

ANNEX J
(PUBLIC)

National Transitional Council Decree recognizing the applicability of international crimes within Libyan law

Preamble

In furtherance of the commitment expressed in the 2011 Constitutional Declaration to upholding human rights and international law; and

In recognition of Libya's longstanding international humanitarian law and international human rights law obligations arising from the Geneva Conventions of 1949, the Additional Protocols to the Geneva Conventions of 1977, the Genocide Convention of 1951, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic and Social Rights of 1966, the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity of 1968, the Convention on the Elimination of all Forms of Discrimination Against Women of 1979, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, the Convention on the Rights of the Child 1989, as well as under customary international law more generally;

Noting the provisions of the Rome Statute of the International Criminal Court of 1998;

In an effort to give full effect to the rights, public freedoms and judicial guarantees set out in the 2011 Libyan Constitutional Declaration;

The National Transitional Council hereby promulgates this Decree recognizing the applicability of international crimes within Libyan law.

Part 1: International Crimes

Article 1 Genocide

For the purpose of this Decree, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly transferring children of the group to another group.

Article 2 Crimes against humanity

1. For the purpose of this Decree, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - a. Murder;
 - b. Extermination;
 - c. Enslavement;
 - d. Deportation or forcible transfer of population;
 - e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - f. Torture;
 - g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any other international crime set out in this Decree;
 - i. Enforced disappearance of persons;
 - j. The crime of apartheid;
 - k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:
 - a. "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
 - b. "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
 - c. "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
 - d. "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - e. "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
 - f. "Forced pregnancy" means the unlawful confinement of a woman

forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

- g. "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - h. "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
 - i. "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
3. For the purpose of this Decree, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 3 War crimes

- 1. The Libyan courts shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
- 2. For the purpose of this Statute, "war crimes" means:
 - a. Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - i. Wilful killing;
 - ii. Torture or inhuman treatment, including biological experiments;
 - iii. Wilfully causing great suffering, or serious injury to body or health;
 - iv. Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - v. Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - vi. Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - vii. Unlawful deportation or transfer or unlawful confinement;

- viii. Taking of hostages.
- b. Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- i. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - ii. Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - iii. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - iv. Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
 - v. Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - vi. Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
 - vii. Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
 - viii. The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
 - ix. Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - x. Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - xi. Killing or wounding treacherously individuals belonging to the hostile nation or army;
 - xii. Declaring that no quarter will be given;

- xiii. Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - xiv. Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - xv. Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
 - xvi. Pillaging a town or place, even when taken by assault;
 - xvii. Employing poison or poisoned weapons;
 - xviii. Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - xix. Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - xx. Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition;
 - xxi. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - xxii. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 2, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
 - xxiii. Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - xxiv. Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - xxv. Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
 - xxvi. Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- c. In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

- i. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - ii. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - iii. Taking of hostages;
 - iv. The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- d. Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- e. Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
 - i. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - ii. Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - iii. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - iv. Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - v. Pillaging a town or place, even when taken by assault;
 - vi. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 2, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - vii. Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - viii. Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - ix. Killing or wounding treacherously a combatant adversary;

- x. Declaring that no quarter will be given;
 - xi. Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - xii. Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- f. Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of the National Transitional Council to maintain or re-establish law and order in Libya or to defend the unity and territorial integrity of Libya, by all legitimate means.

Part 2: Modes of Liability for International Crimes

Article 4 Individual criminal responsibility

1. The Libyan courts shall have jurisdiction over natural persons pursuant to this Decree.
2. A person who commits an international crime as defined in this Decree shall be individually responsible and liable for punishment in accordance with this Decree.
3. In accordance with this Decree, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Libyan courts if that person:
 - a. Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
 - b. Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - c. For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
 - d. In any other way contributes to the commission or attempted

commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

- i. Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an crime as defined in this Decree; or
 - ii. Be made in the knowledge of the intention of the group to commit the crime;
- e. In respect of the crime of genocide, directly and publicly incites others to commit genocide;
- f. Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

Article 5 Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Decree for international crimes:

- a. A military commander or person effectively acting as a military commander shall be criminally responsible for the international crimes in this Decree committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
 - i. That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
 - ii. That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- b. With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Libyan criminal courts committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
 - i. The superior either knew, or consciously disregarded

- information which clearly indicated, that the subordinates were committing or about to commit such crimes;
- ii. The crimes concerned activities that were within the effective responsibility and control of the superior; and
 - iii. The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Part 3: Penalties for international crimes

Article 6 Applicable penalties

1. A Libyan court may impose one of the following penalties on a person convicted of an international crime referred to in this Decree:
 - a. Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or
 - b. A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
2. In addition to imprisonment, a Libyan court may order:
 - a. A fine;
 - b. A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

Part 4: Other Matters

Article 7 Continued application of other provisions of Libyan law

Pursuant to article 35 of the 2011 Constitutional Declaration, all other provisions of Libyan law continue to be remain effective in so far as they are not inconsistent with this Decree.