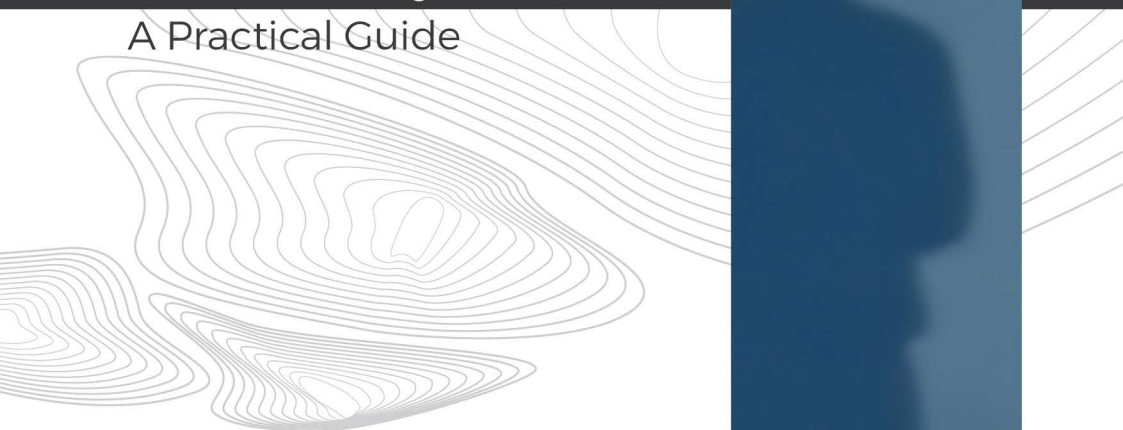


The Rights of Families of Missing Persons in Libya

A Practical Guide



The National Campaign
for Raising Awareness
on Missing Persons



INTRODUCTION

This short guide is meant to provide you with straightforward information about your rights as the family member of a missing person under international and national law in Libya. This guide also indicates where you may be able to find help if your rights are not upheld, both at the national and international levels. It also outlines how you, as a family member, can contribute to ensuring that authorities will respect your rights and play a role in accounting for missing persons.

DEFINITION

A missing person is anyone whose whereabouts are not known to their families or others close to them. Missing persons may be alive or deceased; they may have emigrated, or they may have been taken out of the country involuntarily; they may have gone missing from natural disasters, arbitrary arrests, or war. Deceased missing persons may have been buried in mass graves or their remains may have been recovered but not identified. A person is no longer considered missing when their family has received sufficient, reliable and credible information on their fate and whereabouts.

According to Libyan Law a missing is 'someone who is absent and whose life-or-death status is unknown' (Law 17/1992). It is presuming that a missing person is alive until his/her fate is ascertained.

Libya is obliged to clarify the fate of missing persons and ensure that families are informed of the whereabouts of their missing relatives. Libya has also responsibilities towards the dead, whose remains must be traced, identified, recovered, and buried with dignity.

Libya is also under an obligation to prevent arbitrary arrest and detention and to allow anyone deprived of liberty an effective opportunity to challenge the lawfulness of their detention before a court. Libya must also ensure that those arrested are promptly informed of any charges against them, and that those charged are brought before the judicial authorities within a reasonable time.

WHO IS A FAMILY MEMBER?

A family member is someone who is linked to the missing person by blood or by social family structures. This includes: biological children, adopted children and stepchildren; life partner/ spouse; parents (including mother-in-law, father-in-law and adoptive parents); and brothers and sisters born of the same parents or different parents or adopted.

Part1

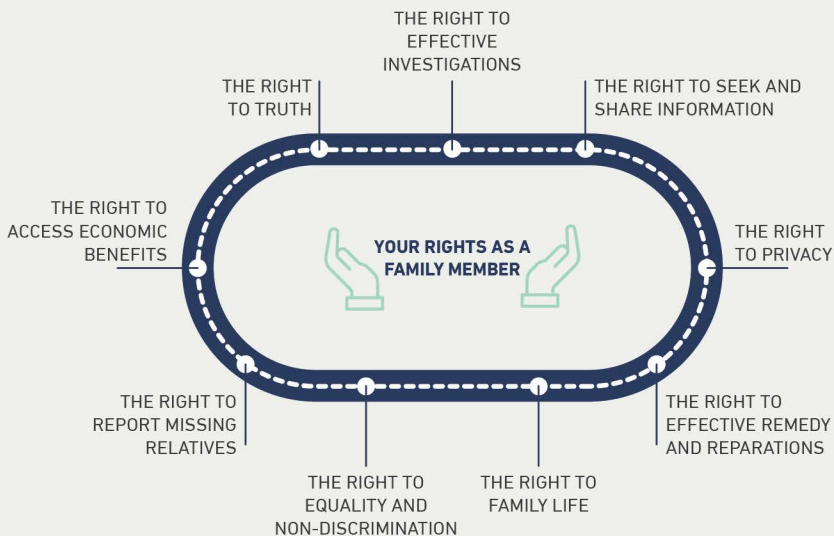
THE RIGHTS OF FAMILIES



YOUR RIGHTS AT A GLANCE

As a family member:

- You have the right to know the truth about the fate and whereabouts of your disappeared family members and the circumstances in which they disappeared.
- You have the right to an effective and official investigation into the fate of your missing family members.
- You have the right to seek, receive, and share information.
- You have the right to form associations and communicate with international agencies and organisations such as the United Nations.
- You have the right to family life, to communicate and visit your family members including if they are in detention.
- You have the right to effective access to justice and adequate reparations, compensations, and rehabilitation for harm suffered.
- You have the right to access, change, delete any personal information you provide, and to control with whom the authorities may share your information (including DNA).
- You have the right not to be discriminated against on any grounds, such as gender, religion, ethnicity, or political affiliation.



THE RIGHT TO TRUTH

You have the right to know the truth regarding the progress and results of any investigations conducted by the authorities to establish the fate of your disappeared family member and the circumstances in which they went missing.

You have the right to seek and receive information about investigations that have been or are being conducted, and to access all relevant locations where the missing person might be found, the circumstances of the disappearance, and if applicable, the cause of death. If the authorities withhold information about missing persons from their family, the family has the right to object, as this amounts to cruel and inhumane treatment, which is a violation of the prohibition of torture.

THE RIGHT TO EFFECTIVE INVESTIGATIONS

The right to life, liberty and security also entails your right as the family member of a missing person to an effective investigation into the fate and whereabouts of your missing relative, and the circumstances of the disappearance. Effective investigations must be official, independent, impartial, timely, and capable of establishing the facts in each case. Investigations should also be able to contribute to bringing those responsible to justice.

Investigations must be transparent, with frequent communications to families, and you have the right to participate in locating and identifying your missing relative including during excavation processes, even though certain specific rules can apply at crime scenes or gravesites to secure the integrity of the investigation and to protect evidence. Professionals involved in the investigation must minimize any harm that may result from the investigation process, especially harm to the physical and mental well-being of family members. They must communicate appropriately the reason for limiting your access to sites under investigation.

THE RIGHT TO SEEK AND SHARE INFORMATION

You have the right to share information, the freedom to seek, receive and share information, and the right to access and communicate with international organizations.

The right to seek and share information includes reporting about missing relatives and sharing necessary personal information to facilitate locating your missing relative. You also have the right to form associations in order to support families of the missing, communicate with authorities, advocate for your rights, remember the missing, or document them.

THE RIGHT TO FAMILY LIFE

Missing persons and their family members have the right to maintain family relationships, to communicate, visit, and correspond with their family members and not to be separated from them. Failure by the authorities to allow communication with your family is a violation of this right and could amount to cruel or degrading treatment. Detained persons also have the right to be visited by and to correspond with relatives.

The loss of a parent through disappearance is also a serious violation of a child's human rights. Children have the right to family relations as well as the right not to be separated from their parents against their will.

THE RIGHT TO EFFECTIVE REMEDY AND REPARATIONS

You have the right to adequate and prompt reparation for any harm suffered to address mental, physical, or economic harm you have suffered as a result of the disappearance of your relative, including through compensation or rehabilitation.

Because this right is one of the hardest one to benefit from, advocating collectively with other families of the missing through forming family associations and seeking the support of CSOs can help strengthen your voices.

THE RIGHT TO PRIVACY

You have the right to determine freely what personal information is communicated to others. Any personal information you provide in relation to your missing relative should be used only with your free and informed consent, which means that you should understand precisely who will receive the information you provide, for what purposes, and how the information will be managed. You should have the ability to access, update, amend or withdraw such information when it is no longer needed.

Your right to privacy is a fundamental human right recognized in Article 12 of the Universal Declaration of Human Rights, which underpins human dignity, autonomy, and liberty.

The procedures for exhumation, examination and autopsy should respect these rights and the principles listed below:

- Dignity, honour, reputation and privacy of the deceased must be respected at all times.
- Families should be kept informed of decisions about exhumation and post-mortem examination, and of the results of any such process. When circumstances permit, their presence or the presence of their representatives should be considered.
- After post-mortem examination and identification is complete, the remains should be handed over to the family as soon as possible.
- Whenever exhumations are performed, it is essential that all information that may be of help in identification be collected in conformity with the principles governing the protection of personal data.

THE RIGHT TO EQUALITY AND NON-DISCRIMINATION

The principles of equality and non-discrimination apply to all rights and freedoms, regardless of:

- Political or other opinion
- Birth, age, sex, marital status
- Religion or belief
- Race, colour, language, ethnicity, tribe, national or social origin
- Physical or mental disability, health status

This means that no distinction can be made between martyrs and missing or based on the circumstances during which your loved-one went missing.

Martyrs and Missing:

Law No. 1 of 2014 on Assistance for Families of Martyrs and Missing Persons of the 17 February 2011 Revolution defines a missing person as “any person who went missing during the War of Liberation [between 15 February and 23 October 2011] and whose life or death is unknown”.

Its conditions apply only to pro-revolution victims, while excluding those associated with the Gaddafi regime, thereby discriminating against missing persons and their families based on political ideology.

Decree No. 85 of 2012 on Assistance and Honouring the Families of Missing Persons and Martyrs establishes memorialisation and reparations programs, but exclusively to the families of martyrs. It includes recognition during 'Martyr Day', the erection of monuments, and adding these families' names into the National Order of the Martyrs.

These provisions violate Libya's obligations under ICCPR, which protects the right to freedom of opinion and/or expression.

THE RIGHT TO REPORT MISSING RELATIVES

You have a right to report your missing relatives. When reporting a missing person, you will be asked to provide:

- Personal information about the missing person: name, age, sex, and size, and any identifying physical traits. Provide a photo if available.
- Information about the disappearance such as when and where the person was last seen.
- Your own information, including your name and contact details.

As disappearance cases often involve criminal activity, such as murder, arbitrary arrests, or kidnapping, they can be reported at a police station, in line with the Libyan Code of Criminal Procedure. Each reported case should also be officially documented with GASIMP's Unit for the Registration of Families of Missing Persons to provide personal and genetic data, through biological reference samples.

THE RIGHT TO ACCESS ECONOMIC BENEFITS

Libyan law is unclear concerning the time required for a court to appoint a trustee after a person is missing, to manage his or her assets and properties. In general, providing a death certificate will be required. This is especially problematic for women, who are left without being able to access pension, retirement, or other social benefits until they are able to end their husband's status as "missing".

When someone's fate is unknown, his or her legal status of absence should be acknowledged and a certificate of absence granted by the competent administrative authority, attesting to this uncertainty and allowing for the protection of the person's rights and responding to the hardships their families face every day.

A person should not be declared dead without sufficient supporting evidence. It is therefore desirable, before a death certificate is issued, to provide for an interim period of 'absence' of reasonable length, so that the circumstances of that person's disappearance can be investigated and his or her fate ascertained. If the person is found alive, the certificate of absence should be annulled and his or her legal status fully restored.

Law No. 17 of 1992 provides that the status of absence or missing ends through giving proof of life, obtaining a proof of death, or through a judicial declaration of death. According to Libyan law, a missing person is therefore considered alive unless there is proof of death:

- If death can be established, the competent authority will issue a death notification and a death registration will be provided, as outlined in Law No. 36 of 1968 on Civil Status, at the Civil Registry to confirm the death.
- If the missing person is a victim of a crime, the General Prosecutor must be notified before the burial, as outlined in the Code of Civil Procedures of 1954.
- In the absence of an identifiable body, the court must issue a decision regarding the death of the missing person. One of the criteria that must be met before the court can declare the death of a missing person is to establish the length of absence. But Libyan law does not specify the length of absence required to presume the death of a missing person. The only guide is therefore Sharia Law, according to which this length ranges from three to seven years, with Libyan jurisprudence establishing a minimum of four years of absence for someone to be declared dead.

Under special circumstances, such as the floods in Derna, Libyan law presumes a missing person dead from the date of disappearance.

THE RIGHTS OF PERSONS UNDER ARREST OR DETENTION

In many cases, missing persons are in fact being held by the authorities or non-state armed groups. To prevent them from going missing, people under arrest or detention have the rights:

- To be registered by competent authorities;
- To be informed of the reasons for their arrest or detention;
- To have a fair trial at a court of law;
- To inform their families or legal counsel of their arrest, place of detention and state of health. They are authorized to communicate with and receive visits from their families.

Missing persons returning after a prolonged period of absence, including after having been held in violation of the above principles, should also be entitled to assistance for their rehabilitation and reintegration into society, in addition to direct financial support and reparations.

The interests of children should always receive particular attention, in case there is no other parent or caregiver to replace the person who has been declared missing.

Part 2

EXISTING INSTITUTIONS TO SUPPORT FAMILIES



Several Libyan authorities participate in fulfilling these rights. These authorities include:

The General Authority for the Search and Identification of Missing Persons

GASIMP

The mandate of GASIMP focuses on the search and identification of those who went missing since 1969, irrespective of the circumstances surrounding their disappearances. This includes excavation of mass graves, collection of DNA samples, and transfer of bodies to the Forensic Medicine Department of the Ministry of Justice (JERC) which is responsible for identifying causes of death and declaring death.

GASIMP begins the search process for missing persons when mandated by the General Prosecutor. GASIMP's mandate does not include establishing responsibilities or investigating on the reasons for the death of the missing persons. GASIMP's primary focus is on identifying persons who are presumed dead, not those that could be in arbitrary arrests or kidnapped. It then obtains documents and information from the missing person's families and collects DNA samples from family members. Having samples from several family members increases the chances of a match (see explanation above).

GASIMP's Family Outreach Unit can direct you to other relevant services and institutions, including for receiving psychosocial and mental health support. They are responsible for taking the testimonies of families and collect any information that can help identify their missing loved one.

You can contact GASIMP at:



+218 91 037 6503



+218 92 881 5773



i.c.office@gasimp.ly

The General Authority for the Care of the Families of Martyrs, Missing Persons and Amputees

GACFMMPA

GACFMMPA was created in 2011 as a fund to help support families, and it was initially affiliated with the Ministry of Assistance for Families of Missing Persons, until it became an independent body under the Council of Ministers. It is mandated to respond to the needs of families of missing persons, including to implement Law No. 1 of 2014 on "Assistance of Families of Missing Persons and Martyrs" and its provisions on reparations and psychosocial support for families. GACFMMPA has 88 local offices in Libya.

You can contact GACFMMPA at:



+218 91 888 3721

The Forensic Medicine Committee (Mass Grave Committee)

Decree No. 411 of 2020 was issued to create a Forensic Medicine Committee, within the office of the Attorney General, with the competency to open and excavate mass graves, to identify and preserve mortal remains and to establish the circumstances of the death. It is composed of representatives from the Ministry of Health, the Department of Forensic Medicine (JERC) at the Ministry of Justice, and GASIMP. The Decree on the formation of the Mass Grave Committee does not provide for the participation of families in the identification processes of their missing relatives.

The Office of the Attorney General

The Prosecutor-General's Office initiates criminal proceedings and refers cases to the court. It is also responsible for conducting investigations. It leads the Mass Grave Committee and gives permission to GASIMP to start excavation. The excavation process must take place in the presence of a representative from the Attorney General's Office.

The Judicial Expertise and Research Centre at the Ministry of Justice

The Judicial Expertise and Research Center (JERC) is part of the Ministry of Justice and is responsible for: conducting forensic examination to identify human remains; conducting autopsies; DNA collection, analysis, and storage; and declaring death.

Other institutions such as the Criminal Investigation Directorate of the Ministry of Interior, and the National Authority for DNA Fingerprinting Research and Analysis, have a similar mandate.

The United Nations Support Mission in Libya

UNSMIL

UNSMIL, as an integrated special political mission, is mandated by the UN Security Council, in full accordance with the principles of national ownership, to exercise mediation and through its good offices to monitor and report abuses and violations of human rights and violations of international humanitarian law, including enforced disappearances, arbitrary detention, torture, and other international crimes.

UNSMIL Human Rights, Rule of Law and Transitional Justice documents violations, leads investigations, reports to relevant human rights mechanisms and advocates for accountability at the national and international levels.

You can contact UNSMIL at:



unsmil-hrs@un.org

The INTERNATIONAL COMMITTEE OF THE RED CROSS

ICRC

The ICRC is an independent, neutral organization that ensures humanitarian protection and assistance for victims of armed conflict and other situations of violence. The ICRC has a Restoring Family Links program, which is designed to locate persons who have been separated from their families and to put them back into contact with their relatives.

You can report missing persons online through their website or write to:



familylinks@icrc.org

INTERPOL

INTERPOL is an international organization that works primarily with national law enforcement agencies, especially police. It uses a system of notices to issue international requests for cooperation or alerts and to communicate information about missing persons, and operates a database called I-FAMILIA where families can submit their DNA sample for matching.

CIVIL SOCIETY ORGANIZATIONS

CSOs

Local and international CSOs can also help you to report your missing loved one and guide you on possible assistance you may obtain. Reach to those operating in your area to be directed to them. The UNSMIL Human Rights Team will also be able to indicate existing support networks in your city.

Part3

OTHER QUESTIONS



WHY AM I PROVIDING A DNA REFERENCE SAMPLE?

Reference samples are collected either from a droplet of blood taken from the finger of the donor, or through a buccal swab. The material collected by families is taken to a laboratory where it will be analysed to create numeric tables that represent the unique genetic profile (DNA profile) of the donor.

Forensic investigations compare personal data about missing persons provided by their relatives with data obtained from other source and can establish family relationships to enable missing persons to be reunited with family members. Where a missing person could be deceased, DNA analysis constitutes one of three accepted human identification methods (together with fingerprints and dental analysis).

The DNA profile of families will be compared to the genetic information of victims, in the case where unidentified bodies are found, to determine whether there is a family relationship between the two, and thereby to identify the missing.

Participation of families of the missing is therefore essential for identification, to provide multiple reference samples. The more relatives provide reference samples the higher the chance of identifying the remains of a missing person.

The provision of reference genetic samples for missing persons investigations must always be based on the free, informed, and express consent of the family member providing such a sample. The consent of the family member must be expressed in writing through a consent form (see details above).



WHAT ARE THE STEPS OF DNA IDENTIFICATION?



DNA reference samples are collected from relatives of the missing persons through either blood or saliva.



DNA from unidentified human remains (usually bones) is collected and profiled (for instance, during a mass grave excavation).



The DNA profiles of family members are compared with the DNA of the unidentified person.



A "match" occurs between the two samples.



The family is informed, and the unidentified person can be reunited with their family or, if deceased, they can be buried with dignity.

WHAT ELSE CAN I DO?

1. You can play an important role in ensuring that your rights are recognized and upheld by calling for effective investigations that are capable of establishing the facts.
2. You can report and document human rights violations and advocate for the establishment of public institutions that will uphold human rights and that deserve the public trust. This often requires legal reforms or new legislation guided by international conventions and other instruments that include guarantees related to the missing and their families.
3. You can participate in mechanisms such as those described above that provide and collect data on missing and disappeared persons and contribute to establishing central records of missing persons.
4. You can help to solicit views from communities with missing persons on the functions of any such mechanisms. You can observe investigative work at locations where missing persons might be found, including detention facilities or illicit gravesites when it is safe to do so for you and others.
5. You can contribute to shaping policies to create processes and laws to uphold your rights and to secure reparations and remedies for harm suffered, economic loss and other substantial violations and abuses of fundamental rights.
6. You can contribute to the establishment of such institutions and work through advocacy, forming associations and participating in processes to locate the missing through local and international institutions that reinforce the responsibility of the state to account for missing persons.

The Rights of Families of Missing Persons in Libya

A Practical Guide

