



Libya: Amend New Special Procedures Law ^[1]

Reject Impunity for Serious Crimes

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July 10, 2012 UPDATE: The legal deadline for the transfer of detainees from militias to state custody has been corrected from July 1 to July 12, 2012.

(New York) – Libya’s National Transitional Council (NTC) should immediately amend a new law that protects from prosecution people who committed crimes if their actions were aimed at “promoting or protecting the revolution” against Muammar Gaddafi, Human Rights Watch said today. The law also allows authorities to detain people for up to two months if they are considered “threats to security.”

Law 38, On Some Procedures for the Transitional Period, passed on May 2, 2012, and to go into effect on May 12, says there shall be no penalty for “military, security, or civil actions dictated by the February 17 Revolution that were performed by revolutionaries with the goal of promoting or protecting the revolution.”

“This law allows people who committed serious crimes to walk free based on politics,” said Joe Stork ^[2], deputy Middle East and North Africa director at Human Rights Watch. “It propagates a culture of selective justice that Libyans fought so hard to overcome.”

Holding accountable all those responsible for serious violations of international human rights and humanitarian law is critical for the new Libya ^[3] to be based on the rule of law, Human Rights Watch said.

The new law does take some measures to address the serious problem of bringing the thousands of detainees held by militias under the central government’s control and prosecuting them when there is evidence they committed crimes. Law 38 says the Ministries of Interior and Defense must refer all “supporters of the former regime” currently detained by militias, if there is sufficient evidence against them, to the competent judicial authorities. The deadline for transfer of detainees is July 12, taking into account the 10-day period between the issuing of the law and its coming into force.

Militias are currently holding thousands of people, most of them accused of having supported or fought for the Gaddafi government. Most of the detainees have not been brought before any judicial authority and are therefore being detained arbitrarily.

Human Rights Watch and others have reported extensively on torture and maltreatment ^[4] in detention facilities run by militias ^[5], sometimes resulting in death. Some militias have been implicated in other serious crimes, such as the apparent execution of at least 53 people ^[6] in October in Sirte and the forced expulsion of about 30,000 people ^[7] from the town of Tawergha, which would amount to a crime against humanity.

“Tasking the ministries with processing the militias’ detainees within two months is a positive step to address a serious ongoing problem,” Stork said. “But giving a pass to people responsible for serious crimes will foster a culture of impunity that encourages further abuse.”

The law also states that even if a court acquits a person who was detained by a militia, that person has no right to initiate a criminal or civil complaint against the state or the militia, unless the detention was based on “fabricated or mendacious” allegations. The right of recourse for people who have been wrongly detained and acquitted should not be nullified, Human Rights Watch said.

The law also gives the government powers to restrict a person’s movement, impose a fine, or detain a person up to two months if they are considered a “threat to public security or stability” based on the person’s “previous actions or affiliation with an official or unofficial apparatus or tool of the former regime.” Affected individuals may challenge the measures before a judge.

Human Rights Watch said that such restrictions on people considered a threat to security should be based on concrete evidence of wrongdoing rather than on past affiliations. Such wrongdoing should be prosecuted under the criminal law rather than vague and open-ended powers to detain people as “threats to security.”

The law appears to violate Libya’s Constituent Covenant for the Transitional Period, which states that all Libyans are “equal before the law” and that they enjoy equal “civil and political rights.” It says that all citizens shall have the same opportunities and are subject to the same public duties and obligations, without any distinction based on political beliefs.

The blanket immunity in Law 38 for people seen as having promoted or protected the February

17 Revolution violates Libya's obligations under international law to investigate and prosecute serious violations of international human rights and humanitarian law, Human Rights Watch said.

International law opposes amnesty for serious international crimes such as war crimes and crimes against humanity and all cases of torture. Libya is a state party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which requires it to remove all such limitations to the prosecution of those two crimes. It is also party to the Convention against Torture which requires it to ensure all acts of torture are criminal offenses, and to investigate and prosecute all those persons on its territory responsible for such torture.

In addition, authorities in other states can prosecute such offenses that have taken place in Libya under universal jurisdiction laws without regard to domestic amnesties. Other states may be required to ensure such universal jurisdiction by treaties they are party to, such as the torture convention. Any grant of immunity by the NTC has no legally binding effect ^[7] on other national or international courts, such as the International Criminal Court (ICC), that have jurisdiction over serious violations of international law, including those committed in Libya.

The ICC has ongoing jurisdiction over war crimes and crimes against humanity committed in Libya since February 15, 2011, taking into account, among other factors, whether the Libyan authorities are willing and able to prosecute the perpetrators of these crimes. This law would be a strong sign of unwillingness to investigate crimes committed by all sides.

Arbitrary detention is strictly prohibited under international law, including the International Covenant on Civil and Political Rights (ICCPR), to which Libya is a party. "Administrative" detention on the grounds of security, outside the criminal law, is only permitted under narrow circumstances where there is a genuine and publicly declared state of emergency threatening the life of the nation and the government has complied with various steps set out by the ICCPR and the United Nations Human Rights Committee, including taking such measures to limit rights only as are strictly necessary to meet that emergency (and are not broadly or vaguely drafted), and the government has shown that the existing law, including the criminal law, is insufficient to address the emergency. Libya has taken none of the steps required under the ICCPR to derogate from these rights in order to justify administrative detention.

The ICCPR also specifically requires that anyone subject to unlawful detention shall have an enforceable right to compensation.

Law 38 is not the only problematic new legislation passed by the NTC. On May 2, the NTC also passed law 37, which bans insults against the people of Libya or its institutions. Human Rights Watch [called on to the NTC to revoke Law 37](#) [8].

Human Rights Watch called on the NTC to amend Law 38 to exclude from any amnesty those responsible for serious international crimes such as murder, torture, sexual violence, and forced displacement.

“There can be no substitute for justice and accountability for serious crimes,” Stork said. “Shielding people from justice will encourage future abuse and hinder national reconciliation.”

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