

SAWTI REPORT

FREEDOM OF EXPRESSION IN LIBYA: A HISTORICAL OVERVIEW

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WELCOME TO THE SAWTI REPORT!

LFJL is excited to share with you the first *Sawti* Report. This is the first in a series of reports by LFJL that monitors the status of freedom of expression in Libya from the legal perspective.

This first report analyses the impact of key events that have promoted and curtailed the enjoyment of freedom of expression throughout Libya's modern history. We explore three separate but interrelated periods that played a key role in shaping freedom of expression over time. They are:

- 1. 1951-1968: Independence, Monarchy and a New Constitution;**
- 2. 1969- 2011: Student Arrests, Executions and the End of Independent Media;**
- 3. 2011-present: A New era for Freedom of Expression?**

This historical overview on the development of freedom of expression in Libya evidences the importance of this right, necessary to ensure the enjoyment of other rights and freedoms, and serves as a foundation for the analysis of the current legal framework.

** Sawti, which means both 'My voice' and 'My vote' in Arabic, is an initiative by Lawyers for Justice in Libya (LFJL) aimed at raising awareness of the importance of freedom of expression and empowering key stakeholders to engage in a way which truly promotes and protects this fundamental human right. You can find out more about Sawti on www.sawti.ly.*

Future reports will examine more specific themes related to freedom of expression. The next report, which will be published later this month, will focus on legislative developments related to freedom of expression in the post- 2011 period. In addition to exploring key laws that were adopted during this period, we will also examine the draft constitutional recommendations related to freedom of expression that were proposed by the Constitutional Drafting Assembly (CDA) in December last year. We will assess to what extent the recommendations comply with Libya's international obligations, as well as with its national laws. We will also explore to what extent national laws related to freedom of expression need to be reformed in order to ensure compliance with Libya's international obligations.

Each report will include a 'Sawti Reflections' section. This aims to provide a short interview with a key freedom of expression stakeholder. Each person will be probed on their concerns, hopes and recommendations in relation to freedom of expression. In this report, we provide an exclusive interview with Salma Sha'ab, President of Tripoli's Journalists Union. She shares her thoughts on the current state of freedom of expression. *Sawti* Reflections will also include first-hand data collected by LFJL, such as surveys that provide a snapshot of opinions of key freedom of expression stakeholders on specific topics related to freedom of expression.

LFJL would love to hear your voice too! We welcome any ideas you may have related to the issues that we have discussed in this report or will be exploring in the upcoming reports. Please share your thoughts by sending an email to sawti@libyanjustice.org or by joining the conversation on [Facebook](#) or [Twitter](#).

1. INDEPENDENCE, MONARCHY AND A NEW CONSTITUTION (1951- 1968)

The 1951 Constitution

The Constitution of Libya was enacted on 7 October 1951 (the **1951 Constitution**) following the United Nations General Assembly's recommendation that Libya shall be constituted as an independent and sovereign state in 21 November 1949. Libya's formal independence followed on 24 December 1951, whereby Libya was declared a monarchy under King Mohamed Idriss Al Senussi (the **King**). The 1951 Constitution was the first piece of legislation that formally defined the rights of Libyan citizens after the creation of the modern Libyan state.

Whilst the 1951 Constitution contained a number of provisions that aspired to safeguard the rights of Libyan citizens, however, many provisions in fact acted as an obstacle to the full enjoyment of freedom of expression and its associated rights. For example, articles 21, 22 and 23 of the 1951 Constitution respectively set out the provisions relating to the rights to freedom of conscience and religion, freedom of thought and expression, and freedom of press. These articles contained restrictions which allowed for the arbitrarily limitation of freedom of expression.

Article 21 stated that "freedom of conscience shall be absolute. The state shall respect all religions and faiths and shall ensure to foreigners residing in its territory freedom of conscience and the right freely to practice religion *so long as it is not a breach of public order and is not contrary to morality.*" Article 22 stated that "freedom of thought shall be guaranteed. Everyone shall have the right to express his opinions and to publish it by all means and methods. *But this freedom may not be abused in any way which is contrary to public order and morality.*" Finally, Article 23 stated that "freedom of press and printing shall be guaranteed *within the limits of the law.*" Although these articles appear to protect fundamental rights, the arbitrary restrictions they contained were highly problematic and undermined the very protections given by the 1951 Constitution. They allowed the state to curtail rights arbitrarily due to the use of vague language and the lack of clarity as to the form such restrictions could take. Article 23 of the 1951 Constitution, for instance, guaranteed freedom of press and printing "within the limits of the law". Such a wide ranging

limitation could be easily used to diminish freedom of expression arbitrarily.

Additionally, the power between the three branches of government - the executive, legislature and judiciary - was unbalanced under the 1951 Constitution, which further curtailed freedom of expression. The 1951 Constitution provided for a weak judicial system, tilting the balance of power away from the courts. It also did not explicitly grant the Supreme Court judicial review powers, or the authority to rule on the constitutionality of laws or executive orders. Article 43 stated that the Supreme Court and other courts "shall give judgments within the limits of this Constitution" and provisions in Chapter VIII gave little further guidance on this matter.

The King was also considered inviolable and as a result was not accountable under the law in the 1951 Constitution and enjoyed broad powers over the judiciary and legislature as reflected in Chapters V and VIII of the 1951 Constitution. This combination of executive powers placed the King above the law and in a position of great influence, which, coupled with the wide ranging limitations to rights guaranteed within the 1951 Constitution, enabled him to curtail fundamental rights, including that to freedom of expression, arbitrarily.

Banning Political Opposition

During the period of the Monarchy, both political opposition and civil society were not tolerated and those who attempted to organize political parties, trade unions and student unions were targeted. Prior to the 1952 parliamentary elections, the King banned the major Tripolitanian and Cyrenaican political parties. Shortly after the elections, the remaining smaller political parties were also banned. As a result, there was no longer any organised opposition. Political opposition parties and civil society organizations belonging to political parties, and trade and student unions were prohibited. In 1962, 78 Libyans were tried for their membership in a Ba'thist party and sentenced to jail terms of up to 32 months. Crackdowns on trade unions were severe, particularly after the discovery of oil

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in 1959 when the government worked hard to suppress organised labour.¹ Students were attacked throughout this period, including for their support during the 1960s of the Palestinian liberation movement and their opposition to the U.S. war in Vietnam.² The government's reaction led to the initiation of mass trials of students in 1967.³

Signs of an Independent Media

Despite the state's suppression of political activities, press freedom was supported by law. Libya's Law of 14 October 1959 related to press and publication, as amended by Royal Decree of 24 November 1962, provided for freedom of press and publication as well as opinion and expression as long as it was in accordance with constitutional rights. In this period, there were 14 daily and weekly newspapers, 13 monthly and fortnightly magazines, eight English language newspapers and three Italian newspapers in publication. Independent newspapers represented 65% of all publications, compared to 35% being administrated by the state⁴.

There were some further steps taken by the Libyan government at the time which indicated some signs of support for an independent and regulated media. For example, in 1963, the Libyan state requested that the United Nations Education, Scientific and Cultural Organisation (UNESCO) recommend steps for the establishment of a Libyan national news agency to serve as the main source for news on Libya for local and international media outlets. As a result, Law 17 of 1964 related to the establishment of the Libyan News Agency (the **Agency**) was issued. The law was key in promoting media ethics and specified that the Agency must be reliable, unbiased and comprehensive when disseminating information. This demonstrated tangible efforts by the government during this period to encourage media ethics and the professionalization of freedom of expression.

Overall, this period was marked by a mixture of legal measures led by executive initiatives that both promoted and hindered freedom of expression and its related rights. Although freedom of association and assembly were restricted, freedom of press witnessed an important development in promoting freedom of expression both legally and in practice.

1 Libya: From Repression to Revolution: A Record of Armed Conflict, A Record of Armed Conflict and International Law Violations, 2011-2013, page 43

2 Robert Looney, Handbook of US-Middle East Relations, Routledge 2009

3 Ibid, 167

4 Frank Senauth The Making And The Revolution of Libya, Xlibris 2013, page 37

2. 1969- 2011: STUDENT ARRESTS, PUBLIC EXECUTIONS AND THE END OF INDEPENDENT MEDIA

Repressive Reforms

Following the military coup of 1 September 1969, the 1951 Constitution, as amended in 1963, was nullified and a Constitutional Proclamation (the **1969 Proclamation**) was adopted. The 1969 Proclamation was intended to be a provisional measure until a permanent constitution could be later adopted.⁵ After several years, the 1969 Proclamation was amended by the Declaration of the Establishment of the People's Authority adopted in March 1977, proclaiming the Socialist People's Libyan Arab Jamahiriya. During this period, freedom of expression became more restricted. Additionally, the Penal Code of 1953 was amended to criminalise various acts of expression, often with severe penalties.

Banning Political Opposition

Article 13 of the 1969 Proclamation stated that expression was "guaranteed *within the limits of public interest and the principles of the Revolution*." The government fought any activities deemed outside the limits of public interest. For example, political parties were banned under Law 17 of 1972 related to the prohibition of party politics, which specifically stated that "those who belong to political parties commit treason". Although such measures were in keeping with the policies of the previous era under the King, the reaction of the government against political opponents, during this period, became more violent. Article 3 of Law 17 of 1972, for instance, provided the death penalty for joining or

⁵ Preamble of the 1969 Proclamation: "The present Constitutional Proclamation is made to provide a basis for the organization of the state during the phase of completion of the national and democratic revolution, until a permanent constitution is prepared, defining the objectives of the Revolution and outlining the future course".

supporting any group whose activity was based on a political ideology that challenged the principles of the *al-Fateh* revolution. Article 207 of the Penal Code provided for the death penalty for any challenge to the basic principles of the Libyan state or for any attempt to overthrow it. Strikes, sit-ins and demonstrations were also prohibited by Law 45 of 1972.

In March 1979, a mass campaign was launched to eliminate dissidents, calling for the liquidation of all opponents of the regime inside and outside Libya. Abroad, Libyan intelligence personnel monitored, harassed and in some cases assassinated expatriate dissidents. Furthermore, the government continued its harsh methods against opposition groups and established special People's Courts that lacked the most basic criteria for fair trials. Revolutionary committees were also created to enforce ideological and political discipline, and to punish violators and dissidents. The Revolutionary Legitimacy Document, issued on 9 March 1990, further suppressed freedoms, granting the Executive immunity from any legal accountability.

Media Censorship

Libya's media witnessed severe oppression by the government during this period. After the 1969 military coup, any journalist's writing which was considered "opposed to the principles of the al-Fateh Revolution" would likely result in them being called before the People's Court.

In 1970, the Agency, created by the Royal Decree of 1964 under the King, was replaced with the Jamahiriya News Agency (JANA). JANA became the official state news agency

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and was the sole source authorized to distribute news to foreign and local news agencies. Law 75 of 1973 related to publications, transferred the control of independent newspapers and periodicals completely to the state. As a result, most of the existing newspapers were dissolved, including the *Al-Balagh*, *Al-Ra'ed*, *Al-Hurreya*, *Al-Shura*, *Al-Jihad*, *Al-Ra'y*, *Al-Midan* and *Al-Haqiqa* newspapers. Only four national newspapers were published, which were *Al-Shams*, *Al-Fajr Aljadeed*, *Al-Zahf Al-Akhdar* and *Al-Jamhiriya*. The state owned and controlled all print and broadcast media outlets, and thereby maintained a monopoly on the flow of information.⁶ Law 76 of 1972 on publications, later on modified by Law 120 of 1972 and Law 75 of 1973, stated that journalists and writers had the right to express their opinions, but that such opinions had to be “within the framework of the principles, values and objectives of Libyan society.” Law 76 of 1972 also governed the press and restricted publishing rights to the General Press Corporation.

The Cultural Revolution and Public Executions

The state began its cultural revolution in universities where students were forced to attend lectures on the new *Jamahiriya*⁷ system. The government restricted academic

freedom, and professors and teachers who discussed politically sensitive issues faced reprisals. Student formations such as student unions were heavily regulated and independent student unions were prohibited. On 21 December 1975, students from Benghazi University elected their Student Committee President and on 25 December they formed a committee which was independent from the state. The following day, the elected president of the committee was arrested together with the other members. Due to this suppression, students took to the streets to protest against the involvement of government personnel in their universities. Students were shot at by government forces and several were killed. Hundreds of students were arrested and detained; many weren't released for months. On 7 April 1976, the Revolutionary Committees persecuted university students suspected of opposing the regime. Students were publicly hanged in Al-Fateh University (now Tripoli University) and in Benghazi's main square, and this was broadcasted on Libyan state television. This day marked a turning point for human rights violations in Libya, as April 7 was then used by the state annually as an opportunity to remove opponents from educational institutions and arrests and public executions of students took place. In some cases the killings followed years of imprisonment without trial.

⁶ https://freedomhouse.org/sites/default/files/inline_images/Libya%20WOW%202005.pdf

⁷ Meaning: “the state of the masses”

3. 2011 - PRESENT: NEW ERA FOR CHANGE? OPPORTUNITIES AND CHALLENGES

During the 2011 uprising, the number, and use, of different media outlets expanded rapidly. However, over the past four years, Libya's progress toward protecting the right to freedom of expression has been severely halted by obstructive legislation and violence. The increase in direct and indiscriminate attacks on key freedom of expression stakeholders, including journalists, activists and lawyers, has severely undermined the right to freedom of expression. This has led, among other things, to self-censorship and selective news reporting.

Legal Set Backs

Libya's domestic laws relating to freedom of expression still contain numerous provisions that restrict this right, in breach of Libya's own Constitutional Declaration of 3 August 2011 (The **2011 Declaration**). The 2011 Declaration serves as a provisional framework of rights and system of governance until a permanent constitution is drafted and ratified.

The 2011 Declaration protects freedom of expression under Article 14, which states that the "state shall guarantee freedom of opinion, individual and collective expression, research, communication, press, media, printing and editing, movement, assembly, demonstration and peaceful sit-in in accordance with the statute". The 2011 Declaration does not fully reflect Libya's international obligations as it does not explicitly prohibit censorship and does not include the right to seek, receive, and impart information and ideas, as formulated in Article 19 of the International Covenant on Civil and Political Rights. Further, it does not cover all types of expression and methods of communication, nor does it grant the rights in question to all persons, regardless of status, age or nationality.

Libya's transitional governments have adopted a number of provisions which have restricted and curtailed freedom of expression. The National Transitional Council (NTC) adopted Law 37 of 2012 related to the criminalisation of the glorification of the dictator, which established a prison sentence for those who spread news, propaganda or rumours, including "praising or glorifying Gaddafi, his regime, his ideas or his sons", with the aim of "terrorising people" or "weakening public morale" during times of war. The law provided for a

life sentence where such acts "harm the state". The law also criminalised and provided a prison sentence for those who published any news, propaganda or rumours which "harm the 17 February revolution". This law was later declared unconstitutional by the Libyan Supreme Court. The NTC also adopted Law 15 of 2012 related to religious opinions which prohibited media discussion of religious opinions (*Fatwas*) issued by the National Council of Islamic Jurisprudence (*Dar Al-Ifta*). These laws constitute illegitimate restrictions of freedom of expression and violate Libya's international obligations, notably Article 19 of the International Covenant for Civil and Political Rights.

Law 5 of 2014 in relation to amending Article 195 of the Penal Code criminalised "any action, which may harm or prejudice the February 17 Revolution, as well as insulting remarks publicly directed at the executive, judiciary, or the legislature or any of their members, or insulting the nation's flag." The use of sweeping language allows for its arbitrary application to a wide variety of situations at the state's discretion. This has a detrimental effect on government accountability and results in the further curtailment of freedom of expression provisions.

The Libyan state failed to abolish laws which restrict media publication. The previously mentioned Law 76 of 1972 related to publications is still in place and officially restricts publishing rights to some public entities, Al Dar al-Jamahiriyah and the General Corporation of Press, Professional Unions, and Syndicates. Although not actively enforced at the moment, the fact that it has not yet been repealed means that there is still a danger that it could be used arbitrarily to restrict publications produced through other publishing entities.

Libyan Media after 2011

As independent media has rapidly grown since the 2011 uprising, the state has sought to reform media regulation. As a result, Decree number 44 of 2012 related to the creation of a Higher Media Council issued by the NTC relocated the state's media regulation from the Ministry of Culture and Civil Society to a Higher Media Council (the **Council**).

Freedom of expression in the country is under constant threat not only because of the adoption of laws that hinder the full enjoyment of this right and the lack of media regulation, but also because of the security situation. The direct and indiscriminate attacks on key freedom of expression stakeholders have resulted in self-censorship and selective news reporting of events.

The Council was mandated with drafting “regulations and laws regulating media operations,” issuing “a code of media ethics,” granting “necessary licenses to media institutions of all types,” preparing “a concept of how to elect a president and members of the High Media Council,” and “considering individuals’ complaints against media institutions.”

The Council was suspended by the NTC in June 2012 due to strong criticism from civil society and media practitioners, and during the same month, nearly 1,000 media professionals gathered in Jadu to attend a media forum. The main aim of the conference was to elect media representatives to replace those appointed by the NTC to the now suspended Council. With 21 members, the newly established council elected by media practitioners in Jadu faced further criticism due to the lack of a clearly defined professional category of journalists which led to a strong discussion on the elected representatives’ professional competencies for the role. A new official High Media Council was then established in July 2012 by the NTC Decree No. 62/2012 to “assume the supervision of the Libyan media sector in general until the General National Congress assumes its duties and responsibilities and takes the actions it deems necessary thereof”⁸ Two bodies therefore existed to represent media practitioners, causing confusion and division within the media community. In November 2012 the GNC replaced the second High Media Council with the Ministry of Information, leading to further complaints from media practitioners that increasing state control over media could cause further curtailment of freedom of expression.

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Following the uprising there were approximately 50 television channels in comparison to two during the previous years. Dozens of radio stations, several daily newspapers, and

⁸ NTC Decree No. 62/2012 on the amendment of a TNC decision number 58/2012 regarding the Higher Media Council.

nearly a dozen private weekly and monthly publications were published in Libya. In Benghazi alone, the number of newspapers reached 180 in 2012.⁹

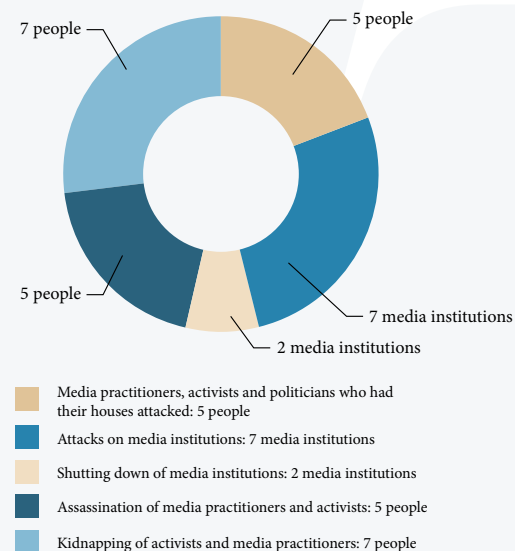
As instability on the ground has increased, Libya has failed to safeguard or effectively ensure the human rights of journalists and broadcasters. Armed groups have targeted media practitioners and as a result, they have been subjected to intimidation, kidnapping and assassinations, as well as attacks on their workplaces.

The above circumstances have resulted in Freedom House downgrading Libya’s media status from “partly free” to “not free” in the period from 2011 to 2013.

This pie chart shows the number of violations against media practitioners from September to November 2014 based on our field research:

Attacks against practitioners and activists between September and November 2014

Source: Lawyers for Justice in Libya



⁹ Mohamed, E., Libyan Press Booms After Revolution, Magharebia, 7 February 2012.

CONCLUSION AND RECOMMENDATIONS

For more than 60 years, freedom of expression has been shaped and reshaped by laws and practices that, for the most part, hindered this right. At independence, freedom of press was supported although freedom of expression, association and assembly were legally and politically curtailed. Then after the 1969 military coup, freedom of expression was restricted further and became non-existent. After the 2011 uprising, the media environment witnessed an increase of media outlets and civil society movements. This progress has been severely halted by new laws and by ongoing violations against freedom of expression practitioners. It is absolutely essential that the legislature draft laws protecting freedom of expression and for the government to take positive action to provide an environment that enables and facilitates the effective enjoyment of this right.

LFJL makes the following recommendations:

1. Laws and decrees established before 2011 or by the transitional authorities after the 2011 uprising that hinder the full enjoyment of the right to freedom of expression and are still in force must be reviewed and repealed. These include, among other provisions, Law 5 of 2014, which amends Article 195 of the Penal Code, criminalizing any action that may harm or prejudice the 17 February Revolution as well as insulting remarks directed at the executive, judiciary, and the legislator or any of their members; Law 15 of 2012 which prohibits media discussion of religious opinions (*Fatwas*) issued by the National Council of Islamic Jurisprudence (*Dar Al-Ifta*); Decree 5 of 2014 banning satellite television stations from broadcasting views deemed “hostile to the 17 February Revolution”; and Decree 13 of 2014 discontinuing scholarships to students studying abroad and salaries and bonuses to Libyan employees, for “taking part in activities inimical to the 17 February Revolution”;
2. Future laws must enshrine the right to freedom of expression in accordance with Libya’s international human rights obligations, including those set out in the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1981 African Charter on Human and People’s Right (ACHPR);
3. Freedom of expression must be defined to include the right to seek, receive and impart information and ideas of all kind, regardless of frontiers, either orally or in print, in the form of art, or through any other media as stated in Article 19 of ICCPR, and must apply to all persons, regardless of status, age or nationality; and
4. The state must provide a legal and social environment that enables and facilitates the effective enjoyment of the right to freedom of expression. This includes protecting freedom of expression practitioners and allowing them to express their views freely without illegitimate restrictions as well as preventing non-state actors from interfering with the exercise of freedom of expression by others, by investigating and holding accountable those responsible, and providing redress for harm caused by private persons or entities and the state.

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REFLECTIONS

An interview with Ms. Salema Al- Shaab, Head
of the Union of Journalists in Tripoli

- How would you rate the current status of freedom of expression in Libya?

The current situation is really very bad and has reached a very extreme level of difficulty. As journalists, we are now refugees who ran away from their cities and houses, not to protect our own lives but rather those of our families. Today, our voices have been silenced, and we are incapable of practicing our right to express our views, not only as journalists but even as mere citizens. If we express ourselves, we will certainly be attacked very violently. This is what happened in fact with many of our colleagues. They were attacked and their houses were burned down. We continuously get anonymous threats.

- How would you evaluate the state's position as far as these violations are concerned?

In reality, the state is currently completely helpless. It did not have any role to play when it came to the cases of the media and the reporters. It did not take any serious measures against the crimes that were repeatedly committed against journalists. On the contrary, we were sometimes attacked by some parties that are affiliated with the government or its official institutions in a way or another. This is what happened to us in the past in front of the headquarters of the former General National Congress (GNC) in Tripoli when we were attacked by the guards there. The state did not take any action against those persons.

- How would you evaluate the past information/media ministries, and have they played a role in protecting journalists and media practitioners?

The Ministry of Information before August 2014 had absolutely no role in protecting the media or the reporters. In my opinion, the ministry did not do anything in fact, not even the very tasks it was assigned. It did not take any initiative to develop the media in the country or help it advance. It did not offer us any services as journalists. We were initially against having this ministry in the first place. We aspired to the formation of a higher council of media run by experts in journalism and media in Libya according to a strong system of regulations and which set standards which would respect and guarantee the rights and freedoms of every journalist rather than a state controlled Ministry of Information or a similar ministry.

- In your opinion, what is the most serious threat that freedom of expression in Libya is currently facing?

The biggest worry currently is the vast number of armed militias in the country. There is no party that is capable of preventing or controlling these militias from doing whatever they want. They are committing very dangerous violations and crimes. They recognize and acknowledge neither the state nor the elections. These illegal bodies only believe in their own power, violence, and threats. This is how they impose their way of thinking. Their belief system does not include anything pertaining to freedom of expression nor does it allow for contrasting points of view. They believe that if you are not with me then you are against me, and if you are not my ally then you are my enemy. Unfortunately, this is why many of our colleagues got attacked and kidnapped, and this is why their houses were burned down: for the simple reason that they expressed their views.

- A final comment from you as the Head of the National Union of Journalists in Tripoli.

Finally, I plead with all organizations and institutions working for freedom of the media as well as freedom of thought and expression, whether local or international, to raise their voices high on the international level in order to work towards improving the situation in Libya. I ask them to protect the journalists in Libya, to support their cause, and to help them claim their rights and freedoms. The current situation in the country is very alarming. We are on the brink of a new dictatorship built on silencing people so that it could rise without any defiance. This is the same strategy that the previous regime followed in order to establish the dictatorship that lasted for decades.

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