



ILAC RULE OF LAW ASSESSMENT REPORT – LIBYA

Executive Summary and Recommendations

From 15-24 January 2013, an eight-person team of experts from member organisations of the International Legal Assistance Consortium (ILAC) conducted an intensive review of numerous justice sector institutions in Libya. This review also examined several crosscutting issues facing the justice sector in the aftermath of the 2011 revolt.

The ILAC team found that the justice sector in Libya currently faces a variety of simultaneous challenges. Unquestionably, the two greatest – and interrelated – challenges are security and the fate of roughly 8,000 ‘conflict-related’ detainees still being held without charges or representation. The absence of security for justice sector personnel has led judges and prosecutors to indefinitely delay the processing of detainees’ cases. The continued confinement of these individuals in state-run and non-state prisons, often under harsh conditions, in turn exacerbates the sense of lawlessness that contributes to the lack of security.

At the same time, the justice sector faces the difficult task of dealing with allegations of significant abuses by revolutionary forces during and after the 2011 uprising. Imbued with ‘revolutionary legitimacy,’ anti-Gaddafi fighters are heroes to many Libyans, who are willing to overlook alleged excesses and even atrocities committed in the name of the Revolution. Victims, along with many in the international community, view the situation far differently, and decry the lack of prosecution of revolutionary wrongs. With irregular revolutionary forces still actively operating throughout Libya, the lack of security has made addressing these issues both politically and personally dangerous for justice sector personnel.

The justice sector’s ability to act independently during the current transitional period is also degraded by its lack of legitimacy. This issue is complicated by the fact that the justice sector is both the object of transitional reform efforts, and the vehicle for the transitional prosecution of past abuses. Thus, any extensive vetting of justice sector actors (judges, prosecutors, People’s Lawyers, private lawyers) will significantly impact the system’s ability to process cases. Yet, as one interlocutor in the Ministry of Justice put it, “how can the same judges suspected of misbehaviour during the Gaddafi regime sit in judgment of alleged Gaddafi supporters?”

Another factor contributing to the justice sector’s lack of legitimacy is that the process of attaining full independence for many institutions remains incomplete. Structurally, full independence requires not only scrutiny of on-going links between the justice sector and the executive, but also a review of the legislation and practices affecting these institutions. This process is far from complete for the judiciary, prosecution, the Ministry of Justice, and the private Bar.

Justice sector reform in Libya faces numerous other issues. Despite Gaddafi-era propaganda, the status of women in the justice sector – both as professionals and members of the public seeking justice – raises significant concerns. Though women predominate at law faculties, they frequently comprise a small minority of judges, prosecutors, governmental officials, and active members of the private Bar. Few women hold positions of authority in these institutions. Additionally, Libyan legislation and government policies fail to effectively address issues of violence against women and gender bias.

Other issues arise from the fact that those responsible for implementing these reforms typically spent their working lives subject to the perverse ideology and informational isolation imposed during 42 years of control by the Gaddafi regime. This lack of exposure to internationally recognized concepts and practices is hampering the process of reform, and frustrating those who genuinely seek effective change.

Finally, the Libyan justice sector at present is struggling with a lack of coordination and communication between the various actors. Independent but co-equal institutions have not yet developed mechanisms for efficiently and effectively working together to serve a common public goal.

Efforts to create ad hoc judicial bodies such as the Fact-Finding and Reconciliation Commission (FFRC) are constrained by the lack of legislative clarity for their mission. Equally important, creating and training new ad hoc judicial, prosecutorial and defence institutions would be far more time-consuming than enhancing the capacity of existing structures. Given that the prolonged detention of thousands of ‘conflict-related’ detainees, and need to reach some resolution regarding offenses allegedly committed by revolutionary forces, delay to create a new system is not an attractive option. Thus, while ad hoc institutions may have a role in such matters as fact-finding or reparations to victims of human rights abuses, the ordinary courts provide the only existing system remotely capable of processing the existing prosecution caseload.

Based on these findings, the ILAC team developed a set of recommendations for use by Libyan authorities and international partners. These recommendations focus on concrete steps that can be taken in the near and medium term to advance rule of law reform in Libya. In part, these recommendations require action by Libyan authorities and institutions. Other recommendations contemplate joint programs, where international partners can provide Libyan professionals with comparative insights, and allow the Libyan partners to develop Libyan solutions utilizing international experiences and expertise.

Ultimately, the shape and course of the rule of law in Libya is for Libyans to decide. The ILAC team was impressed with the professionalism and commitment of many Libyans involved in the reform effort. ILAC hopes that this assessment and the accompanying recommendations will assist Libyan reformers and their international partners in moving forward to develop the new Libya earned through the bravery and sacrifice of the Libyan people. The recommendations of the ILAC team are as follows:

I. The High Judicial Council (HJC) and Judiciary

A. The security of judges and prosecutors must be substantially improved. As stressed throughout this report, the judiciary, in cooperation with the government, must increase security measures, to provide an environment where judges and prosecutors can work without fear of threats or retaliation. Given the variations in the nature and severity of security threats in different parts of Libya, government responses should be based on consultations with judicial officials and staff to identify and respond to specific local security threats.

B. The courts, particularly the criminal courts, must begin operating on a full-time basis and promptly resolve the cases of current detainees. Current plans to provide all ‘conflict-related’ detainees with a prompt and fair hearing should be implemented without delay. The courts must also be given the necessary tools and capacity to deal with other ‘transitional’ issues referred to them by bodies such as the FFRC.

C. The judiciary should address the legacy of perceived corruption and political bias in the judicial system. To address the existing legacy of public mistrust and create the preconditions for long-term improvement of the effectiveness of the judiciary, appropriate steps should be taken to determine the truth regarding allegations of corruption, bias, incompetence and complicity in political show-trials by sitting members of the judiciary and develop institutional mechanisms to preserve the judiciary's integrity in the future. In this regard, ILAC believes that the recommendations of the Committee for the Promotion of the Judiciary are an important first step.

D. Training programs for judges and prosecutors should be strengthened and expanded, utilizing the High Judicial Institute. The HJI presents an excellent institutional training platform, but must implement significant changes in order to meet the new challenges facing the judiciary. These changes include updating the content of the training curriculum (particularly in such emerging areas as transnational crime, human rights and commercial law), instilling new technical skills, and adopting improved teaching methodologies based on interactive adult-learning techniques. A substantial, relevant and mandatory continuing education program should also be developed in consultation with sitting judges and prosecutors.

E. A long-term strategy should be developed for strengthening judicial independence. While the separation of the HJC from the Ministry of Justice represents a key first step, other measures to secure judicial independence should include (a) a systematic review of the relevant existing legal norms and practice, and (b) involvement in current political processes that will impact judicial independence, such as the drafting of the Constitution.

F. Coordination and cooperation between all rule of law and transitional justice institutions should be enhanced. Efforts should begin to develop mechanisms for coordination and cooperation between the judiciary, other rule of law institutions, and transitional justice bodies such as the Fact-Finding and Reconciliation Commission (FFRC), in order to improve the effective functioning of the entire system. Any lack of clarity concerning the respective jurisdictions of the various organs should be quickly resolved, and simple, mutually agreed-upon procedures adopted for matters such as referral of complaints or files, as well as reporting back to referring agencies regarding actions taken.

G. Efforts should be made to identify and remove obstacles to the recruitment and promotion of women judges and prosecutors. A striking aspect of the Libyan judiciary is that, though a substantial majority of law students are women, the proportion of women judges and prosecutors is far smaller. A concerted effort should be made to identify obstacles to the recruitment, hiring and retention of women, and to implement programs to significantly increase the number and promotion of women judges and prosecutors.

H. Judges and prosecutors should be appropriately compensated to retain trained professionals and minimize incentives for financial corruption. As a practical matter, the state's investment in training senior judicial officials is lost if legal professionals resign due to disproportionately low salaries.

I. Support should be given to a voluntary judges association, and the participation of judges and prosecutors in international professional organizations. Experience in other countries reflects that a strong association of judges and prosecutors typically enhances the independence and competence of the judiciary, while contact with professional colleagues and the ability to observe best practices on a comparative basis enhances their skills.

II. The Ministry of Justice

A. Efforts by the Ministry of Justice to address issues of transitional justice should continue. The Ministry has taken crucial steps to initiate legislation to end impunity, improve conditions of detention and establish the control of the Judicial Police over all conflict-related detainees. The Ministry has also coordinated with the judiciary in developing screening programs for conflict-related detainees and bringing to account those responsible for contemporary human rights abuses. These initiatives should be supported and continue.

B. Adequate resources and support should be provided to the judicial police. The judicial police should receive proper training in international standards concerning the treatment and security of detainees, as well as support in establishing security for courtrooms and other judicial facilities.

C. Efforts to strengthen the capacity of the Ministry of Justice should continue. The Ministry of Justice should develop an adequately resourced international cooperation department with sufficient, well-trained staff to evaluate and cooperate with international projects and donor organisations. In addition, the Ministry's capacity to support policy development and legislative implementation should be increased.

D. Statistical data should be collected regarding key-performance indicators in the justice sector. The lack of reliable data, and the capacity to monitor and evaluate such information are major impediments to justice sector reform.

E. Mechanisms should be developed to ensure access to justice for the underserved in Libya. After broad consultation, Libya should develop a strategy for ensuring access to justice for the indigent, vulnerable and marginalized. This review should include a systematic analysis of the capabilities and suitability of the People's Lawyers Directorate, and other rule of law actors such as the private bar to meet these needs. A public information strategy should also be developed to inform the public concerning the various agencies handling transitional justice and human rights issues and procedures for filing complaints before these bodies.

F. Modern court management practices should be implemented throughout Libya. Working with the Judiciary and fully respecting its independence, the Ministry should promote modern court management practices, and ensure that court administrative personnel receive sufficient training and resources to be able to implement these practices effectively and consistently.

G. Support should be provided to the Directorate of Law. In addition to increasing its capacity to draft effective legislation, the Directorate of Law should develop the expertise to review existing legislation for compliance with international standards, and to provide policy recommendations for implementing new legislative programs.

III. The Basic Freedoms and Human Rights Council (BFHRC)

A. A longer-term plan should be developed and implemented for the support and training of the BFHRC. As a new and unprecedented institution in Libya, the BFHRC requires both institutional and human capacity development. In particular, the BFHRC needs to increase the staff's capacity to process complaints, undertake investigations, assess legislative compliance with international conventions, engage in policy-making and promote public awareness of human rights. International exchanges and linkages with other national human rights institutions in the region will be of particular importance.

B. The BFHRC's relationships with other rule of law institutions should be clarified. To avoid overlap and enhance cooperation, the BFHRC should develop mechanisms for exchanging information with other rule of law institutions, and protocols for reporting and collaboration on matters requiring cooperation, such as the Council's mandate to refer cases to the prosecutor.

IV. The Bar Associations and Private Lawyers

A. The Draft Law on the Legal Profession should be rapidly adopted and implemented. The adoption of the Draft Law is vital for the development of the profession, as well as improvement of the quality of legal education and the institutionalization of a system of legal aid.

B. Libyan Bar associations should encourage and promote women practitioners. All Libyan bar associations should develop strategies to identify and overcome obstacles facing women lawyers in private legal practice and in attaining leadership positions in the Bars.

C. The Libyan Bar Association (LBA) should adopt a code of ethics. The LBA should take the lead in adopting a new ethical code focusing on the profession's core values, including independence, integrity, prevention of conflicts of interest, and confidentiality.

D. Libyan Bar associations should further develop their capacities to support private practitioners. In order to function effectively, the LBA should develop greater capacity to receive and distribute grants, and to coordinate effectively with international professional organizations and donors. All Libyan Bar associations should increase their abilities to coordinate their activities, and communicate with the Libyan population and media.

E. The LBA should develop digital legal resources. The LBA should be supported in collating and publishing Libyan statutes, regulations, commentaries, and case law, in line with the principles of the Free Access to Law movement.

F. Libyan Bar associations should foster volunteerism and access to justice for all. Access to justice is a critical issue in Libya. The various Libyan Bar associations should develop plans for effectively harnessing and managing the pro bono legal skills of their members, and provide the training, resources and effective coordination with other actors to reach this goal.

V. The Law Faculties:

A. Libyans should undertake a national dialogue among all relevant stakeholders concerning the future of legal education. The various Libyan stakeholders should discuss the need for and content of legal education reform, and develop a national strategy to set standards for public and private laws faculties.

B. Support should be provided for on-line learning, research and dialogue for Libyan law students. Until a national strategy is implemented, support should be provided for on-line "knowledge centers" for Libyan law students who are looking for ways to supplement their coursework.