive knowledge of staff members continues to increase, focused training on specific thematic areas is key to the NCCLHR’s ability to formulate policies and programming to respond to the human rights needs of Libya. Particular attention should be paid towards the substantive areas of the special committees established by the NCCLHR’s bylaws, developing a national dialogue and transitional justice issues in line with the Strategic Plan 2014-2016.

There are large gaps in substantive training regarding the subject areas of the Council’s core mandate. In large part this is due to the lack of general human rights knowledge during Qaddafi’s 42-year oppressive regime. Consequently, establishing a vernacular of human rights within the NCCLHR needed to occur before specialised training in specific thematic areas can occur. In line with the Strategic Plan 2014-2016 and priority areas for human rights outlined in the bylaws establishing special committees within the Council theme specific substantive knowledge building must occur.

5.1.2 Functional Capacity

Simultaneous to increasing the substantive knowledge of human rights is developing the NCCLHR’s capacity to manage human rights cases. Specifically, this includes protection, promotion, stakeholder engagement, advice to the GNC and state bodies and support to the international human rights system.

There are no specific coordination mechanisms in place regarding reporting, communications or dealings with national stakeholders. Consequently, as things are presently undertaken on an ad hoc basis almost entirely based on personal relationships they remain sporadic. Thus, there is a need to design and strengthen national mechanisms that encourage coordination, communication and systemic reporting.

Internationally, the NCCLHR is quick active. In part this is due to their reliance on outside funding for many activities. In terms of interaction with international bodies the NCCLHR has a dedicated

⁷ Rules of Procedure, GNC Announcement #2012 (11 Aug. 2012).

unit and an individual permanently in Geneva who represents the Council at the International Coordinating Committee. As stated previously, the NCCLHR has already been working with the DIHR in the development of their strategic plan. They have also established ties with the Arab-European Human Rights Dialogue through their contacts at the DIHR. Regionally, the NCCLHR has developed close relations with the Moroccan Council for Human Rights, made contact with the Arabic National Human Rights Institutions (AANHRI) but has yet to contact formally the Network for African National Human Rights Institutions (NANHRI).

In terms of technical capacity, the NCCLHR receives complaints directly and indirectly they lack the systemic coordination with state bodies to ensure complaints are handled once referred. While this will strengthen as mechanisms are in place to formalise the procedures between the NCCLHR and national stakeholders, capacity building across all actors is important. Technical capacity should be undertaken as regards complaint handling, monitoring, reporting, legal reforms as well as how to undertake education and awareness raising campaigns.

6. Paris Principles Analysis

6.1 Broad Mandate

Article 1 of Law No. 5 lays out the overarching mandate of the NCCLHR as being quite broad. The article specifically mandates to “promote the protection of public freedoms and human rights” which is indicative of including civil and political rights. Additionally, Article 3 (12) of Law No. 185 includes technical training in the areas of public freedoms and economic, social and cultural rights as a task. Article 9 of the internal bylaws establishes the special commission for civil and political rights. The internal bylaws of the NCCLHR in Articles 10, 11 and 12 outline specialised commissions for social, economic and cultural rights. Moreover, the Strategic Plan 2014-2016 specifically notes a key result as human rights in business and health, which denotes a broad interpretation of the NCCLHR’s mandate. Therefore, the determination regarding what rights are mandated is determinable through the interpretation of ‘public freedoms and human rights’. The founding legislation does not mention object or temporal jurisdiction for the NCCLHR. The fifteen specific tasks outlined in Article 3 encompass a broad range of responsibilities for the NCCLHR sufficient to ensure its mandate has a wide berth in terms of its operational mandate.

6.2 Autonomy

As already noted, the NCCLHR faces the most direct interference from the State through the control over its budget and auditing procedures. While the dependence on government funding, as outlined in Law No. 185, article 11, means that the NCCLHR cannot be truly autonomous, restricted access to funds and unclear procedures has led to increased government control limiting autonomy.

It is important that the aspects of autonomy and independence of the NCCLHR be taken into consideration by the Constitutional Drafting Assembly to provide a further operating legal framework for the NCCLHR.

6.3 Independence

Independence is crucial both in terms of operation and funding. In the 2013 Annual Report, the NCCLHR has already noted its concerns regarding financial independence. While the NCCLHR reports to the GNC-HRC its purse strings remain under the control of the Ministry of Finance increasing the perception of government interference. Not only is the funding controlled by the Ministry of Finance, the NCCLHR has not received adequate funding to operate across all regions of Libya.

One avenue of operational independence is through the appointment and dismissal of members. As already noted, there is no governing legislation for this procedure. While the once renewable three year term of office is sufficient to meet operational independence, without adequate appointment, resignation or dismissal procedures it effects only a few Council Members.

At present, a privileges and immunity clause for Council Members when acting in their official capacity does not exist. While Libyans have seized their right to freedom of expression, the fragile security situation diminishes this freedom among human rights activists and members of the

NCCLHR. Thus, a privileges and immunities clause would shield NCCLHR members from cases of slander arising out of performing their job as required by Law No. 185.

Importantly, the founding legislation includes in Article 12 that the Council shall “issue internal regulations...without being restricted by government systems.” The inclusion of this provision regarding internal bylaws helps promote the NCCLHR’s independence.

6.4 Pluralism

Pluralism and diversity are meant to ensure that the NCCLHR can establish effective cooperation with other State entities and society. Pluralism and diversity is achieved through the appointed members and staff of the NCCLHR. While Law No. 185 Article 2 clearly requires that four members be female and at least two under the age of 35, there is no mechanism to ensure diversity. While the founding law provides for diversity at the senior level, as stated the development of a human resources manual would ensure pluralism amongst the staff.

6.5 Adequate Resources

As outlined in the 2013 Annual Report, the NCCLHR urged the GNC to provide adequate financial support “in order to enable it to extend its activity to all regions of Libya.” While there is sufficient funding to operate in separate premises and to continue to take complaints, the NCCLHR faces severe financial difficulties in developing their capacity and achieving their Strategic Plan 2014-2016. As a burgeoning institution, guaranteed adequate funding is essential in the NCCLHR’s efficacy and success. Thus, this principle is closely related to the principle of independence in terms of financing.

6.6 Adequate Powers of Investigation

The broad subject matter and temporal jurisdiction of the NCCLHR coupled with the varied article 3 tasks to meet their mandate indicates broad powers of investigation. The establishment of specialised committees in the internal bylaws allows for opinions with respect to transferred matters from the Chairman/President or Vice-President/Deputy Chairman of the NCCLHR, government or NGO authorities. Moreover, the NCCLHR is tasked by Law No. 185 Article 3(5) to receive and follow up on complaints, monitor, necessarily granting them powers of investigation.