

Explanatory Memorandum Regarding Legislative Deficiencies and Flaws in the UN "Structured Dialogue" Outcomes Concerning Media Freedom in Libya

Prepared by: The undersigned Libyan human rights organizations.

Introduction and General Context:

The undersigned organizations are monitoring, with a high sense of national and rights-based responsibility, the final outcomes and recommendations issued by the "Structured Dialogue" sessions held under the auspices of the United Nations Support Mission in Libya (UNSMIL). While we value all efforts aimed at supporting the democratic transition and the stability of the country, we submit this explanatory memorandum to highlight the legislative and methodological flaws that marred Recommendation No. (19), which states: *"Review and update the Publications Law and the Cybercrime Law in line with freedom of opinion and expression."*

This memorandum clarifies the legal and factual grounds that render this recommendation a deficient and flawed outcome, one that fails to meet the minimum standards of professional accuracy and does not provide the necessary protection for the journalistic work environment.

First: Methodological and Legislative Flaws in Recommendation No. (19)

1. Overlooking Domestic and International References for Freedom of Opinion and Expression Standards

Merely using the phrase *"in line with freedom of opinion and expression"* strips the recommendation of its binding value and leaves it as a text without a reference framework. The recommendation failed to explicitly state that these laws must comply with the Libyan Interim Constitutional Declaration and the international treaties and conventions ratified and adhered to by the State of Libya. It was imperative to link this freedom to its foundational reference frameworks, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), to ensure that the interpretation of the "concept of freedom" is not left to the whims of the authorities.

2. Deficiencies in Understanding the Reality of the Media Environment (The Dilemma of the 1972 Publications Law)

The call to "update" Publications Law No. (76) of 1972 entails a structural flaw. This legislation was drafted in a political and technological environment dating back to the 1970s and is exclusively designated to regulate the "printed paper press" through obsolete regulatory mechanisms.

- Legal Impact: Relying solely on "updating" this law completely ignores the reality of modern digital, audiovisual, and electronic media platforms. Furthermore, this law is inherently characterized by a punitive and deterrent nature.
- Alternative Approach: Today, the Libyan Media urgently needs a modern, unified, and comprehensive media law, rather than relying on patching restrictive texts that are more than half a century old.

3. Vague Phrasing Muzzling Freedoms under a Legal Guise (The Dilemma of the 2022 Cybercrime Law)

The recommendation of the Structured Dialogue came across as vague and indecisive regarding the Anti-Cybercrime Law No. (5) of 2022.

- Legal Impact: Instead of explicitly demanding the "freezing" or "repeal" of its broad articles, the recommendation settled for the phrase "review and update." This law contains ambiguous provisions and definitions, such as "harming public order" and "public morals," which are legal pretexts systematically exploited to muzzle bloggers and journalists and subject them to security and judicial prosecution.

4. Overlooking Complementary Punitive Legislation

The Recommendation No. (19) overlooked a package of effective Libyan legislation that contains articles criminalizing peaceful expression protected under international declarations and treaties, most notably:

- The freedom-restricting provisions that mandate corporal/custodial punishments within the Libyan Penal Code.
- The Counter-Terrorism Law No. (3) of 2014, which contains arbitrary provisions regularly deployed to restrict journalists and confiscate the right to expression.

Legal Conclusion: It was incumbent upon the international mission to adopt a recommendation that explicitly calls for a "comprehensive overhaul and reform

of the legal framework" by repealing all texts criminalizing peaceful expression wherever they appear, in alignment with Libya's international human rights obligations.

Second: Emptying the Recommendation of Field Protection Guarantees for Journalists

Recommendation No. (19) lacks any executive mechanisms to protect media professionals in the field, turning it into a mere sloganistic "statement of intent" due to the absence of decisive and direct parameters, namely:

1. Explicitly stating the abolition of custodial penalties (imprisonment) in publication and expression cases.
2. Explicitly stating the prohibition of the pretrial detention of journalists in cases related to the performance of their duties.
3. Recommending the establishment of a completely independent civil body to regulate the media, separating political authority from media platforms.

Third: Constitutional Context and Institutional Division

These fragile recommendations come amidst a complex political and constitutional landscape, where the Libyan legislative system suffers from acute polarization and an institutional division that has persisted since 2014. The Interim Constitutional Declaration of 2011 and its amendments remain the governing framework in the country, given the stagnation of the public referendum on the permanent draft constitution completed since July 2017. Although Article (14) of the Constitutional Declaration guarantees the freedoms of opinion and the press, the absence of explanatory, protective, and up-to-date laws has left this constitutional text incapable of confronting security overreach and broad judicial interpretations that restrict freedoms.

Fourth: Conclusions and Procedural Recommendations

Based on the legal merits detailed above, the undersigned organizations conclude with the following resolutions:

- Rejection of the Exclusionary Approach: We register our condemnation of the exclusionary approach adopted by the United Nations Mission through its sidelining of professional media and human rights personnel specializing

in media legislation, and the drafting of recommendations in isolation from the reality and suffering of Libyan journalists in the field.

- Political and UN Responsibility: We hold the United Nations Support Mission in Libya (UNSMIL) fully responsible for the fragility of these outcomes and their incorrect characterization of the media's legal reality.
- The Required Legislative Roadmap: We demand that the Mission and immediately review Recommendation (19) and refer it to a "professional and independent legal and media team" to be redrafted to ensure:
 1. The formulation of recommendations that fully comply with international standards and human rights.
 2. Laying the groundwork for a safe and free legislative environment that guarantees the integrity and security of the upcoming electoral process.

Conclusion:

Press freedom is not a political luxury or a negotiating chip to be debated within the context of quotas and settlements; it is the fundamental cornerstone of democratic change and the primary forum for human rights and social justice.

Organizations Signing and Endorsing this Memorandum:

1. The Libyan Organization for Media
2. The Libyan Institution for Investigative Journalism
3. Aswat Media Network
4. Al-Kamel Training and Development Center

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