

Searching for Justice in Post-Gaddafi Libya

Edited by **Jan Michiel Otto**
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A Socio-Legal Exploration
of People's Concerns and
Institutional Responses at
Home and From Abroad



Report of the AJIDIL
Research Project

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2 Opportunities, Constraints and Dilemmas in Libya's Search for Justice

Jan Michiel Otto

2.1 Two Libya's

Before discussing Libya's justice challenges, they need to be put into context. But into which context? After five trips to Libya in 2012-2013, numerous conversations with Libyans, and as a regular reader of the reliable on-line newspaper *Libya Herald*, I could sketch two different contexts, two competing images of Libya.

There is, as one judge put it, "the Libya I dreamt of on 17 February 2011." This is a Libya of hopes, a country where the people managed to oust the dictator Gaddafi and embarked on a democratic and law-based road ahead. Indeed, a self-appointed National Transitional Council (NTC) and a transitional government led the country throughout 2011 until the summer of 2012. In July, free and fair elections were held resulting in a new, legitimate parliament, the General National Council (GNC). In the autumn of 2012, the government under Prime Minister Ali Zeidan was established. This new Libya allows for a free press. It has secured its national income, mainly from oil production, and is now addressing the next challenges, one by one, with broad support from the international community.

This hopeful Libya is reflected in peaceful appearances of everyday life in Tripoli, Benghazi and other towns. As AJIDIL researchers, whether Libyan, British or Dutch, we could indeed see this Libya every day, in the streets, parks, shops, coffeehouses, schools, universities, offices, airports. We saw normal life everywhere: people chatting, eating and drinking, working, going to the busy markets, buying and selling, driving around in cars, attending weddings, visiting social and cultural events, watching tv, and making jokes. Meanwhile in the media we were hearing and reading

news about the expansion and training of security forces, foreign investors returning to Libya,¹ and a supportive international community (see 3.1).² So it seems that for the silent majority of Libyans the present and future look promising, even though, sometimes, there may be problems.

There is another, more troubling Libya, in which militias operate outside state control and put themselves above the law, frustrating the state's law enforcement, a country startled by assassinations, assaults, kidnappings, tortures in illegal prisons, bombs detonated at police stations and embassies, usually without any of the perpetrators being brought to justice. In this troubling Libya every now and then armed conflicts flare up.³ Vast areas of this immense country are beyond state control, especially in the deserts and mountains in the south.⁴ Amongst the main cities Benghazi has been the scene of many violent attacks.⁵

Troubling Libya seems a country in turmoil. In the wake of Gaddafi's regime, which had scarred so many people's lives, the 2011 uprising brought liberation. However, soon social and political cleavages and conflicts became visible. While the government makes serious attempts to improve the situation, the young judge's dream of 17 February 2011 still seems remote.

In the headlines of Libya's free press both sides are reflected. However, readers of the foreign press are mainly informed about Libya's troubles. This chapter could perhaps restore the balance, as it first discusses some of the current hopes and opportunities, followed by some of the problems and constraints.

This mixed picture forms the real, complicated context of any effort towards good governance, rule of law and access to justice in Libya. There are no shortcuts to progress. The main requirements are now stabilisation and security, a long-term commitment to the democratic ideals of the 17th

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- 1 "Libyan Minister of Economy expects \$1 trillion in FDI." *Libya Herald* 3 May 2013, <http://tinyurl.com/sjpgl-001>, accessed on 27 June 2013.
 - 2 "Obama meets with Libya's new leader," Jennifer Epstein. *Politico* 13 March 2013, <http://tinyurl.com/sjpgl-002>, accessed on 28 June 2013; "Zeidan looks to UAE for police and security expertise," Hadi Fornaji. *Libya Herald* 28 March 2013, <http://tinyurl.com/sjpgl-003>, accessed on 28 June 2013.
 - 3 "Fresh deadly clashes in Mizdah; army moves in." *Libya Herald* 3 March 2013, <http://tinyurl.com/sjpgl-004>, accessed on 27 June 2013; "Gunmen kill six Libyan soldiers at checkpoint near Sirte." *Reuters* 25 June 2013, <http://tinyurl.com/sjpgl-005>, accessed on 28 June 2013.
 - 4 "The other frontier warriors," Beata Oleksy. *Libya Herald* 13 January 2013, <http://tinyurl.com/sjpgl-006>, accessed on 27 June 2013.
 - 5 "Twenty-five reported dead in clashes in Libyan Benghazi," Feras Bosalum. *Reuters* 8 June 2013, <http://tinyurl.com/sjpgl-007>, accessed on 27 June 2013; "Huge explosion flattens Benghazi police station – no casualties reported," Maha Ellawati and Ayman Amzein. *Libya Herald* 19 June 2013, <http://tinyurl.com/sjpgl-008>, accessed on 26 June 2013.

February Revolution, a comprehensive understanding of the problematic context, and substantial efforts to facilitate well-informed discussion, dialogue, and decision-making. In all this, the roles of Libyan individuals and groups are decisive. The role of the international community is limited and can only be effective if it is willing to learn about Libya, about its society and state, about its ambitions, difficulties, dilemmas, and opportunities.

2.2 Hopes, Opportunities, and Some “Good News”

To what extent is the environment in Libya conducive to strengthening the rule of law and improving access to justice?

2.2.1 Gaddafi and his regime have gone

The death of Gaddafi put a final end to a regime, which was totalitarian in nature, whimsical in operation, and ruthless towards its opponents and other victims. After 42 years of suppression, since late 2011 people have tasted a new freedom to speak, without the old fear of being overheard, reported or tapped by their government. People no longer need to be afraid when they walk or drive past a state security agency. Gaddafi’s regime, which provided the grounds for many fears – for common people to be arrested (see Chapter 9), for critical students to be publicly hanged or for young women to be sexually assaulted by Gaddafi in his headquarters (Hilsum 2012, 64, 67, 78-79) – is no more.

There may be certain other fears, for other groups (see 2.3.1), but the long collective nightmare created and maintained by Gaddafi, his inner circle and his wider circle of henchmen and helpers, has come to an end. Many of Gaddafi’s men have fled the country, and are in Egypt, Tunisia, or elsewhere (UNHCR 2013). Gaddafi’s heir, Saif al-Islam, and his closest associate Abdullah Sanusi, are imprisoned and awaiting trial.

In the wake of the 17th February Revolution, social and political groups in Libya have called for special legislation to prevent Gaddafi’s top and middle elite, and his staunch supporters, from occupying any meaningful positions in the new state of Libya. Indeed, several vetting mechanisms have been established. In April 2012 the NTC enacted Regulation 26 establishing a High Commission for the Application of Standards of Integrity and Patriotism – now commonly referred to as “the Integrity Commission” – for incumbents of, or candidates for, public office. This quasi-judicial commission has the mandate to investigate any person occupying or seeking high public office

for close ties with the Gaddafi regime or for criminal deeds. It has made numerous decisions based on the close scrutiny of personal files. The law allowed those affected by the commission's decisions to launch an appeal with the regular courts (see 5.1).⁶

Just over a year later, in May 2013 the GNC passed Law 13/2013, the much-contested Political Isolation Law. Its purpose was similar to that of Regulation 26/2012 but it went much further. Amidst pressure from armed militias and political factions, the GNC's majority agreed to formulate categories that targeted anybody who had worked in a leading position for the Gaddafi regime since 1969. This would include many politicians with highly respectable, anti-Gaddafi credentials. The most conspicuous example is the GNC-president and de facto head of state Mohammed Megarief, who had to step down. With regard to vetting the judicial system, in the autumn of 2012 a draft law on judicial reform was proposed by the Supreme Council for the Judiciary. It envisaged a radical purge but has not yet been accepted. Some observers expect that the Political Isolation Law will be used to purge the judiciary.

The standards and procedures for transitional justice are contested by different political factions. Yet, there seems to be a broadly shared desire that now that Gaddafi has gone, those who misused the state and oppressed the people on his behalf will also be excluded from leadership positions in the new Libya.

2.2.2 The war came to an end

From February until August 2011 Libya was in a state of war, fought between revolutionaries and Gaddafi's army and supporters. The struggle left thousands dead.⁷ On 19-20 March 2011 Benghazi narrowly escaped being overtaken and possibly destroyed by Gaddafi's army; brave Libyan pilots and later French warplanes came to its rescue. However, Gaddafi's troops inflicted heavy damage on the city of Misrata, a centre of resistance. Later, in revenge, revolutionaries destroyed much of Sirte, Gaddafi's "home town,"

6 "Inside the Commission for Integrity and Patriotism," Mathieu Galtier. *Libya Herald* 11 April 2013, <http://tinyurl.com/sjpgl-009>, accessed on 28 June 2013.

7 Estimates differ dramatically. After the first four months of fighting, the UN Human Rights Commissioner, Cherif Bassiouni estimated that between 10,000 and 15,000 people had been killed ("Up to 15,000 killed in Libya war: U.N. rights expert." *Reuters* 9 June 2011, <http://tinyurl.com/sjpgl-010>, accessed on 26 June 2013). More recently, the National Transitional Council estimated that "4,700 rebel supporters died and 2,100 are missing, with unconfirmed similar casualty figures on the opposing side" ("Libyan revolution casualties lower than expected, says new government," Ian Black. *Guardian* 8 January 2013, <http://tinyurl.com/sjpgl-011>, accessed on 28 June 2013).

as well as Tawergha, the home to a community also regarded as loyal to Gaddafi.

On 23 October 2011, after Tripoli had been taken by revolutionaries and Gaddafi was finally spotted and killed, the NTC chairman Mustafa Abdel Jalil declared that the war had come to an end. Local, sometimes serious, conflicts remained. Group violence did not disappear. There are also reports of actions and threats by organised terrorist groups in the south and in the east. Nevertheless, as we write this report in early July 2013, there are no signs that large-scale conflict is likely to break out again any time soon. The war, indeed, came to an end.

2.2.3 New national unity, a civic sense and a civil society

The first half of 2012 saw many people in Libya in a state of euphoria about what they perceived as a new sense of national unity. People in the west of the country were grateful to those in the east for having started the uprising. Easterners felt that an end had come to the neglect of their region by the central government. Armed brigades from different towns were working together towards the same goal. To the surprise of many people, for months there was a low crime rate, although most of the security forces had collapsed and the country was flooded with weapons. In fact, ordinary people all over Libya filled the security gap in their neighbourhoods. Many felt that they could finally fulfil a civic duty for their country. During 2012 numerous civil society organisations were established. Some focus on helping victims of the Gaddafi regime, others on problems caused by the civil war. Others again advocate the rights of women, children, or ethnic minorities. Some civil society institutions have also organised major demonstrations to protest against the militias. The development of an active civil society has been supported by government policy, and NGOs have, in many cases, become a vehicle for policy initiatives.

2.2.4 Basics of democracy

Since early 2011 at the outset of the 17th February Revolution, the Libyan people and its new leaders have worked hard to establish a democracy, and their efforts have proven largely successful. The changes have encouraged a free press. The government has drafted regulations for local and national elections. In accordance with these laws, Libya was able to conduct democratic elections in 2012. They brought uncontested results, both at national and local levels. In the autumn of 2012 the newly elected parliament (GNC)

approved the formation of a new cabinet. Thus Libya provided itself with a democratic government, and as such created a broad basis for political legitimacy of its new policies and laws.

2.2.5 Good government

After parliament had withheld its approval from the first PM-candidate's proposed cabinet, the next candidate, Ali Zeidan, was more successful. Since the inauguration of this cabinet on 14 November 2012, the government has faced many difficulties and potential crises but so far it seems to have addressed them with remarkable determination and persistence. Zeidan's selection of ministers was made under high pressure from certain cities, parties, tribes, and other strategic groups, which demanded inclusion of their representative(s). So far, the resulting cabinet has seemed to be reasonably stable.

Faced with many political and violent attacks, the Zeidan-government has chosen the path of peace, patience, and domestic diplomacy. Whereas the GNC has at times been very unruly, the government has consistently demonstrated a respect for democracy, and for the parliament as an institution. Zeidan has also consistently referred to the rule of law as a foundation of the new Libya.

2.2.6 Basics of rule of law and legal institutions

Upon independence, during the monarchy throughout the early 1950s, Libya had already established a full-fledged legal system (see Chapter 4). Much legislation followed models from Egypt, which had become independent 30 years before, in 1922. Egypt had, in terms of legal development, taken the lead in the Arab world. Sanhuri, the great Egyptian legal drafter and judge (Otto 1995) had come to Libya to play a central role in the genesis of the new national Libyan law.

During this period, Libya's legal profession established a reputation for the rule of law. More than a few judges and lawyers upheld this reputation, despite the attempts of the Gaddafi regime to undermine it by setting up parallel systems of "revolutionary" and "people's" courts, politically appointed or legally unqualified judges and "people's lawyers." Much of the 2011-2012 transition, led by the NTC, was law-based. Lawyers and judges were in the forefront of the 2011 uprising (Hilsum 2012, 7-46), and contributed much to legal drafting for the new Libya. A private lawyer with

a record in human rights, Salah Marghani, became Zeidan's Minister of Justice.

2.2.7 Oil money

The government also controls Libya's vast oil revenues. The National Oil Cooperation (NCO) and the Oil Ministry are known to be among the best-run state institutions. By mid-2012 oil production had regained its pre-war level of about 1,5 million barrels a day.⁸ Libya could, more than other countries in the region, afford to pay for what is needed to restore the rule of law. Yet, the boundaries between the Libya of hopes and the more troubled Libya are blurred here; oil production and transport have been disrupted by militias and workers, prompting Prime Minister Zeidan to state that "anyone who disrupts oil ports wants to fight the Libyan people."⁹ Over the past year, the government has needed the oil money, understandably, to buy its way out of problems, for example to buy stability and time by paying monthly salaries to tens of thousands of militiamen. This brings us to the problems Libya is facing.

2.3 Problems, Constraints, and "Bad News"

To which extent and how is the environment in Libya frustrating access to justice and rule of law?

2.3.1 Armed groups

Among Libya's main problems in 2013, the serious threats to the country's security and stability stand out as the most pressing. A summary from the written press of just one day in June 2013 gives an impression of the numbers and types of reported security problems (see box 2).

Numerous post-revolutionary armed groups, so-called "militias" (*milishiat*) or "brigades" (*kataib*), have kept their arms and their power. Other armed groups have emerged in the space created by the security gap. To keep them in check, the government has followed the examples of other post-

8 "Libya's oil. Gurgle and splutter," *The Economist*, 8 June 2012, accessed on 11 July 2013.

9 PM Zeidan speaking at press conference on Sunday 7 July 2013: "Anyone who disrupts oil ports wants to fight the Libyan people: Zeidan." *Libya Herald* 8 July 2013, <http://tinyurl.com/sjpgl-012>, accessed on 11 July 2013.

BOX 2

Morning Headlines Sunday 2 June 2013

- Cyrenaica Federalists Declare Self Government on 64th Anniversary of Emirate of Cyrenaica Independence, *Libya Herald*.
- Burqa Region Declares Itself Federal Region and Rejects Political Isolation Law, *Alwatan*.
- ICC Rejects Libyan Trial for Said; Demanded He Be Handed Over, *Libya Herald*, *Libyan News Agency*.
- Hollande: No French Military Action in Libya, *News24*.
- France Hollande Says South Libya Islamists Likely Behind Embassy Attack; Worried by Lawless Southern Libya, Says No plans to Intervene Militarily, Would Need UN Mandate; Initiatives to Help Tripoli to Be Unveiled in Coming Weeks, *Reuters*.
- Al-Kufra Area Commanding Officer Denies Social Media and Satellite Channel Reports of Foreign Forces Entering the South, *Libyan News Agency*.
- Kufra Military Council Chief: Five Kidnapped by Chad Tebu Belong to Border Security Brigade Of Martyr Suleiman Buntari, *Almanara*.
- Libya: Five Soldiers Kidnapped By Armed Group in South, *Tripoli Post*.
- Guards at Libyan Mellitah Oil Field Protest. *News24*.
- In Eyes of Niger People: Libya Turns From El Dorado Into Terrorist Threat, *Middle East Online*.
- Libya Becomes “the New Mali” As Islamists Shift in Sahara, *Reuters*.
- Libya Rejects Neighbours’ Claims of Destabilising Region, *AFP*.
- Spokesperson for Tripoli Police Directorate Denies Some Media and Social Media Reports About 2 Car Bombs in Dahra Area, *Libyan News Agency*.
- Tawerghans Seek Support for the Return Home, *Libya Herald*.
- Kidnapping of Revolutionary Walid Jumaa Shaaban, Head of Misrata Al-Huda Institution Security Unit, *Alwatan*.
- New Government Agency Named “Force To Protect Foreign Diplomats in Libya” Formed, *Alwatan*.
- Bani Walid Local Council Calls for Comprehensive National Reconciliation Among Tribes and Cities in Libya Based on the Principle of Restitution, *Libyan News Agency*.
- Top Level Mediation Ends Tensions Between Tajoura and Misrata, *Libya Herald*.
- Libya: Government Moves to Protect Southern Region, *Tripoli Post*.
- Libya: New Interior Minister Takes Office, *Tripoli Post*.
- Zeidan Intervention Stops Libyan Airlines’ Strike, *Libya Herald*.

Source: UNSMIL Public Information & Communication Office

conflict administrations, such as in DRC Congo, Lebanon, and South Sudan, in recognising their role, incorporating them formally in a loose national security structure, and paying monthly salaries.¹⁰ Meanwhile armed groups have at times been able to force their will on the government, parliament, on public servants, and on ordinary people. One now has to be careful about openly expressing support for the former regime. Some of the militias behave as autonomous powers within a state, arresting people, keeping thousands of them in prisons, torturing them. Militias may or may not be behind the dozens of assassinations of high-ranking police and army officers, especially in Benghazi.¹¹ They have also evicted whole communities from their homes – such as those from Tawergha, Mashashiya, Awaniyya and Tiji who fled from Misrata, Zawiyat-al-Bajul – and have refused to let them safely return. Thus at times they can exercise control over parts of Libyan state and society.

The standoff between the government and the militias has also seriously undermined the justice system (see Annex III). As a result, judges, prosecutors and police lack the state's monopoly on the legitimate use of power and thus cannot enforce the law. They receive threats, as do lawyers; some have even been killed.¹²

Ironically, this lawlessness provides the militias with a perfect justification. As long as the government cannot maintain law and order, they can claim that they will take on this responsibility. Libya thus suffers from a vicious circle of injustice and insecurity. According to the International Crisis Group (2013) there are two competing narratives to explain the vicious circle. The first is the state declaring that it cannot enforce the law as long as the militias keep intimidating and terrorising the law enforcement apparatus and ordinary people. In the other narrative, the militias claim they cannot give up their positions as long as the state allows lawlessness and impunity, especially for the stooges of Gaddafi's former regime.

10 A similar policy was pursued in Afghanistan after 2001 ("Just Don't Call It a Militia: Impunity, Militias, and the 'Afghan Local Police'." *Human Rights Watch* 2011, <http://tinyurl.com/sjpgl-013>, accessed on 28 June 2013); Lebanon in 1991 ("Ex-militia fighters in post-war Lebanon," Dima de Clerck. *Accord 24*, <http://tinyurl.com/sjpgl-014>, accessed on 28 June 2013); South Sudan from 2005 ("South Sudan army integrates largest militia." *Sudan Tribune* 10 June 2007, <http://tinyurl.com/sjpgl-015>, accessed on 28 June 2013); and the DRC Congo in 2009 ("Congo: no stability in Kivu despite a rapprochement with Rwanda." ICG (2010)).

11 "Few arrests have been made for these attacks and no prosecutions have been brought. Some suspect that many of the killings have been revenge attacks on figures from the old regime, while others believe the killers are Gaddafi regime supporters who are, as they see it, punishing individuals who chose to change sides and serve the February Revolution," in "Another senior officer murdered in Benghazi," Maha Ellawati and Ahmed Elumami. *Libya Herald* 26 June 2013, <http://tinyurl.com/sjpgl-016>, accessed on 29 June 2013.

12 "Lawyers slam 'alarming' growth of attacks on judiciary," Hadi Fornaji. *Libya Herald* 19 June 2013, <http://tinyurl.com/sjpgl-017>, accessed on June 28 2013; "Derna local councillors strike in protest at 'government inaction' and judge's murder," Ahmed Elumami. *Libya Herald* 18 June 2013, <http://tinyurl.com/sjpgl-018>, accessed on June 28 2013.

2.3.2 Institutional weakness

In 2013 the question asked by many in Libya has been: why has the government not yet taken the obviously necessary steps? Why haven't we seen the rebuilding of a strong army, a strong bureaucracy, and legal institutions? Why does the government not regain the monopoly of power by negotiating a peaceful transfer of the "good" militias into the security forces?

Most observers agree that it is not because the ministers of Zeidan's cabinet do not have the right intentions. However, they face huge problems with "getting things done." The government seems to lack the institutional strength required to translate good governance into action. The bureaucracy seems not to be able to implement, execute, and enforce the policy plans and regulations of ministers and director-generals.

Participant observers in the system have offered different explanations for this institutional weakness. They often refer to Libya's administrative culture (see 2.3.3), tainted by the influence of Gaddafi's regime and by a lack of productivity as a result of "the oil curse." When probing deeper, they often point to aspects of Libyan society (see 2.3.4).

2.3.3 The influence of the Gaddafi regime on administrative culture

One of the main accusations that has often been levelled against Gaddafi's regime is that he weakened or even destroyed Libya's regular state institutions in order to prevent any challenge to his power. When Gaddafi came to power, the country's institutions were still quite young. There was not much of an inherited colonial administration as the Italians (1911-1942) had systematically excluded Libyans from any bureaucratic and administrative institutions they had created (Vandewalle 2012, 41).

In the first decade of independence Libya was a federation in which administrative tasks were divided in a complicated way among three tiers. Only after 1963 when the federal experiment came to an end, could the central government begin to build strong national institutions (*ibid.*, 63-65); however this development was interrupted.

In 1969 Gaddafi staged a coup d'état, and in 1977 he launched his *Green Book* ideology. It reflected a profound distrust of political and bureaucratic institutions, which he depicted as obstacles to people's direct participation in political decision-making and the implementation of policies (*ibid.*, 96). According to Vandewalle (*ibid.*, 102),

the Green Book's central tenet is that ordinary citizens can directly manage the bureaucratic and administrative institutions that shape their lives, and devise their own solutions to economic and social problems. Hence the Green Book contains the essential idea of statelessness, and of people managing their own affairs without state institutions.

To implement his grandiose visions, Gaddafi created People's Committees, replacing the regular state apparatus. The regime's relentless persecution of critics installed a great sense of fear amongst the general population in particular for parallel organisations, such as the Revolutionary Committees. Gaddafi's own charisma and his informal, non-institutionalised style of leadership "fitted perfectly with the kind of personalized politics that developed within the Jamahiriyya" (ibid., 125) (see Chapter 4 for more on the concept of *Jamahiriyya*). While Gaddafi severely and brutally punished certain persons and groups, he always awarded favours to select groups and tribes.

Meanwhile Gaddafi, in contrast to his principle of statelessness, brought all aspects of the economy under state control. Much of his *Green Book* ideology reflected a socialist ideology, modelled after the Arab Socialism Nasser had introduced in Egypt. The state dominated all manufacturing, agriculture, foreign and domestic retail trade, banking, insurance, as well as major services (ibid., 190). In all sectors, new bureaucracies were created, in which the connection between productivity and income was often very thin. We may assume that Libya's big government had all the weaknesses characteristic of other centralised socialist bureaucracies in the Third World at that time: general ineffectiveness, low morale, inefficiencies, patronage, nepotism, and "rampant corruption" (ibid., 164).

For much of the Gaddafi period, failures were attributed to the country's institutions and population, often voiced by Gaddafi himself in public speeches. When in the end this lacked any credibility and the failures of the regime could no longer be ignored, the 2003-2010 period witnessed the beginning of reforms to liberalise the economy, and to roll back some of the regime's failed policies and laws. Committees were established to design new policies, new statutes saw the light, and some noticeable changes raised expectations and hopes for real reform.¹³ However, Gaddafi's basic ideology and political style did not change, nor did most of the country's malfunctioning political and administrative system.

13 See for examples of such reforms Chs. 5, 8 and 9.

In the state apparatus inherited by the present government, many officials have jobs as “sinecures,” they get a salary without having to do much – or sometimes any – work. Officials, who are professionally dysfunctional, have routinely retained their jobs and enjoyed both legal and socio-political protection, much to the dismay of a minority of dedicated, development-oriented officials. The new government, in an effort to clean the system, disclosed that many officials were found to have more than one job. Many names appeared on two, three of four payrolls of public organisations. When PM Zeidan promoted a new national ID card to the public, he disclosed that one person was even found to have a hundred jobs – and salaries.¹⁴

The existing disconnect between productivity and income is also manifest on the macro-level. Libya has a rentier economy, where budgets are covered by oil revenues, irrespective of performance in other sectors of the economy. Many ordinary Libyans feel entitled to their “fair share” of the country’s oil wealth, i.e. to an income, or two, provided by the state. For some government officials this works as a secure economic basis, to which they can add income from other sources. Obviously, efforts to reform such aspects of the civil service, meet the resistance of vested interests, and might weaken the silent support the government gets from its own public servants.

A recent phenomenon which may also affect morale in the bureaucracy, is the vetting mechanism to remove “Gaddafi loyalists.” Although there are widely different responses to this throughout the whole state apparatus, many fear replacement, which contributes to a sense of uncertainty.

2.3.4 Libyan society: socio-political identities, cleavages and conflicts

For decades personalism, clientelism, and transactionalism have been dominant features of the social and politico-administrative structure throughout the MENA region (Eickelman 1989, 2002). The proverbially strong tribes, clans, and families in the Arab Middle East have always been a countervailing force to the state and to its efforts to establish strong state institutions. What then are the most important socio-cultural markers in Libyan society?

14 “Prime Minister calls for understanding, promises explanation of Budget,” Sami Zaptia. *Libya Herald* 5 June 2013, <http://tinyurl.com/sjpgl-019>, accessed on 28 June 2013.

Libyans identify each other usually by their tribe,¹⁵ their town (of origin), their region,¹⁶ or their identity as belonging to the majority of Arabs or ethnic non-Arab minorities (cf. Obeidi 2001). From these social markers people derive much of their identity, “social capital,” and status. In contrast, being a migrant worker – from Egypt, Tunisia, Sub-Saharan Africa, and Asia – usually brings a low socio-economic status.

Certain tribes are associated with certain towns and regions, or with ethnic minorities. Over time, due to migration and urbanisation, tribal bonds have loosened in parts of the country. In contrast, for many in the east and south their tribe still plays a key role in the settlement of conflicts, both between individuals, families, as well as larger scale political conflict (see Annex II and III). Between particular tribes or towns there still are old, deeply seated differences, which flare up occasionally.

In today's Libya, the following political markers matter: having been revolutionary fighters (*thumar*)¹⁷ or related to them, or not; still being member of a particular revolutionary “brigade,” or not; having clearly been against Gaddafi's regime during the uprising, or not; being a victim seriously affected by the Gaddafi-regime, or not; having been an active supporter of Gaddafi and his policies during a particular period, or not. Three other socio-political markers may also be important: having recently returned from abroad (“double passports”) or having stayed behind and endured Gaddafi's rule in Libya; being an active member, supporter or associate of a political party or grouping, or not; and being linked to a particular foreign country, or not.

The abovementioned identity markers make people feel part of groups and communities, which form the present fabric of Libyan society. Below a shared Libyan identity we find a patchwork of identities and cleavages, resulting from the complex combinations of multiple social and political identity markers. In practice, such divisions have often stood in the way of the neutrality of the bureaucracy, and of equality between citizens before the law.

15 The role of tribe as a unit of social organisation is allegedly strongest in the east and parts of the south, as compared to Tripolitania (see Annex III).

16 The three regions, which were united in 1951 to create the State of Libya are the west, (also called Tripolitania), the east (called *Barqa* in Arabic, or Cyrenaica), and the south (usually called *Fezzan*).

17 Revolutionaries killed during the uprising are usually referred to as “martyrs.”

2.3.5 Legal system: dysfunctional and contested parts

Laws in the new democratic Libya have been enacted, first by the NTC and presently the GNC. Whereas both parliaments promulgated many laws to regulate the political transition, the main body of legislation enacted during Gaddafi's regime is still in place. Some of those laws, issued to implement "The Leader's Third Universalist Theory," laid down in his *Green Book*, are seen as the root cause of injustices and conflict. A prime example is Law 4/1978 on the reform of property and housing (see Chapter 8). Many Gaddafi-era laws are seen as detrimental to a modern market economy.¹⁸ The business community has voiced serious complaints about the old-style, socialist legislation as an obstacle to their business,¹⁹ and recently the governor of the central bank has denounced old legislation as hindrances to both domestic and foreign investment. Other Gaddafi-era laws have been criticised for other reasons, for example an important article of Marriage Law 10/1984 for contradicting the Sharia, and therefore being unconstitutional (see Chapter 4); or the Criminal Procedure Code, which according to a case study on criminal defence lawyers in this report, does not comply with international human rights standards of "due process" (see Chapter 6).

It will be a major challenge for the new Libyan state to review the whole body of laws, and to reach a near consensus on which parts should be weeded out, and which parts should be maintained, or improved.

Libya's judicial system itself is often criticised; important parts have not yet been operational again since the revolution, especially within criminal justice, and in certain parts of the country. Certain sections of the judiciary have been accused of collaborating with the Gaddafi regime, especially judges who served in the people's courts (ICG 2013, 3). Others have denied such allegations.

Some judges have been assassinated – most recently a prominent judge in Derna in mid-June 2013.²⁰ Prosecutors have received threats, and some

18 "Old financial laws curtailing progress in the New Libya," Umar Khan. *Libya Herald* 23 June 2013, <http://tinyurl.com/sjpgl-020>, accessed on 28 June 2013.

19 "Row at Libyan Businessmen's Council forum," Sami Zaptia. *Libya Herald* 16 January 2013, <http://tinyurl.com/sjpgl-021>, accessed on 28 June 2013. A businessman was quoted as saying: "we were expecting some new announcements. Some new policies or some new reforms of the existing business laws. How long must we wait for progress? I am not surprised that the business community is getting frustrated. We are still forced to operate under the old socialist laws which are holding us back and time is passing. How long must we wait?"

20 "Derna judge murdered outside courthouse," Ahmed Elumami. *Libya Herald* 16 June 2013, <http://tinyurl.com/sjpgl-024>, accessed on 28 June 2013.

have been kidnapped. As previously said, police and military officers have been assassinated, especially in Benghazi (see 2.3.1). This has served as a warning to other policemen, who consequently cannot easily confront the militias and other armed groups. Since the criminal justice system relies completely on the police for arresting suspects and enforcing judicial decisions, this has frustrated the investigation and adjudication of major crimes. For minor crimes the lower criminal courts are to some extent operational. Family courts, for example in Tripoli and Benghazi, function again as usual (see Chapter 7), though there are reports of occasional violence related to adjudication of family disputes.²¹ It is unclear, though, whether and how this relates to the general causes of insecurity.

2.3.6 Demand for federalism; decentralisation not going well

Historically, there has always been a great distance between the three regions that now constitute Libya. When Libya was established as an independent state in 1951, it became a kingdom and, unsurprisingly, a federation. The formal end of Libya's federal system in 1963 has not prevented the continuation of federalist thinking, notably in the Benghazi region. The fear of being outnumbered and discriminated against by Tripolitarians, in parliament and government, has not disappeared. This has been manifested since the 17th February Revolution through a number of well-publicised federalist gatherings, mainly in Benghazi, issuing declarations of "independence."

The same argument has also emerged in conflicts about the composition and election of the Constitutional Assembly, which is to draft Libya's new democratic constitution. On 13 March 2012, Article 30 of the Constitutional Declaration, which had served as the country's interim constitution since 3 August 2011, was amended. One of the provisions of this amendment provided that the GNC, which was soon to be elected, would choose a Constituent Assembly from non-members; this body was to be composed of 60 members "along the lines of the 60-member commission that was formed to prepare the constitution of the independence of Libya in the year 1951."²² Indeed, during the genesis of the Libyan state over 60 years ago, the Constitutional Assembly consisted of 20 delegates from

21 "Misrata lawyer attacked." *Libya Herald* 6 June 2013, <http://tinyurl.com/sjpgl-025>, accessed on 29 June 2013.

22 Constitutional Amendment No. 1-2012, Amending The Text of Article 30 of the Constitutional Declaration (unofficial translation), <http://tinyurl.com/sjpgl-026>, accessed on 4 July 2013. Draft Constitutional Charter For the Transitional Stage (original text), <http://tinyurl.com/sjpgl-027>, accessed on 4 July 2013.

the western, 20 from the eastern, and 20 from the southern region of the country.

In Tripoli the word “federalism” mainly gives rise to resistance. The Zeidan government has spoken out in favour of a strong central government but recently agreed to the transfer of several important state institutions to Benghazi, including the National Oil Corporation, Libyan Airlines, Libya Company for Insurance and the Internal Investment Company.²³ These transfers are meant to increase job opportunities and the economic development of Benghazi and the eastern region, and hence reduce the support for federalism.

Unfortunately, Libya has not yet developed an effective decentralisation policy enabling local and regional governments to establish democratic and responsive institutions, and to speed up socio-economic development and to improve services. Several elected members of local councils have stepped down out of frustration with the lack of real responsibilities, decision-making power and resources.²⁴ Much enthusiasm for the new Libya has waned since local administrators and citizens found that everything still has to be decided by central government institutions, with their cumbersome procedures and tardy administrative practices designed during the decades of Gaddafi’s rule.

2.3.7 Libya between anxieties and hopes

It is appropriate to end this section with a long citation of a well-informed observer and actor. On 18 June 2013 Mr Tarek Mitri, Special Representative of the UN Secretary-General and Head of the United Nations Support Mission in Libya, sent a briefing to the Security Council,²⁵ stating that,

The risks in Libya should not be underestimated, and by the same token, the opportunities should not be overlooked. Judging by the speed with which last year’s elections to the General National Congress took place so soon after the

23 “Federalists celebrate return of NOC to Benghazi,” Ahmed Ruhayem. *Libya Herald* 7 June 2013, <http://tinyurl.com/sjpgl-028>, accessed on 28 June 2013.

24 “TLC Deputy Chairman Resigns in Protest over PM Remarks,” Umar Khan. *Libya Herald* 26 May 2013. <http://tinyurl.com/sjpgl-029>, accessed on 28 June 2013; “President of Benghazi Local Council resigns over ‘unworkable’ conditions; aims fire at Tripoli,” Hadi Fornaji. *Libya Herald* 16 August 2012. <http://tinyurl.com/sjpgl-030>, accessed on 28 June 2013. “Benghazi local election results announced— woman candidate wins most votes UPDATE,” George Grant. *Libya Herald* 21 May 2012, <http://tinyurl.com/sjpgl-031>, accessed on 4 July 2013; “Only female member of Benghazi Local Council resigns, citing obstructionism, incompetence,” Maka Ellawati. *Libya Herald* 20 November 2012, <http://tinyurl.com/sjpgl-032>, accessed on 4 July 2013.

25 “Briefing to the Security Council by Special Representative of the Secretary-General and Head of UNSMIL, Tarek Mitri, 18 June 2013,” <http://tinyurl.com/sjpgl-033>, accessed on 2 July 2013.

cessation of hostilities, we would be forgiven if we thought that the road to democracy was as simple as it appeared. As important as these elections may have been in ushering in the beginnings of a new political process and the building of legitimate state institutions, the Libyan people will continue to endure for the foreseeable future the heavy legacy bequeathed to them over decades of brutal rule. Managing the transition is bound therefore to be difficult.

Mr. President, (...) The mood in Libya today may have changed since I last briefed the Council in March. Despite the gravity of some of the security and political developments that have taken place over the course of the last three months, Libyans have not lost confidence. Many of them remain unwavering in asserting the principles that underpinned their Revolution, and their desire to build a modern and democratic state, based on the separation of powers, respect for human rights and the rule of law.

2.4 The Many Challenges of Justice

The AJDIL research project has in its first nine months recorded many different demands for justice. Justice is not an area about which there is immediate consensus in Libya, as there are many different views of what constitute major injustices, what are the proper standards for justice, who are entitled to be the legitimate guardians of justice, what remedies will suffice to satisfy the justice-seekers, and, last but not least, what and who should come first.

The first group of injustices date back to the Gaddafi period (1969-2011), and have now provoked demands on the new State of Libya for compensation. To begin with, we can distinguish several categories of political victims of Gaddafi's repressive rule (see Chapter 9 and 10). Then, there is the strong and widespread desire to see those responsible for the Gaddafi-era atrocities and oppression be brought to justice. Based on our observations, it is most doubtful whether a transfer of Gaddafi's son Saif al-Islam or his Chief of Intelligence Sanusi to the International Criminal Court in The Hague would be understood and accepted as just by the majority of the Libyan people. Also, many now want to see the leading functionaries on whose work the regime actually rested, ousted from their positions and permanently excluded from the public sphere. There are other types of injustices and demands inherited from the old regime. There is a huge justice problem, partly of a financial-economic nature, concerning the tens of

thousands of claims from former owners of property, dispossessed by Law 4/1978 (see Chapter 8). Should the government have to restore their property to them, or pay them compensation, and if so, should this reflect the spectacular rise of real estate prices over the last 40 years? Another perceived collective injustice, more of a macro-political nature, is the neglect of the eastern region, which has called for a thorough redistribution of the state's resources.

The second group of injustices were committed during the 2011 uprising and its 2012-13 aftermath, partly by Gaddafi's troops and supporters but increasingly also by revolutionaries, or in their name. Numerous assassinations, kidnappings, assaults, cases of torture and bomb attacks have been committed. Until today militias have kept thousands of real and perceived Gaddafi supporters in their illegal prison facilities. Then there are displaced communities who cannot safely return to their homes, such as the Tawerghans. There are women who fell victim to rape by soldiers from either side. Another injustice is felt by those who were removed from their position but felt that they did nothing wrong.

The third group of injustices needing to be addressed are "ordinary" family disputes regarding divorce or inheritance, "ordinary" labour disputes, "ordinary" commercial disputes, "ordinary" crimes like assault, theft and robbery, committed by individuals or gangs, "ordinary" corruption by state functionaries, fatal traffic accidents caused by careless driving, "ordinary" discrimination and maltreatment of religious and ethnic minorities, of women, and of migrants, and so forth. They are not directly related to Gaddafi's regime, or to the revolution – although on closer observation there are often connections.

Surveying the manifold demands for justice, from different groups and individuals, many of them backed by strong political, social and armed pressure, one cannot but conclude that the new State of Libya faces a gigantic task. To fulfil this task of providing justice to all, it needs both a working system of laws, legal institutions and processes, and a society which allows itself to be guided and protected by that system.

In 2013-14, a Constitutional Assembly is expected to be formed and make major decisions about the make-up of that system, including the degree of autonomy for the regions, the organisation of the judiciary, human rights, the course of transitional justice, and the position of Sharia in the legal system. Processes of political decision-making are to be supported by national dialogue and discussions about all these issues, facilitated by civil society organisations and a free press. At the same time, state and society need a

working justice system. This requires active performance of the judiciary, a build-up of the police and the administration in general, and their protection against the type of violent attacks, which have kept the criminal justice system in limbo.

There is little doubt that the legal system as a whole – laws, institutions, and processes – needs reforms in many of its components. This is a challenge for the mid and long-term and obviously the government has not been able to address this in full. After the successful overthrow of Gaddafi's regime, the government now finds itself caught between several fires. On the one hand there is the pressure from without: all these conflicting demands for justice, dissatisfied and impatient groups and individuals, dangerous armed groups, an unruly parliament, and a critically watching international community; on the other hand, the government must deal with its own often ineffective bureaucracy and an old body of regulations. For a systematic diagnostic analysis of the legal system and how it operates in social reality, the Libyan government could muster the support of those who are trained to understand and analyse Libya's law and society, notably its most qualified academics (see Chapter 12).

Given the challenging and complex environment of Libya's justice issues, one may wonder what contribution the international community could possibly make to foster "justice and the rule of law." During Libya's first years as an independent state, in the 1950s, the UN played a major and positive role. After Libya's liberation in 2011, the UN has again provided generous assistance through the United Nations Support Mission In Libya (UNSMIL). During 2012 and 2013 many more international actors have come on stage, reflecting the rapid growth of international attention for justice and the rule of law. In the next chapter we will look at how some of these actors have regarded Libya's justice problems.