

# Libyan justice

The new Libya without Qadhafi must now rebuild credible infrastructures. Its laws need rewriting with an eye to the kind of country one intends to build. At the moment security is lacking, the militias are still armed and a lay state is still just an idea.

by Claudia Gazzini

The October 2012 military assault on the town of Bani Walid, which killed more than 50 people and forced more than 10,000 families to flee from their homes following the town's refusal to hand over "wanted" individuals to unruly armed groups while Libya's judiciary remains in disarray, showcased how delays in reforming Libya's justice system can fuel grievances capable of reigniting armed conflict. More than a year since the fall of the Qadhafi regime, frustration over the absence of a functioning court system and the government's inability to curb the authority of revolutionary armed groups, who continue to run prisons and enforce their own notions of justice, have hampered national reconciliation and risk further undermining the authority of this weak and fragmented state.

Efforts to kick-start Libya's criminal justice system have faltered. Some 7,000 people captured by revolutionary brigades during and after the conflict are still arbitrarily detained without due legal process. The country's criminal courts are functioning at a bare minimum. Only a handful of trials against senior Qadhafi-era officials have begun in regular courts. Military courts, which have jurisdiction over combatants as well as civilians supporting Qadhafi's armed forces and are scheduled to try more than 1,000 captives from the war, lack independence. Most government-controlled prisons have little security and numerous jailbreaks have taken place since the end of the war. Judges and prosecutors are often



threatened. Corruption at all levels of the justice system is widespread.

Aside from the systemic weaknesses of Libya's justice system inherited following decades of political interference, the current paralysis of the criminal justice system is also the result of the failing security in the country. The lack of an effective national police force,



coupled with the widespread availability of arms among civilians, has undermined the state's capacity to investigate and carry out justice. Hundreds of armed groups that refused to lay down arms after the fall of Qadhafi now function as parallel police forces, at times working at cross-purposes. They operate investigations and arrests units that nominally

refer to either a civil or a military prosecutor's office, but in many respects act independently and arbitrarily. For the most part, such bodies lack any investigative capacity and its members have never engaged in formal policing or legal training.

Hanging over the Libyan security situation is the lack of accountability for crimes the rev-

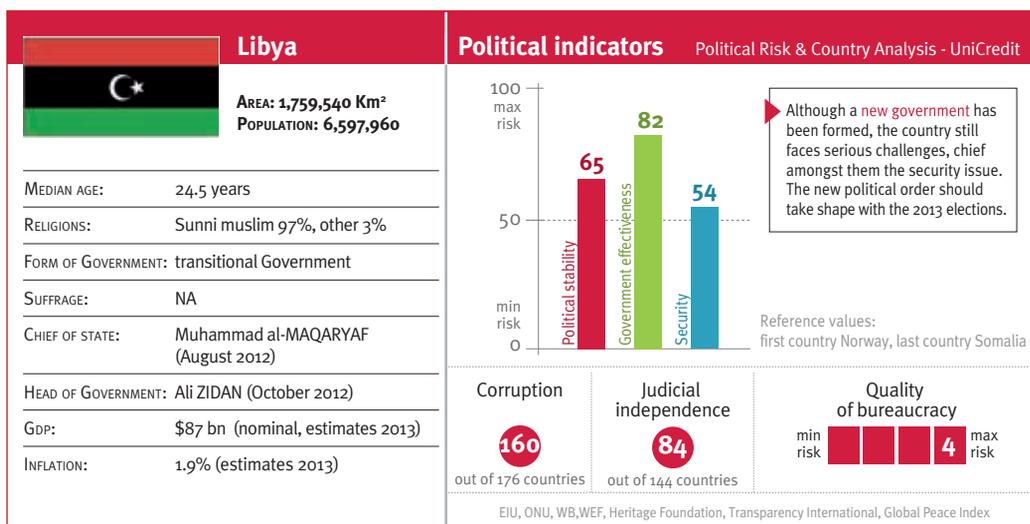
**☒** Young women during a karate lesson in Tripoli. A rare opportunity for women to express themselves freely.

olutionary fighters committed during the 2011 conflict. In March 2012 a UN Commission of Inquiry concluded that revolutionary forces had committed war crimes and crimes against humanity but that no investigations into such violations had until then been carried out. In May 2012, the Libyan National Transitional Council issued a controversial amnesty law granting immunity to those who committed crimes during the revolution, including murder and forced displacement. The law emboldened former fighters to disregard the crimes conducted during the war, and to consider their current actions similarly to be above the law.

When they came to power, the new Libyan leaders promised a clean break from Qadhafi-era abuses, when political trials, detention and killing of opponents of the regime were commonplace, and have repeatedly stated their commitment to the rule of law. "Proper justice is one of the reasons why this revolution has started and one of the reasons why we ended where we are," said former Prime Minister Abdurahman al-Keib while visiting a new deten-

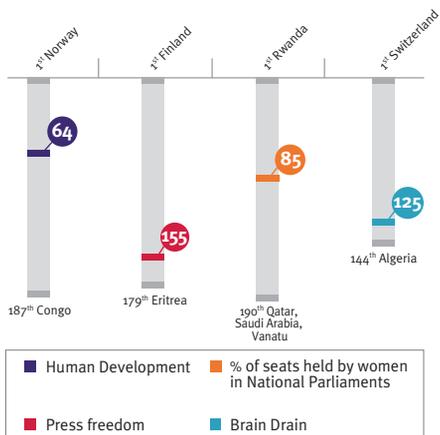
tion facility in July 2012 at the eve of the country's first election." Current Prime Minister Ali Zeidan vowed to turn Libya into a "state of law". Such a pledge is also enshrined in the August 2011 Interim Constitutional Declaration, according to which "there shall be no crime or penalty except by virtue of the text of the law" and "judges shall be independent, subject to no other authority but the law and conscience."

Their good will is not in doubt. Authorities, however, are struggling to turn these statements of intent into reality. Some noticeable progress has been made with respect to the living conditions of prisoners in official government custody, the court infrastructure and in ensuring greater independence of the Supreme Court and the Supreme Judicial Council (SJC). A December 23, 2011 Supreme Court ruling also declared the procedures thus far adopted in criminal trials as unconstitutional. These are positive developments. But the government has faced many obstacles in outlining and implementing a much-needed reform of the justice system. An October 2012 draft ju-

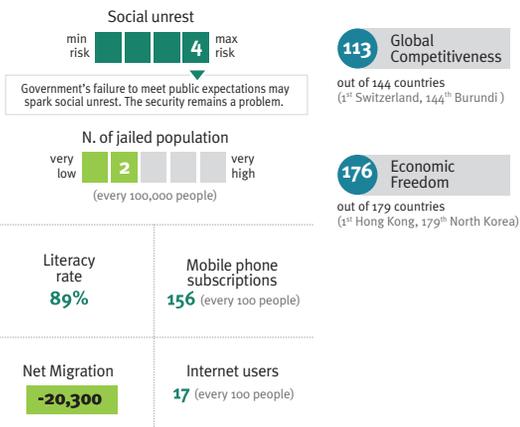




## Social indicators



## Business Environment



☒ Bab Al Azizia, a bomb site. Destitute families have found accomodation in what's left of the bombed buildings.

☒ Hundreds of thousands ex-rebel fighters are still fighting for a better life after the revolution.

diciary law presented by the SJC proposes to purge the system of judges who were closely implicated with the regime, but it has already sparked criticisms for the draconian (and not appealable) categories it outlines for judges' dismissal. It also falls short of addressing the much broader range of problems inherited from a long history of political interference in the justice system. While Libyan law provides for an independent judiciary, it was never independent in practice.

Most importantly, state authorities have been unable to stop individuals and armed groups from applying "victor's justice." This has ended up creating a political grammar that awarded the brigades institutional support for their lawless behavior. Revolutionary forces throughout the country drafted lists of "wanted men" – irrespective of judicial procedures. Arbitrary arrests, kidnappings and killings of alleged opponents of the 2011 revolution as well as Qadhafi-era security officials have continued after the formal end of the war and most are not investigated. Even the perpetrators of the September 2012 attack against the US consulate in Benghazi, which killed the US ambassador and 3 others, have yet to be arrested. The January 12, 2013 attack against the Italian consul is just the latest of a series of targeted attacks that have taken place in the eastern capital.

Such attitudes have undermined national reconciliation. In May 2012, when Islamist leader Ali Sallabi

started to dialogue with former Qadhafi supporters who fled to Egypt, the initiative met fierce resistance among revolutionary forces and within the National Transitional Council, the self-appointed revolutionary governing body that was in power until the election of the GNC in July 2012. Several Libyan politicians said they oppose "cheap" reconciliation unaccompanied by accountability, and accuse the government authorities of talking about transitional justice as a means to allow former regime supporters to return to power, and insist instead on retributive justice for them. "They should either be killed or face justice," said one influential revolutionary leader.

Ordinary Libyans, even among those who supported the revolution in its early hours, expressed their anger at the unchecked authority of the brigades. The expression "ma fish qanun" (there is no law) has become increasingly common. Even the head of General National Congress (GNC) admitted that delays in reactivating and reforming the judiciary "has cre-

ated a state of discontent and tension among different segments of society and contributed to the spread of chaos, disorder, corruption and weakness in the performance of various government agencies."

The problems of Libya's justice system came to international attention on the occasion of Libya's dispute with the International Criminal Court (ICC). Libya and The Hague are at loggerheads over jurisdiction





on the trial of Qadhafi's son, Saif al-Islam, who has been in the custody of an armed group in Zintan since his capture in November 2011. The arrest and 3-week detention in Libya of Saif al-Islam's ICC-appointed Australian defence lawyer in June 2012 has further complicated relations between Tripoli and The Hague. Both the Libyan government and revolutionary forces are unequivocally determined to host a domestic trial

with or without international approval because they want Saif to be held accountable for a broader range of crimes than those that fall under ICC jurisdiction. Yet to do so in conformity with international law, Libya needs to demonstrate to ICC judges that it has both the willingness and the ability to guarantee a fair trial.

Whatever the outcome of Libya's admissibility challenge it is essential that the international commu-

nity and the ICC support the country's efforts to reform its judiciary. Such a commitment becomes even more important should Libya decide to go ahead with Saif al-Islam's trial in spite of a possible negative ruling from the ICC. The United Nations Support Mission in Libya (UNSMIL), the UNDP and the EU, which have been advising Libyan authorities on transitional justice since the end of the war, as well as other international organizations and Libya's bilateral partners, need to coordinate and be mindful of the country's legal and judicial background as well as of the tensions that the fragmented political and security landscape have given rise to. Italy, in particular, could play a significant role in helping reform and enhance Libya's criminal justice system given the historical influence that Italy's penal code has had in shaping the one Libyan judges still use today.

Libya's political transition is fraught with potential dangers due to the fragile security situation, the continuous power exercised by brigades who have not disarmed, recurring local conflicts and weak state institutions. As the country embarks on a constitutional-drafting project that will outline the future role of the judiciary, it is of the essence that decision-makers bear in mind both the legacies and the shortcomings of the past and resolve the present obstacles to the creation of an independent justice system, which was one of the stated goals of the 2011 Libyan uprising. **E**