

# Trial by Error: Justice in Post- Qadhafi Libya

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## *Executive Summary*

There are many necessary cures to Libya's pervasive insecurity, but few more urgent than repairing its judicial system. Qadhafi-era victims, distrusting an apparatus they view as a relic, take matters in their hands; some armed groups, sceptical of the state's ability to carry out justice, arbitrarily detain, torture or assassinate presumed Qadhafi loyalists; others, taking advantage of disorder, do violence for political or criminal aims. All this triggers more grievances, further undermining confidence in the state. Breaking this cycle requires multi-pronged action: delivering justice to former regime victims by reforming the judiciary and kick-starting transitional justice; screening out ex-regime loyalists guilty of crimes while avoiding witch-hunts; and reining in armed groups, including those operating under a state umbrella. Unless there is a clear message – the justice system is being reformed; no violence or abuse, done in the past by Qadhafi-era officials or in the present by armed groups will be tolerated – there is a real risk of escalating targeted assassinations, urban violence and communal conflicts.

It has been well over a year since Qadhafi's regime was ousted and still there is no functioning court system in many parts of the country, while armed groups continue to run prisons and enforce their own forms of justice. The severe deficiencies of the current judicial system are rooted, first and foremost, in the failings of the one that, in principle, it has replaced. Under Qadhafi, the judiciary suffered from politicisation of appointments, rampant corruption and the use of extrajudicial means to target political opponents. Four decades of such arbitrary justice served as a burdensome backdrop to the new government's efforts; faced with a choice between summarily dismissing judicial officers who served under Qadhafi or gradually screening them one-by-one, the new authorities so far have opted for the latter. While this was the right decision, it has contributed to public scepticism regarding the scope of change.

The situation has been complicated by the proliferation of armed groups. Distrustful of the Qadhafi-era judiciary and police, frustrated by the slow pace of trials against former officials, facing state security forces in disarray and emboldened by their new power, so-called revolutionary brigades – and, at times, criminal gangs posing as such – have been operating above the law, hindering the work of investigators and judges. They all at once assume the roles of police, prosecutors, judges and jailers. Armed brigades create investigation and arrest units; draft lists of wanted individuals; set up checkpoints or force their way into people's homes to capture presumed outlaws or people suspected of aiding the former regime; and, in some cases, run their own detention facilities in their own headquarters, isolated farms or commandeered former state buildings. Thousands of individuals are in their hands, outside the official legal framework and without benefit of judicial review or basic due process. Assassinations and growing attacks against government security forces have further darkened the picture.

This has all the hallmarks of a vicious cycle: impatience with the pace of justice and overall mistrust embolden armed groups; their increased activism undermines the state's ability to function, including on matters of law and order; and this in turn vindicates the armed groups' claim that it is their duty to fill the vacuum.

Underlying this state of affairs are two conflicting views of both the source of the problem and the nature of its remedy. Some – Prime Minister Ali Zeidan’s government among them – view the armed groups as a principal cause of growing violence; they advocate their disbandment or absorption into the official security apparatus and the transfer of detainees under their control to the state judiciary. Others, including the brigades themselves, view the armed groups’ activity as necessary in light of defective state institutions and continued sway of Qadhafi-era officials. These competing narratives translate into divergent approaches to the judiciary: between the government’s cautious approach to weeding out former officials on a case-by-case basis and the brigades’ call for root-and-branch dismissal of all presumed loyalists. To many Libyans, frustrated by how little appears to have changed, the latter view undoubtedly carries appeal.

Contradictory government policies towards armed groups partly explain the existence of such polarised views. The National Transitional Council (NTC), Libya’s first post-Qadhafi governing body, vowed to build a new justice system based on the rule of law. Yet, it simultaneously encouraged consolidation of the brigades, granting official recognition to a large number of armed groups that carried out their own policing activities. Too, it provided them with immunity for crimes arguably carried out in defence of the revolution. The NTC’s successor – the elected General National Congress (GNC) – partially followed in its footsteps, sanctioning efforts by government-affiliated armed groups to seize suspected individuals without regard for due process.

Given this, it is a credit to Zeidan’s government, appointed in November 2012, that it is trying to buck the tide. He and his justice minister have announced a policy of zero-tolerance toward arbitrary detention or revenge assassinations and made it a priority to transfer into state custody thousands of arbitrarily detained individuals. State security forces have emptied several illegal detention centres in the capital and the legislature passed a law criminalising torture and abductions.

It is very much a work in progress, though, and the balance of power does not clearly tilt toward the government. If not carefully managed, and in particular if legitimate grievances regarding the sluggish pace of justice for Qadhafi-era crimes are not addressed, a confrontational approach toward the brigades could well backfire. There is evidence already: the justice ministry and prime minister’s office have come under attack, and armed groups threaten to take over prisons currently under government control.

Getting this right will entail a form of political multi-tasking. The government will have to provide visible signs that it is addressing shortcomings inherited from the past in order to restore confidence in the justice system and security forces. Criminal prosecutions against high-ranking Qadhafi-era officials are an important step, but they will not suffice; what is needed is a more comprehensive transitional justice process that, in addition to criminal trials, includes appropriate vetting mechanisms for former regime loyalists and truth commissions. At the same time, armed groups – even those hailed as heroes of the uprising – will need to be held accountable for their actions as well; justice for victims of yesterday’s crimes must go hand-in-hand with justice for victims of today’s.

## *Recommendations*

*To restore trust in the judicial system and ensure accountability*

### **To the Supreme Judicial Council:**

1. Revise the draft law on the judiciary to ensure that vetting mechanisms are not based on political affiliation by providing that, inter alia:
  - a) an independent panel is tasked with vetting members of the judiciary;
  - b) the process is transparent and that disbarred judges have the right to appeal; and
  - c) judges are dismissed on the basis of a fair review of their performance and qualifications and not simply for having served on Qadhafi-era “special courts”.

### **To the Justice Ministry:**

2. Establish, as a matter of urgency, a screening process to end arbitrary detentions.
3. Reactivate currently non-operative courts, and in districts where lingering distrust towards the state judiciary is the cause for their closure, reach out to local armed groups, notables and local councils to promote greater dialogue on the state justice system.
4. Reach out to ordinary citizens through media and civil society groups to explain the current judicial system and restore confidence in what many still perceive as a Qadhafi-era relic.

### **To the General National Congress:**

5. Pass a modified bill on the judiciary, as described above, so that judges are vetted by an independent panel, and use this, rather than the Political and Administrative Exclusion Law, as the principal means to weed out corrupt and tainted members of the judiciary.
6. Approve the draft laws on transitional justice and restriction of military jurisdiction to members of the armed forces.

### **To the Office of the General Prosecutor:**

7. Ensure that all investigations and criminal trials, including those of former regime officials, respect due process and are conducted consistent with the Code of Criminal Procedure.

### **To governments that have pledged to support rule of law and transitional justice programs in Libya, the UN Support Mission in Libya (UNSMIL), European Union (EU) and international NGOs operating in the country:**

8. Provide technical assistance and training to the Fact-Finding and Reconciliation Committee and its local sub-committees and support civil society organisations' efforts to document past and recent abuses.

*To help rein in armed groups*

**To the General National Congress:**

9. Amend law 38/2012 to clarify that perpetrators of crimes such as torture, murder and rape committed during and after the 2011 war will not be granted legal immunity.

**To the Office of the General Prosecutor:**

10. Hold members of armed groups accountable for their actions, notably those involving torture and death in detention.

**To the Interior Ministry and Defence Ministry:**

11. Bar individuals and armed groups responsible for serious crimes from leadership positions in the state security apparatus.
12. Ensure that units of the Supreme Security Committee (SSC), Libya Shield and other government-approved armed groups halt the practice of arresting individuals and storming homes or offices without warrant or evidence of wrongdoing.
13. Ensure that only official security units arrest so-called wanted individuals and that such units adhere strictly to due process.

**Tripoli/Brussels, 17 April 2013**

# Trial by Error: Justice in Post-Qadhafi Libya

## I. Introduction

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In October 2012, armed groups led an assault on the town of Bani Walid following its refusal to hand over so-called wanted individuals. The result – over 50 dead and more than 10,000 families forced to flee their homes – was a stark illustration of, among other problems, the risks persistent disarray in Libya’s judiciary entail.<sup>1</sup> More than a year and a half since the fall of Qadhafi’s regime, the absence of a functioning court system and the government’s inability to curb armed groups – which continue to run prisons and enforce their own forms of justice – fuel frustration, hampering efforts at national reconciliation and undermining the authority of a still weak and fragmented state.<sup>2</sup>

Upon coming to power, Libya’s new leaders promised a clean break from the abuses of the past, when political trials, detention and killing of regime opponents were commonplace. Likewise, they repeatedly asserted their commitment to the rule

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<sup>1</sup> On 25 September 2012, fighters from the town of Misrata vowed to purge Bani Walid of former regime remnants if leaders of the city, which they accuse of being a pro-Qadhafi stronghold, refused to hand over those responsible for the death of Omran Shaaban. He was a former rebel from Misrata credited with capturing Qadhafi. Injured and detained in Bani Walid, he died of his wounds after his release. The General National Congress (GNC) supported the demands, issuing GNC Decree 7/2012, authorising force to capture those allegedly responsible for his death. The decree stated that “the defence ministry and the interior ministry are tasked with the arrest of those responsible for the kidnapping and torture of the martyr [Shaaban] and his companions, and the arrest of others wanted by justice, who must be handed over to the judiciary within ten days from the issuance of the decree. Likewise prisoners still being held in Bani Walid must be released. The two ministries are authorised to take all appropriate measures, including the use of force if necessary to implement this decree”. Misratan fighters from the Libya Shield Forces (LSF), a coalition of armed groups that operates under the chief of staff’s authority, imposed a three-week siege on the outskirts of the town. They cut off electricity, water and food supplies in an attempt to pressure the town’s authorities to hand over the alleged fugitives. Reconciliation councils and GNC President Mohammed Magarief failed to broker a peaceful agreement. Despite the siege and threats of attack, Bani Walid tribal elders refused to hand over their men to what they considered lawless militias and called for a proper investigation. They also were reluctant to hand them over to a state that – in their words – had a “broken judicial system”. After several rounds of negotiations, they stated their willingness to allow the army enter the town and to hand over those individuals for whom the prosecutor would sign an arrest warrant. Misratan authorities refused the proposal, and the LSF, with some army backing, launched a full-scale attack, 17-24 October. According to the government spokesperson, speaking immediately after the attack, “around 50 people died in the clashes”, but no official death toll was ever established. Crisis Group interviews, GNC members, Supreme Security Council (SSC) commanders, LSF members, tribal leaders, judges and prosecutors, Tripoli, Zliten and Bani Walid, November-December 2012; Nasr al-Manaa, government spokesperson at televised joint press conference, Tripoli, 24 October 2012. A similar refusal to hand over “wanted” individuals triggered armed clashes in Tripoli’s central Zawiyah Street neighbourhood on 4 November 2012, in the coastal city of Khoms the next day, and again in Bani Walid in mid-December 2012. In early 2013, LSF forces from Zawiyah claimed that four people died, including an LSF commander, in gun-fights following an attempt to arrest a “wanted” resident of the nearby town of Ajaylat; however, people familiar with the incident claim the clashes were over drug routes. Crisis Group interviews, tribal leaders, security forces, Tripoli and Sabratha, January 2013.

<sup>2</sup> For earlier analysis of communal clashes, including those in Bani Walid, see Crisis Group Middle East/North Africa Report N°130, *Divided We Stand: Libya’s Enduring Conflicts*, 14 September 2012.

of law. Visiting a new detention facility in July 2012 on the eve of the country's first election, former Prime Minister al-Keeb said, "proper justice is one of the reasons why this revolution started and one of the reasons why we ended where we are".<sup>3</sup> Echoing those words, the new prime minister, Ali Zeidan, vowed to turn Libya into "a state of law" (*dawlat qanun*).<sup>4</sup> Such pledges are 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".<sup>5</sup>

The authorities undoubtedly have made progress in several respects; notably, the conditions in which high-ranking prisoners are held clearly have improved, and the Supreme Court has gained greater independence. Moreover, following a December 2012 Supreme Court ruling that declared unconstitutional certain procedures used in trials against senior Qadhafi-era officials (procedures bequeathed by the former regime), judges set out to rectify them.<sup>6</sup>

Yet, these achievements notwithstanding, much judicial reform still awaits. Part of the problem involves the long history of political interference and corruption the current system inherited and that needs serious correction. Also, views on appropriate remedies diverge.

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<sup>3</sup> See "Libya justice system stagnant despite funding", Al-Jazeera, 1 July 2012. Protests against the detention of a prominent lawyer and human rights activist, Fathi Terbil, whom Qadhafi-era security officials in Benghazi called in for questioning on 15 February 2011, were a precursor to the larger anti-regime protests that erupted in the eastern city over subsequent days. Terbil had represented families of the victims of the Abu Salim 1996 prison massacre during which security officials killed over 1,200 detainees following a prison riot. The quest for justice became a central theme of the 2011 uprising; these aspirations were symbolised by the transformation of Benghazi's courthouse into the uprising's operations centre. The choice of former Justice Minister Mustafa Abdel Jalil to head the National Transitional Council (NTC), the self-proclaimed assembly that led the fight against the regime, was telling; in 2010, he had clashed with Qadhafi over judicial reform. The appointments to the NTC of Terbil and Ahmed Zoubair, Libya's longest serving political prisoner, were equally significant.

<sup>4</sup> See public addresses broadcast on Libya Wataniya radio channel, 5 January 2013. "Libya state of law and justice and respect of human rights" is also the motto of the 2012-2014 strategic plan of the justice ministry.

<sup>5</sup> Respectively Articles 31 and 32 of the Interim Constitutional Declaration, approved and announced by the NTC on 3 August 2011, henceforth Constitutional Declaration (2011). The 37 articles are the key governance principles until adoption of a permanent constitution and election of representative bodies.

<sup>6</sup> Constitutional Chamber of the Supreme Court, ruling 59/25, 23 December 2012. Although in 2005 Libya abolished the People's Court (*mahkama al-shaab*) and the people's prosecution office (a separate office for cases heard in the People's Court), the 1988 law regulating the People's Court was not scrapped. As a result, even after the court ceased to exist, ordinary prosecutors continued to adjudicate most criminal offences, including political crimes, pursuant to the People's Court's procedures as opposed to those regulating ordinary criminal prosecution. Specifically, suspects appearing before a People's Court could be detained for longer periods without judicial review and did not have a right to a lawyer during interrogations; likewise, prosecutors did not need to go through an indictment chamber to bring a case to court. People's Court procedures continued to be used until a 23 December 2012 Supreme Court ruling. Crisis Group interview, senior ministry of justice official, legal scholar, January 2013. The Supreme Court ruling should affect all cases against Qadhafi-era officials that have reached trial phase. These include cases against former intelligence chief Abu Zeid Dorda, former Foreign Minister Abdel Ati al-Obeidi, former head of the General People's Congress (GPC) Muhamed Belqasim Zwai and former Prime Minister al-Baghdadi al-Mahmudi, all of whom are being held and tried in Tripoli. The Supreme Court ruling also is likely to affect preparations for the trials of Qadhafi's son Saif al-Islam and intelligence chief Abdullah Senussi.

Several lawmakers believe that justice will only begin to be served after a thorough purge of the judiciary. For this purpose, they support two draft laws that would lead to the dismissal or barring from office of a large percentage of current judges and prosecutors.<sup>7</sup> While neither law had been approved, public pressure to “cleanse” the system of former officials is mounting. Critics of these bills, including most current members of the judiciary, believe that such a purge would do more harm than good. They argue instead that a limited number of people should be dismissed, but only after individual screening and alongside internal reform of the judiciary and the entire court apparatus, including military courts, which enjoy wide latitude to try civilians and are viewed as lacking independence.<sup>8</sup>

These more structural problems aside, judicial authority likewise has been eroded by overall lack of security. The absence of an effective national police force, widespread availability of weapons and persistent assassination of security officials have hampered the state’s investigative capacity as well as its ability to carry out justice. Tellingly, the investigation into the September 2012 attack against the U.S. consulate in Benghazi, which killed the ambassador and three other U.S. citizens, has come to a standstill.<sup>9</sup>

Across the country, criminal courts operate at a bare minimum. In the Jebel Akhdar region, east of Benghazi, inadequate security and threats against local prosecutors and judges have forced the suspension of all investigations and trials since

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<sup>7</sup> The first is the draft law on the judiciary presented by the Supreme Judicial Council (SJC) to the GNC on 16 October 2012. It would dismiss all members of the judiciary and charge a secret committee with exclusively reappointing those deemed fit for duty. The second is the draft law on political and administrative exclusion (*al-azl al-siyasi wa al-idari*), henceforth political exclusion law, which a committee of nineteen GNC members presented to the GNC on 14 February 2013. This bill proposes to disbar all judges who served on a Qadhafi-era People’s Court and other types of so-called “exceptional” or “special” courts, as well as all former prosecutor generals and peoples’ prosecutors (prosecutors in the parallel People’s Courts system), irrespective of individual conduct, for ten years. For more on the special courts, see below. Aside from members of the judiciary, the political exclusion bill lists 35 other categories of people to be barred from high-ranking political and administrative positions. At the time of writing, lawmakers were in the process of drafting a new version of the political isolation bill, which they hoped would gain enough support in the GNC.

<sup>8</sup> Crisis Group interviews, judges, members of the Supreme Judicial Council and the justice ministry, Tripoli, January 2013.

<sup>9</sup> Libya has insisted it will lead investigations into the attack. For more than six months, U.S. officials repeatedly said there had been no noticeable progress, with one calling it “a joke”. Reuters, 19 December 2012. In that period, Libyan authorities made no arrest and refrained from questioning a number of suspects who admitted to journalists that they were on the consulate’s grounds the night of the attack. A Tunisian and an Egyptian national suspected of being connected to the attack were under investigation in their home countries, but in January 2013 a judge released the Tunisian for lack of evidence; the Egyptian is believed to be still detained. Fear of possible reprisals led many security officials in Benghazi to resign from the investigative team; the chain of command within it passed from one senior judicial official to another before the prosecutor general in Tripoli assigned the case to an investigative judge from the capital. During a March 2013 visit to the U.S., Prime Minister Ali Zeidan reiterated that his government is “keen on reaching the truth and to see that justice is achieved” and “to work with President Obama seriously in order to achieve this goal”. See video, YouTube, 13 March 2013, [www.youtube.com/watch?v=WyYtJS8ZYro](http://www.youtube.com/watch?v=WyYtJS8ZYro). The following day, reports emerged that a man suspected of involvement in the attack had been detained in Libya, but it was not clear whether charges had been brought. “Sources: Benghazi suspect detained in Libya”, CNN (online), 14 March 2013.

December 2012.<sup>10</sup> The courthouse in Waddan, a desert city some 600km south east of Tripoli, was torched in February 2013 and all case files destroyed.<sup>11</sup> Most government-controlled prisons are overcrowded and devoid of proper security, a situation that has led to numerous jailbreaks since the end of the conflict.<sup>12</sup> The presence of thousands of convicted criminals, whom Qadhafi set free in the early days of the uprising and whom current authorities have been unable to recapture, also has contributed to the increase in banditry and violence.

Most importantly, the state has been unable or unwilling to prevent individuals and armed groups from applying “victor’s justice”. Hundreds of armed groups that emerged victorious and refused to lay down their arms after the regime’s fall still function as parallel police forces, at times working against state interests. Although some armed groups nominally fall under the authority of a civilian or military prosecutor’s office – depending on whether they have been recognised by the interior or defence ministry – they tend to act both independently and arbitrarily. Such bodies for the most part also lack investigative capacity, and their members have never undergone formal police or legal training. Having compiled lists of “wanted” individuals – without reference to any judicial procedure – they have carried out arbitrary arrests, kidnappings and killings of alleged “anti-revolutionary” figures well after the end of hostilities. Indeed, more than 7,000 people captured by so-called revolutionary brigades during and after the 2011 conflict remain in arbitrary detention, for the most part in makeshift prisons.<sup>13</sup>

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<sup>10</sup> Crisis Group interviews, activists and officials, Derna, March 2013. Court offices are open, but solely to record amicable settlements.

<sup>11</sup> Al-Manara news (online), 27 February 2013. The court’s registrar called the fire an “intentional criminal act”. Ibid.

<sup>12</sup> Jailbreaks have taken place from a number of state-controlled detention facilities across the country: from Zawiya’s Jedayem prison in June 2012; Sebha’s Reform and Rehabilitation Institute in July 2012; Tripoli’s Maftuha (Open) prison and Jdeida prison, respectively in August and October 2012; and Benghazi’s Kawfiya’s prison in August 2012. Also, up to 200 inmates fled from Sebha’s prison in early December 2012. Crisis Group interviews, human rights activist, Tripoli, August 2012. See also “Thirty-four inmates on the loose following mass prison breakout in Sebha”, *Libya Herald*, 16 July 2012; “200 inmates escape Sebha prison as Congressmen from Fezzan stage GNC walkout”, *Libya Herald*, 6 December 2012; “Blast and jailbreak rock Libya’s Benghazi”, Al-Jazeera, 1 August 2012; “Tripoli prison suffers massive breakout”, BBC, 15 October 2012. According to Western officials advising the government on prison reform, detention centres in Tripoli and Zawiya are overcrowded, between 50 and 100 per cent beyond capacity. In Misrata a number of schools have been turned into detention centres. Crisis Group interviews, international prison reform advisers, Tripoli, January 2013.

<sup>13</sup> There are no official statistics on the prison population, be it of those under government control or in the custody of independent armed groups. Likewise there are no official numbers of sentenced, charged or uncharged detainees. According to Human Rights Watch (HRW), in October 2012 approximately 8,000 people were in detention; of these, 3,000 were in government custody, approximately 2,000 were held by the Supreme Security Committee; and the rest were held by various armed groups. Most detainees had not benefited from judicial review. See “World Report 2013”, Human Rights Watch, p. 582. In late 2012, Western prison reform consultants unofficially estimated the population of government-controlled detention centres at roughly 5,100, of which 80 per cent were awaiting trial. Crisis Group interview, international prison reform consultant, Tripoli, January 2013. According to other human rights and rule of law consultants who regularly inspect detention facilities, in December 2012 approximately 7,000 detainees – roughly 4,000 in state custody and 3,000 held by armed groups – had yet to be granted judicial review. Crisis Group interview, Tripoli, December 2012. Government officials typically do not dispute these estimates. In his official response to the HRW report, the justice minister acknowledged that the number of prosecu-

The armed groups' actions often have occurred with the authorities' blessing. The authorisation by the General National Congress (GNC) to use force in Bani Walid to capture unspecified individuals – despite the absence of a proper probe into allegations against them – was part and parcel of a broader policy granting certain armed groups institutional support and political legitimacy for what, at times, can only be described as lawless behaviour.<sup>14</sup> The GNC in effect disregarded the authority of the country's prosecutors – in theory tasked with issuing arrest warrants<sup>15</sup> – and set a dangerous precedent of legislative interference in the judicial sector. Evidence suggesting that more than twenty people arrested during the attack on Bani Walid died in detention is a worrying indication of the degree of lawlessness that still characterises some government-affiliated armed groups.<sup>16</sup>

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tions of detainees was "too low and unacceptable". "Libyan Justice Minister responds to HRW report", *Tripoli Post*, 8 February 2013. In his 29 January 2013 briefing to the UN Security Council, Tarek Mitri, the UN Secretary General's Special Representative in Libya, spoke of "several thousand people" detained without due process. "Security Council Briefing of the Special Representative of the Secretary-General and Head of UNSMIL Tarek Mitri", 29 January 2013.

<sup>14</sup> Opponents of GNC Decree 7/2012 – which authorised use of force to capture those allegedly responsible for Shaaban's death, see fn. 1 above – claim that its issuance was hasty and disrespected ordinary procedures. Salem Ahmar, a former GNC representative from Bani Walid, said he was not given sufficient notice to discuss the situation in the town; he also accused the GNC's deputy chief of intentionally calling him into his office for a meeting that same morning to keep him away from the relevant session and thus "prevent him from voicing what they knew would be a strong opposition to the use of force against Bani Walid". Crisis Group interview, Salem Ahmar, Tripoli, 26 November 2012. GNC critics also accuse the body of lacking the required quorum and, most importantly, adequate information regarding the circumstances of Omran Shaaban's death. Misratan members of the Libya Shield Forces, as well as some Misratan GNC members, asserted that he had died as a result of wounds inflicted during his kidnapping and subsequent torture in captivity, an allegation that informed the GNC's conclusion. In contrast, Ahmar and other Bani Walid residents insisted he was injured in an exchange of fire after being stopped at a Bani Walid checkpoint on 7 July 2012; they said that, after the shooting, he was kept at the city hospital together with another Misrata fighter and deny any torture. According to Ahmar, Bani Walid's ruling council – the so-called Social Council – held the two men along with three others who belonged to the May 28 brigade – a pro-revolutionary brigade from Bani Walid that joined the Libyan Shield Forces – as a bargaining chip to obtain the release of injured Bani Walid prisoners from a Misrata hospital. They also wanted Misrata to transfer over 130 members of the Warfalla, Bani Walid's main tribe, from Misratan makeshift prisons to either a location in the east or in the Jebel Nafusa, the mountainous region south of Tripoli; they asserted that a fair process could not take place in Misrata, which has an historic rivalry with Bani Walid. Crisis Group interviews, Salem Ahmar, Tripoli, 26 November 2012; Bani Walid judge and residents, Bani Walid, 24 November 2012.

<sup>15</sup> Salem Ahmar said that the the General Prosecutor told him he never gave the order to arrest anybody from Bani Walid and criticised the GNC decision to adopt Decree 7/2012; this was confirmed by others. Crisis Group interview, Salem Ahmar, Tripoli, 26 November 2012; lawyer, judge, Tripoli, December 2013. Omar Hemidan, the GNC spokesperson, disagreed with those who argued that the decision harmed the transition process, asserting instead that it "gave strength to the GNC", because "revolutionaries (*thuwwar*) started to view us as legitimate representatives of the state". Crisis Group interview, Tripoli, 28 January 2013.

<sup>16</sup> In late March 2013, photographs of the bodies of 21 people from Bani Walid who allegedly died in captivity following their arrest during the October 2012 clashes appeared on social networks. [www.facebook.com/GreatWerfalla](http://www.facebook.com/GreatWerfalla). These included people as young as seventeen and students. Families of victims said members of government-affiliated armed groups arrested them, that witnesses saw some being held in Ghariyan and Tarhouna and that they subsequently were transferred to Misrata, where they died in captivity. Crisis Group interviews, Bani Walid residents, family member of a deceased, Tripoli, 31 March 2013. That said, the office of the military prosecutor in Misrata and members of the government-affiliated 28 May brigade offered a different version. Crisis Group observa-

Many ordinary Libyans, even among early supporters of the uprising, express anger at the government's inability to restore order. The expression "*ma fish qanun*" (there is no law) is increasingly common.<sup>17</sup> The head of the GNC himself admitted that delays in reactivating and reforming the judiciary "have created 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".<sup>18</sup>

These problems have come to international attention in the context of Libya's dispute with the International Criminal Court (ICC). Tripoli and the court are at loggerheads over the question of jurisdiction for the trials of Saif al-Islam, a Qadhafi son held in custody by a Zintani armed group since his capture in November 2011, and of former intelligence chief Abdullah Senussi, who was extradited to Libya from Mauritania in September 2012. Both the government and armed groups are determined to try the two in a domestic court, with or without ICC approval. Yet to do so in conformity with international law, Libya would need to satisfy ICC judges that it has the willingness and ability to guarantee a fair trial.<sup>19</sup>

The issue plainly goes far deeper and involves score settling, arbitrary arrests and deficiencies in the rule of law. As seen, armed groups, distrustful of Qadhafi-era institutions, including the judiciary, and dissatisfied with what they consider to be the state's lack of prosecutorial capability, have taken matters into their own hands. This

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tions of remarks delivered by Abu Bakr Yaakubi, person familiar with the case, interviewed on Libya Ahrar channel, 28 March 2013. Following publication of the photographs and the ensuing public outcry in Bani Walid, the government agreed to open an inquiry and ordered transfer of the bodies to Tripoli for examination.

<sup>17</sup> On 9 January 2013, Tripoli residents set up roadblocks around the capital to protest increased lawlessness there; abductions and deaths of individuals held in makeshift prisons were on the rise since late 2012. That day alone four people died during firefights that erupted after the reported death of an individual, accused of being a drug dealer, who had been held by an armed group based in Tripoli's Mtiga airport. "This past month two people I know were kidnapped in Tripoli. I am not against them being arrested if they did something wrong, but it must be in accordance to the law, with an order of the prosecutor, and they should be taken to a regular detention centre. But we can't allow any armed person to show up, kidnap a person and lock them up in an undisclosed location, torture and kill them in detention". Crisis Group interviews, protestor manning a roadblock in the Bel Khayr neighbourhood, Tripoli, 9 January 2013.

<sup>18</sup> GNC President Mohammed Magarief address, on Libya Wataniya channel, 20 October 2012.

<sup>19</sup> Ten days after violence broke out between government forces and protestors in February 2011, the UN Security Council referred the situation in Libya to the International Criminal Court (ICC). On 27 June 2011, the ICC issued arrests warrants for Muammar Qadhafi, his son Saif al-Islam and Abdullah Senussi in relation to alleged crimes against humanity. When Saif al-Islam was captured in southern Libya in November 2011, the ICC requested his transfer to The Hague, but the new leaders refused, asserting their intent to try him in a domestic court. Because the ICC is a court of last resort, primacy is accorded to national judicial systems whenever possible, and a country can challenge ICC jurisdiction. According to Article 17 of the Rome statute, domestic jurisdiction is permissible when "the case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable to carry out the investigation or prosecution". In May 2012 Libya's legal counsel filed an "admissibility challenge", stating that the country's "national judicial system is actively investigating Mr. Gaddafi and Mr. Sanusi for their alleged criminal responsibility for multiple acts of murder and persecution" and that the authorities had "genuine willingness and ability to bring the persons to justice". See "Application on the behalf of the Government of Libya pursuant to article 19 of the ICC statute", ICC-01/11-01/11-130Red, 1 May 2012. In April 2013, Libya filed a separate admissibility challenge pertaining to Abdullah Senussi. See "Application on behalf of the Government of Libya relating to Abdullah al-Sanusi pursuant to Article 19 of the ICC Statute", ICC-01/11-01/11-307-Red2, 2 April 2013. The ICC has not issued a final decision on either case.

in turn fuels resentment and risks sparking renewed local conflicts. Members of the Tawergha community, frustrated by their forced displacement and the illegal detention of over 1,000 of them, threaten to return to their hometown, a move that could lead Misrata to retaliate.<sup>20</sup> The Tebu, who witnessed the killing of twelve community members in early 2013 and blame government security forces for not arresting suspects from the Zway tribe, threaten to end a precarious ceasefire in the southern desert town of Kufra.<sup>21</sup> More broadly, shortcomings in the judicial and investigative bodies have fuelled a general sense of lawlessness in cities and towns across the country.

In short, the nature and quality of the judicial system affect more than the nature and quality of civil and criminal prosecutions. They play an integral part in the political transition and, more specifically, in the question of transitional justice. Challenges are multiple: hold former regime members and current armed groups accountable; avoid a destructive witch-hunt and cycle of retaliation; and restore trust in the rule of law.

Gradually disarming civilians and establishing a proper police force and army would be important steps, promoting state control over the security sector. But before those happen – and, as discussed in prior Crisis Group reports, these will take time<sup>22</sup> – urgent measures will be necessary. This report analyses those necessary measures and assesses the prospect of restoring citizens' trust in the judiciary.

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<sup>20</sup> "We intend to go peacefully. But if Misrata wants to kill us in order to stop our return, then they can go ahead. As things stand, we are already getting killed and detained". Crisis Group interview, Tawergha notable, Tripoli, 30 January 2013. In August 2011, Misratan armed groups forced approximately 40,000 Tawergha out of their hilltop town, 32km south of Misrata. Most now live in refugee camps across the country. Misratans accuse the Tawergha of having helped Qadhafi forces shell their town and having raped their women during the 2011 war, charges Tawergha notables deny. Misratan forces have made clear they will not allow Tawergha to be their neighbours again and, according to Tawergha sources, have rounded up some 1,300 community members (through checkpoints and abductions) who reportedly are being held without judicial review in makeshift prisons. Civil society groups and individuals familiar with the situation in Misrata allege that Tawergha are being tortured. A Tripoli resident said, "I have a friend; he is in a Misrata *katiba* (armed group). He saw it with his own eyes: they hung a Tawergha by his hands over a pot of boiling oil. That is how they kill them". Crisis Group interview, Tripoli resident, 13 March 2013. Misrata's military council continues to demand that the Tawergha hand over another 1,500 "wanted" individuals. Most Tawerghans, especially those living in Tripoli, live in fear of arbitrary detention and arrest. Crisis Group interviews, member, Tawergha local council, Tripoli, 28 January 2013; Tawergha notable, Tripoli, 30 January 2013; Tripoli resident, Tripoli, 11 March 2012. Some Tawergha who were not residing in the town during the 2011 war have been abducted. In one such case, in mid-November 2012, armed men in military outfits stormed the house of a Tawerghan who had been residing with his family in the capital since the 1960s and forcibly removed him in the middle of the night. Almost four months later his family discovered that he had been kept in a makeshift prison in a Tripoli villa for three months, then transferred to Misrata. Similar incidents reportedly occur regularly in the capital. Crisis Group interview, son of an abducted Tawergha, Tripoli, 17 November 2012; person familiar with the case, Tripoli, 11 March 2013.

<sup>21</sup> In early February 2013, last-minute negotiations with notables from the east, the government and GNC members helped preserve the July 2012 Kufra ceasefire. Crisis Group interview, Juma Kousa, Tebu activist, Tripoli, 23 January and 4 February 2013. In the first half of 2012, clashes between the Tebu and neighbouring tribes in Kufra and Sebha killed hundreds. For more on communal violence in Kufra and Sebha, see Crisis Group Report, *Divided We Stand*, op. cit.

<sup>22</sup> See Crisis Group Report, *Divided We Stand*, op. cit., and Crisis Group Middle East/North Africa Report N°115, *Holding Libya Together: Security Challenges After Qadhafi*, 15 December 2011.

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## II. Legacies of the Past

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The current state of the judiciary as well as public attitudes towards it have their roots in governance prior to the uprising. Distinct periods shaped the judicial system: the end of the nineteenth century – with the administrative reforms that overhauled the Ottoman Empire – the colonial period and the post-colonial era when the legal system, based on European continental law, was born. By the same token, some of the present system’s more problematic aspects – excessive politicisation of judicial appointments; corruption; and extrajudicial means of targeting political opponents – are tied to the country’s judicial history.

### A. *Italian Colonial Rule (1911-1943)*

When Italy occupied Tripoli in 1911, it retained the Ottoman Empire’s court structure.<sup>23</sup> It maintained local peace councils (*majalis al-sulh* or *lijan al-sulh* manned by tribal elders) for dispute resolution, while a separate Islamic court (*mahkama shariya*), headed by an Islamic law judge (*qadi*), enjoyed jurisdiction over matters of Muslims’ personal status. At the same time, Italian judges were put in charge of state-administered courts. In Tripoli and the more populated centres of the west, residents resorted to both *qadi* courts and colonial state tribunals, whereas residents of the largely rural and tribal east – over which Italy’s control was far looser – dealt principally with local peace councils, in which local notables applied a blend of local customs (*urf*) and Islamic law (Sharia).<sup>24</sup> Italy also replaced Ottoman laws with its own, even as it allowed Libyans to turn to Ottoman and Islamic legal texts as well as customary law on matters where Italian legislation was silent.

Fascist Italy’s most controversial legacy was the Special Tribunal for the Defence of the State (STDS), which was designed to repress all subversive activity.<sup>25</sup> Faced with protracted anti-colonial resistance, this military tribunal enabled the occupying authorities to cut short legal procedures and introduce summary trials lasting just a few hours.<sup>26</sup> Military officers forced local populations to attend these court sessions, often in open-air, “in order to obtain the healthy benefits of legal intimidation”.<sup>27</sup> Colonial officers issued on-the-spot verdicts, mainly death sentences and forced deportation, with no right of appeal.<sup>28</sup>

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<sup>23</sup> The Ottoman structure consisted of a three-tier state court system with jurisdiction over civil, commercial and criminal cases, as well as separate Sharia (Islamic Law) courts with authority over personal status matters and religious endowments.

<sup>24</sup> Observations and interviews of Crisis Group analyst working in a different capacity, Tripoli, Oxford and Rome, 2008-2010.

<sup>25</sup> The Special Tribunal for the Defence of the State was established by Decree 2008, “Provvedimenti per la Difesa dello Stato”, 25 November 1926. The law reinstated the death penalty for persons found guilty of crimes threatening the life, integrity or freedom of the king, his regent or the government; it also entitled military officials to set up and preside over a special court to try crimes against the state as defined in the same decree. Eritrean soldiers serving in the Italian army were known to carry out death sentences on the spot; Libyans occasionally were chosen to perform the deed. See Rodolfo Graziani, *Cirenaica Pacificata* (Milan, 1931), pp. 134-146.

<sup>26</sup> These became known in Italy as “flying courts” because its three judges (at least one military officer and two others who could be colonial bureaucrats) flew by plane to remote locations that faced anti-colonial armed resistance. Graziani, *Cirenaica Pacificata*, op. cit.

<sup>27</sup> *Ibid.*, p. 135.

<sup>28</sup> Of 448 individuals the court tried between April 1930 and March 1931, 133 were sentenced to death. *Ibid.* The most notorious trial was the 1931 case against Umar al-Mukhtar, a resistance lead-

## B. *Mandatory Libya (1943-1951) and the Constitutional Monarchy (1951-1969)*

After Italy's departure following World War II, Libya's judicial system remained dependant on foreigners. Due to the absence of a law faculty prior to 1962 and the resulting shortage of trained local judges, Italian judges continued to man the state courts for as long as Italian codes were in force.<sup>29</sup>

In the 1950s, after it was granted independence and became a constitutional monarchy, the country promulgated new codes heavily influenced by European legal principles, while judges from neighbouring Arab states were brought in.<sup>30</sup> Foreigners advised the sub-committee charged with drafting the constitution's section on the judiciary (Chapter VIII) and introduced the nation's first Supreme Court. As with lower courts, most Supreme Court judges at the time were foreigners: Italian, British and American.<sup>31</sup> The post-independence period witnessed a short-lived attempt to incorporate religious courts into the state court system, as other Arab states had done at the time. In 1958, faced with opposition from local religious leaders as well as rural and tribal communities in the eastern region known as Cyrenaica (in Arabic,

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er and national hero. The Italian prosecutor in Benghazi charged him with fifteen counts of treason; after a few hours, he was sentenced to death. He was hanged the following day in the nearby Solluq internment camp. Documents released decades later from colonial archives show that the authorities had prejudged the case and verdict. See Santarelli et al. (eds.), *Omar al-Mukhtar e la conquista fascista della Libia* (Milan, 1981). Anger at Umar al-Mukhtar's trial and execution – a “brutal and atrocious deed” against a man “who fought magnificently for the defence of his country” – remained strong among Libyans for decades. See “Clandestine leaflet of the Cirenaica resistance remembering the first anniversary of the hanging of Umar al-Mukhtar (September 1932)” in *ibid*, p. 275. Iconographical images of his court hearing were used by both Qadhafi and his opponents as symbols of their self-proclaimed quests for justice. Photographs of a chained Umar al-Mukhtar being led to court became a favoured symbol of Qadhafi's anti-colonial and anti-Western rhetoric. The former Libyan leader bankrolled a multi-million dollar movie starring Anthony Quinn as Umar al-Mukhtar that regularly was screened on state television and during public events. Similarly, during the 2011 uprising, anti-Qadhafi fighters adopted Umar al-Mukhtar's defiant words to the Italian judges: “We do not surrender: we live or we die”. The memory of Italy's Special Tribunals remains vivid and plays a role – alongside fresher memories of similar courts set up by Qadhafi some 40 years later – in contemporary efforts to devise a different judicial system.

<sup>29</sup> Libya's first law faculty was founded in 1962 in Benghazi's Qar Younis University, now renamed Benghazi University.

<sup>30</sup> The monarchy adopted new codes based on French and Italian law. Libya's 1953 Code of Criminal Procedure was a hybrid of the Italian and Napoleonic systems, while the Penal Code of that same year was heavily influenced by Italy's version. Libya's 1954 Civil Code was written by Egypt's Abd al-Razzak al-Sanhuri, a contributor to the 1949 Egyptian Civil Code, itself based on both French civil law and Islamic law. The English version of Libya's civil code is available in M. O. Ansel and I. M. Al-Arif, *The Libyan Civil Code: an English translation and a comparison with the Egyptian Civil Code* (Cambridge, 1972). An unpublished English version of Libya's 1953 Penal Code and 1956 amendments is available at [archive.org/details/LibyanPenalCodeenglish](http://archive.org/details/LibyanPenalCodeenglish). The current Arabic versions of these codes and other Libyan legislation is available on the justice ministry's website, at [www.adel.gov.ly/main/modules/sections](http://www.adel.gov.ly/main/modules/sections).

<sup>31</sup> Only the Supreme Court president had to be a Libyan national. Supreme Court statutes permitted the appointment of foreign judges until qualified Libyans could take their place; no restriction applied to the nationality of lower courts judges. Crisis Group interview, Faraj Maaruf, head of judicial inspections office, Tripoli, 29 August 2012.

Barqa) the government reverted to the pre-existing dual judicial system, with separate Sharia and state courts.<sup>32</sup>

In the eyes of many current judges, the period between 1952 and 1969 was the only one during which the judiciary was truly independent and functioning. In like manner, those who advocate adoption of the 1951 Constitution tend to idealise this period, urging restructuring of the judicial system so that it resembles the one in place at the time of independence.<sup>33</sup>

Yet, 1950s Libya was markedly different from what it has since become. Prior to the oil boom of the 1960s, the country was poor; the judiciary relatively safe from corruption; the state court bureaucracy far less extensive than today; and foreign judges for the most part manned the courts.<sup>34</sup> Reverting to the past, or merely abolishing what Qadhafi's regime introduced, would be to ignore the ways in which the 40 intervening years affected both the social fabric and legal culture.

### C. *Qadhafi and the Revolutionary State (1969-2011)*

For a short time after coming to power, Qadhafi maintained the existing court system and legislative framework; he even allowed some foreign judges to continue working in state courts. By the mid-1970s, however, most of these gradually had been replaced by Libyan nationals and some laws amended.<sup>35</sup> Together with the officers who participated in the 1969 coup, Qadhafi turned the judiciary into a more national institution and, in line with the goal of diminishing what they saw as the West's negative influence, sought to conform domestic laws to Sharia. They instituted a committee of jurists (*nadwa al-tashraiya al-islamiya*) to review pre-existing civil, commercial and criminal codes and harmonise them with Islamic law. In November 1973, Sharia courts, which until then had retained autonomous jurisdiction on personal status matters, were abolished and their judges were absorbed into the state judicial system.<sup>36</sup>

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<sup>32</sup> Local communities, especially in rural and more tribal areas of Cyrenaica where the colonial state judicial system had not made significant inroads, found the new civil courts too complicated and expensive for settlement of local disputes. They preferred traditional peace councils and Islamic courts and urged the national government to revert to the former separation between religious and civil courts. In 1958, the government enacted a Law for Judicial Organisation that split the two.

<sup>33</sup> The federalist movement, which supports adopting the 1951 constitution rather than drafting a new one, is a Benghazi-based group that emerged in April 2012. Its members advocate return to a federal system as outlined in the monarchical-era constitution.

<sup>34</sup> Current jurists claim that judges enjoyed greater independence at the time. Crisis Group interviews, judges, prosecutors, lawyers, Tripoli, Benghazi, Misrata, Bani Walid, June-September 2012.

<sup>35</sup> Crisis Group Interview, Faraj Maaruf, head of judicial inspections office, Tripoli, 29 August 2012.

<sup>36</sup> Application of Islamic legal tenets presented certain difficulties. One example involved what to do with traditional forms of Islamic punishment, such as the severance of a hand for theft. Debates arose over whether this literally meant amputation or rather should be seen as a metaphor for preventing the hand from committing future crime by removing need and temptation. Libya's religious legal scholars adopted mostly literal interpretations, but these were sparsely applied in Qadhafi-era courts, as judges invoked exemptions and qualifications consistent with Islamic tenets. Sheikh al-Sadeq al-Ghariani, the current mufti of Libya, claims that the Shariatisation of legal codes carried out under Qadhafi was limited. Crisis Group interviews, Adel al-Msellati, former head of Tripoli's Appeals Court, Tripoli, 2 May 2012; Sheikh al-Sadeq al-Ghariani, Tripoli, 26 November 2012. See also the chapter on "Law and the Judiciary" in Helen Chapin Metz (ed.), *Libya: A Country Study* (Washington, 1987).

During the first years of Qadhafi's rule, the new leadership more or less respected the state courts' independence and basic due process of law. Although early on it introduced the concept of crimes against the state in the criminal code, a current member of the judiciary said, "in those initial years [after the 1969 coup] judges were against Muammar [Qadhafi], and criminal courts were not collaborating" with the regime.<sup>37</sup> Likewise, judges assert that, Qadhafi's attempt to restrict judicial independence notwithstanding, the regime was unable to use criminal courts and ordinary criminal legislation in cases of alleged political crimes; as a result, it established what came to be known as "exceptional" or "special" courts (*mahakim istithnaiya*) to prosecute officials affiliated with the monarchy.<sup>38</sup> According to the current head of the Supreme Court:

Immediately after the [1969] revolution, our courts were excellent, and the judges were honest. Because of this, the regime tried to change some laws in order to restrict their freedom to adjudicate. They wanted to limit the judges' independence but were unsuccessful. So they created the special courts and appointed regime loyalists to them.<sup>39</sup>

With the 1977 establishment of so-called revolutionary committees, the ordinary judicial system itself was brought into line. These committees – whose decisions superseded legislation – enjoyed police functions, including the power to arrest regime opponents and manage detention centres.<sup>40</sup> Internal security services (*al-aman al-dakhili*) could bar the release of prisoners even after they had served their terms. The regime likewise appointed judges without legal training and, between 1981 and 1991, banned private lawyers; collectively, this had the practical effect of bringing the judicial system under the internal security's authority.

To this day, the country lives under the shadow of these decisions. The chief of judicial inspections said:

After 1977, the justice ministry was changed into the justice secretariat. The revolutionary committees placed their own people as members of the judiciary, even if they lacked legal training. Many police officers became judges. Some would work for twenty years as policemen and then be promoted to judgeships. Today, we are facing this problem, as roughly 30-40 per cent of judges did not go through formal legal training.<sup>41</sup>

Even as the judiciary increasingly came under state control, special courts were in charge of political trials, a principal means of quashing dissent. Although at first these were ad hoc, they gradually developed into an entirely separate court system.

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<sup>37</sup> Crisis Group interview, Mustafa Omar Ali Abu Qatifa, member, office of the attorney general, Tripoli, 2 May 2012.

<sup>38</sup> "Exceptional courts" is the literal translation of the Arabic *mahakim istithnaiya*, widely used to describe types of Qadhafi-era tribunals that fell outside the ordinary criminal justice system. They are also referred to as "special" courts (*mahakim tahassusiya*), the term this report uses.

<sup>39</sup> Crisis Group observations, speech by Kamal Dahan, president of the Supreme Court, to the Council of Ministers, prime minister's office, Tripoli, 21 November 2012.

<sup>40</sup> On the Revolutionary Committees, see Crisis Group Middle East/North Africa Report N°107, *Popular Protest in North Africa and the Middle East (V): Making Sense of Libya*, 6 June 2011.

<sup>41</sup> Crisis Group interview, Faraj Maaruf, head of judicial inspections office, Tripoli, 29 August 2012.

## 1. Special courts

In 1971, the regime set up the People's Court (*mahkama al-shaab*) to try former royal family members, prime ministers and other officials from the deposed monarchy accused of rigging elections or "corrupting public opinion".<sup>42</sup> A Revolutionary Command Council (RCC) member presided over the court, which also included a representative from the armed forces and the police; the RCC nominated all judges. By the late 1970s, the court had tried over 200 people affiliated with the former monarchy, including former King Idris, who was sentenced to death in absentia.<sup>43</sup>

The People's Court functioned even after it had finished dealing with former regime officials.<sup>44</sup> From the late 1980s until its abolition in 2005, it acted as a parallel system with its own prosecutorial body (*maktab al-idaa al-shaabi*, office of the people's prosecutor). It tried most political and security cases, gaining international notoriety notably for lumping together perpetrators of violent acts and government critics seeking peaceful political change.<sup>45</sup> Over the years, the court tried and sentenced many current politicians and activists, including National Transitional Council (NTC) and GNC members, as well as Islamists.<sup>46</sup>

In the late 1970s, the regime established another judicial body, the Revolutionary Committees. Its members, civilians who acted as a paralegal security force, presided over proceedings against individuals charged with what were deemed crimes against the revolution.<sup>47</sup> Defendants had neither legal counsel nor right of appeal; "revolutionary judges" sentenced many to death.<sup>48</sup> Students were compelled to attend executions, which were carried out on university campuses and televised.<sup>49</sup> Although there is no evidence they ever were formally abolished, the regime appears to have stopped using revolutionary courts by the late 1990s.<sup>50</sup>

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<sup>42</sup> The Revolutionary Command Council (RCC) included top officials who carried out the 1969 coup. Chaired by Qadhafi, it was the country's governing body from 1969 to 1977, when the General People's Congress (GPC) replaced it. The RCC established the first People's Court on 26 October 1969. The current GNC president, Mohamed Magarief, wrote about the special court system in *Libya: min al-shara'iya al-dusturiya ila al-shara'iya al-thawriya* [Libya: From constitutional law to revolutionary law] (Cairo, 2008).

<sup>43</sup> A complete list of people sentenced by these courts is available in *ibid*, pp. 820-829.

<sup>44</sup> GPC (General People's Congress) Law 5/1988 "On the creation of the People's Court" institutionalised this court, establishing both its composition and jurisdiction. The law required People's Court judges to be Arab, "good, committed revolutionar[ies] with a sound reputation" and have completed basic legal studies.

<sup>45</sup> "Libya: Words to Deeds", Human Rights Watch, 25 January 2006.

<sup>46</sup> Crisis Group interview, Muslim Brotherhood member, Tripoli, October-November 2012.

<sup>47</sup> Law 71/1972 banned any group activity based on political ideology contrary to the principles of the 1969 revolution. "Libya: Words to Deed", *op. cit.*

<sup>48</sup> Executions typically were carried out on 7 April, the anniversary of the regime's 1976 suppression of student protests in Tripoli and Benghazi.

<sup>49</sup> A Libyan woman in her 50s said, "it was horrible. When I was a little kid, they would broadcast these hangings on television. There weren't as many channels as there are now, and they repeated the footage, so you would end up watching it even if you did not want to". Crisis Group interview, Tripoli, May 2012. Segments of the Peoples' Court trials also were broadcast. "I am not sure if we were shown the actual trial or just the charges of which these people stood accused. All I know is that we would see these people behind bars – many of them journalists - and a voice would state the charge. Now, in retrospect, I know that many of those charges were fabricated. But at the time, how could you know? We believed what we were told". Crisis Group interview, Tripoli resident, 22 December 2012.

<sup>50</sup> The last time a revolutionary court was convened appears to have been to try military officers from Bani Walid, accused of participating in a 1993 coup attempt. Alleged supporters from the town

Soon after Qadhafi's coup, the regime also set up military courts (*mahakim askariya*).<sup>51</sup> Until 1974, these were ad hoc tribunals; subsequently, they became yet another official judicial body, re-baptised the "permanent military court" (*al-mahkama al-askariya al-daima*). Finally, in 2000, the regime established a separate office of military prosecution (*maktab al-naib al-askari*) charged with investigating and preparing indictments in cases adjudicated in such courts.<sup>52</sup> They continue to function and can try civilians in specified circumstances.

## 2. Attempted Reforms

In the early 2000s, as Qadhafi sought to break out of isolation and re-engage the West,<sup>53</sup> the leadership took steps to gradually reform the regime, including the judiciary.<sup>54</sup> In 2005, it abolished the People's Court and ordered the transfer of all pending files to ordinary courts.<sup>55</sup> It also split the justice ministry and public security into separate bodies, so that the administration of justice – including prisons – no longer

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also were tried, and Bani Walid itself was subjected to collective punishment. Crisis Group interview, Bani Walid residents, November 2012.

<sup>51</sup> According to Article 2 of the 1974 military code (*qanun al-uqubat al-askariya*), military justice applies to civilians accused of damaging funds, property or documents belonging to the military; committing any crime, even ordinary ones such as theft, within a military compound; committing a crime while working alongside and in support of armed forces; and committing a crime against military personnel. The 1974 code remains in force, and civilians can be tried in military courts in the above circumstances. Crisis Group interview, military prosecutor, Tripoli, 23 December 2012.

<sup>52</sup> See Military Criminal Procedure Law (*qanun al-ijraat al-askariya fi al-shaab al-musallah*, 2000). Of approximately 200 military prosecutors, fewer than 10 per cent have military rank. Following promulgation of the Military Criminal Procedure Law, civilian prosecutors could be seconded to the office of the military prosecutor; as a result, the vast majority of military prosecutors are now trained prosecutors. Although military officers lacking legal training officially can still serve as judges in military courts, since late 2012 military officials reportedly have been solely assigning officers with legal education. The justice minister believes military courts should not have jurisdiction over civilians in any circumstance, and in late 2012 presented to the GNC a bill that would bar military courts from trying civilians. As of early April 2013, the GNC had not yet passed it. Crisis Group interviews, military prosecutor, 23 December 2012; Justice Minister Salah al-Marghani, Tripoli, 7 January 2013.

<sup>53</sup> In the late 1990s, as a result of international sanctions, declining oil prices and the cumulative effect of years of mismanagement, the regime faced growing popular dissatisfaction. Senior officials reportedly persuaded Qadhafi to rebuild foreign ties. Libya handed over individuals suspected of involvement in the 1988 Lockerbie bombing and agreed to forsake its weapons of mass destruction (WMD) program. Sanctions gradually were lifted and Tripoli's relations with the West were normalised.

<sup>54</sup> Many of these initiatives were carried out by Qadhafi's son, Saif al-Islam, who proclaimed himself a champion of human rights, supporting the release of hundreds of Islamist militants and long-term political detainees. He became an advocate for reform and modernisation. However, after protests broke out in 2011, his behaviour changed radically. After initially suggesting the creation of a commission of enquiry and offering to introduce a constitution and reforms, in a 20 February 2013 televised speech he advocated taking up arms against the demonstrators, whom he described as including "thugs" and "drunks" who "wanted to establish an Islamic emirate in Libya" and blamed for attacking army barracks. "We will fight to the last man and woman and bullet; we will not lose Libya", he said. Al-Jazeera, 20 February 2011.

<sup>55</sup> Law 7/1373 (dated on the basis of a special Qadhafi-era Libyan calendar, equivalent to 2005) "Regarding the abolition of the People's Court". Although the People's Court was abolished, the law regulating its procedures was not, as explained above. During this same period, the justice ministry also set up a committee to reform the penal code, but its final recommendations were not implemented, as the uprising began before the General People's Congress (GPC) had discussed them.

fell under the security forces' jurisdiction.<sup>56</sup> British prison experts provided advice on how to upgrade the prison system, while the government ordered the construction of new detention centres.<sup>57</sup>

Such reform efforts only went so far. In the last decade of Qadhafi's rule, courts and trials remained a political tool in regime hands,<sup>58</sup> and corruption in their midst

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<sup>56</sup> With the exception of high-security prisons like Abu Salim, where political detainees remained under the jurisdiction of the interior ministry (also known as the public security ministry), authority over detention centres and the judicial police charged with managing them was transferred to the justice ministry as of 2005. See A. Barclay and C. Allen, "Human Rights and the Management of Libyan Prisons" (unpublished), delivered at an Oxford University conference, "Libya: Legacy of the Past, Prospects for the Future", 25-27 September 2009, attended by Crisis Group analyst working in different capacity.

<sup>57</sup> Following a request from British and Libyan officials, former British prison wardens affiliated with the King's College International Centre for Prison Studies (ICPS) carried out a prison reform project in Libya that began in 2004. They inspected detention centres falling under justice ministry authority, suggested structural innovations and trained the judicial police. They suspended their work in 2011 but resumed it in mid-2012. Crisis Group interviews, international prison reform advisers, Tripoli, November 2012; see also Barclay and Allen, "Human Rights", op. cit. When the project began, U.S. and British intelligence services reportedly were involved in rendition of Libyan nationals accused of involvement in terrorist activities to Tripoli. CIA classified documents discovered in Tripoli after Qadhafi's overthrow suggest that in early 2004 British officials provided intelligence information that ensured the rendition of anti-Qadhafi opposition figures Sami al-Saadi (also referred to as Abu Munthir) and Abdul Hakim Belhaj (referred to as Abu Abdullah al-Sadiq) and their families from Hong Kong and Malaysia, respectively. See [www.guardian.co.uk/world/interactive/2011/sep/09/libya](http://www.guardian.co.uk/world/interactive/2011/sep/09/libya). The regime subsequently freed the two men, who became leading figures of the 2011 uprising and prominent politicians in the transitional phase. After Qadhafi's fall, al-Saadi and Belhaj initiated legal action against the British government and its intelligence services, charging they played a role in handing them over to Libyan security officials, who allegedly tortured them. On 13 December 2012, London agreed to pay £2.2 million to al-Saadi, though a foreign office spokesperson asserted "there had been no admission of liability and no finding of any court of liability". In a 28 February 2013 letter to three British government officials, Belhaj offered to settle his case in exchange for £3 token compensation, an apology and admission of liability. As of April, the matter is pending. See "UK pays out to family 'rendered' to Gaddafi's Libya", Reuters, 13 December 2012; Letter from Abdul Hakim Belhaj to David Cameron, Jack Straw and Mark Allen, Tripoli, 28 February 2013, published by *The Independent* (online), 4 March 2013. In October 2005 the UK and Libya had signed a memorandum of understanding agreeing to nine separate assurances for the fair trial and detention of deported suspects. According to CIA documents, Washington also sought diplomatic assurances that the rendered detainees would be "treated humanely" and given fair trials. See "Rendition of LIFG deputy Emir Abu Munthir" and "Planning for the capture and rendition of Abdullah al-Sadiq", undated, published by *The Guardian* in its above-cited website.

<sup>58</sup> One of the more infamous examples of presumed political interference involved five Bulgarian nurses and a Palestinian-born medic accused of having deliberately infected 400 children with HIV. The People's Court sentenced them to death despite evidence that the hospital's poor hygienic practices had caused the infection and notwithstanding allegations that the nurses' confessions had been extorted through torture. In July 2007, a Benghazi appellate court upheld the sentences. However, a week later, following extensive negotiations with the EU (which included a \$400 million settlement reportedly paid by several EU states as well as Bulgaria's commitment to forgive \$50 million debt owed by Libya), the Supreme Judicial Council commuted their sentences to life imprisonment. The six left Libya pursuant to an agreement between Tripoli and Sofia under which they could serve their sentences at home. The Bulgarian president pardoned them on arrival in Sofia on 24 July 2007 and they were released. In March 2012, a Dutch court ordered Libya to pay €1 million in compensation to the Palestinian doctor, who also brought the case before the UN Human Rights' Committee. "Dutch Court compensates Palestinian for Libya jail", Associated Press, 27 March 2012. The 2008 charges against two Swiss businessmen accused of immigration and tax violation were widely considered by observers as retaliation for the brief arrest of Qadhafi's son Hannibal in

expanded. Judges acknowledge receiving in-kind rewards in exchange for favourable rulings, especially in commercial disputes or cases having to do with state offices in which large monetary settlements were at stake.<sup>59</sup> Where state security was involved or one of the parties was a high-ranking official, they often turned to blackmail and threats of persecution to secure a satisfactory verdict.<sup>60</sup> Moreover, a high percentage of untrained judges continued to man the courts, while those who had worked in the now-abolished People's Courts simply were reassigned to the ordinary court system, carrying with them a legacy of arbitrary procedural practices. Finally, insofar as the judiciary system had come under the authority of Qadhafi's internal security – which routinely resorted to torture and denied access to legal representation – some judges and prosecutors also lacked proper interrogation techniques and accepted confessions extorted under duress.<sup>61</sup>

In short, despite its face-lift, the judiciary remained plagued by longstanding weaknesses: subservience to political authorities; corruption; and a dearth of knowledge. A businessman with dealings in Libya described the situation on the eve of the uprising: “It still was the case that relationships and negotiations took precedence over legal norms. And state security ruled over everything”.<sup>62</sup>

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Geneva. Although Switzerland later dropped the charges against Hannibal, relations between the two countries soured. In November 2009, a Libyan court sentenced the two Swiss, Max Göldi and Rachid Hamdani (both of whom took refuge in the Swiss embassy in Tripoli after being prevented from leaving Libya for over a year), to sixteen-month imprisonment. In February 2010, an appeals court acquitted Hamdani and reduced Göldi's sentence to four months, which he served until his release in June 2010. Interviews of Crisis Group analyst working in different capacity, Libyan exiles, foreign experts involved in the Benghazi HIV trial, diplomats, Tripoli, London, Rome, 2009-2010. <sup>59</sup> Corruption within the judiciary was – and remains – hard to prosecute because of the absence of a cash trail. A recently demoted judge said: “The way it worked was, if I was a judge assigned to a case, I would receive a call from somebody I knew, who in turn had been contacted by the lawyer for one of the two parties in litigation. They would let me know that my assistance in the case would be much appreciated. So in my verdict, rather than ordering a compensation of, say, 600,000 Libyan dinars (\$400,000), which is what I would have done had I not received the call, I would set the compensation higher, at around one million dinars. But don't imagine that somebody would show up with my cash payment. Rather, the payback would be through gifts or services. So, for example, if at the time I had to build a house, they would send me all the construction material and equipment I needed. Or if I had a son who needed a job, they would find him a good position in a government office”. Crisis Group interview, former judge, Tripoli, November 2012. Judgeships were much coveted and enjoyed wide immunity.

<sup>60</sup> Crisis Group observation, remarks by Supreme Court head Kamal Dahan to the Council of Ministers, Tripoli, 21 November 2012. Dahan added: “Many judges were persecuted under the previous regime. There was also a lot of blackmailing, and those who complied with the wishes of the regime were rewarded. As a result, many judges lost direction and lost confidence in themselves and ended up not knowing what they were doing”. Even judges with proper legal background often lacked specialised training, possessing only cursory knowledge of basic rules and procedures. Largely isolated for the prior three decades, few were exposed to foreign judicial practices and thus remained largely unaware of their system's procedural shortcomings.

<sup>61</sup> Referring to the Qadhafi era, a recently demoted judge said, “it is well known that some members of the judiciary turned a blind eye to the way internal security forces interrogated detainees and obtained confessions”. According to the World Organisation Against Torture (OMCT), “under Qadhafi judges and prosecutors ignored all allegations of torture”; the only exception was the 1996 Abu Salim prison massacre, for which years later the government started paying financial compensation to the victims' families. Crisis Group interviews, former judge, Tripoli, March 2013; Libya representative, OMCT, Tripoli, 13 March 2013.

<sup>62</sup> Crisis Group interview, Tripoli, 22 October 2012.

### III. Justice after Qadhafi

Many who were involved in or backed the uprising had first-hand experience with Qadhafi's form of justice, so it came as little surprise that the National Transitional Council (NTC) declared respect for the rule of law and establishment of an independent judiciary immediate priorities. Soon after the formal end of hostilities, it altered the composition of the Supreme Judicial Council (SJC), the managing body of the judicial apparatus, to bolster its independence from the government.<sup>63</sup> It also banned all special tribunals, while committing to respect human rights and provide fair trial guarantees.<sup>64</sup>

Beyond that, the new authorities chose to keep in place the existing judicial system's broad structures.<sup>65</sup> Despite acknowledging problems with the security situation, members of the GNC, the first elected legislature, which replaced the NTC in August 2012, defended the current civil and criminal courts as well as overall body of laws.<sup>66</sup> Likewise, judges and prosecutors overwhelmingly backed preservation of the current legal codes, arguing they followed European models from the 1950s, well before Qadhafi came to power.<sup>67</sup> Even the Judicial Reform Committee that the Supreme Judicial Council appointed in June 2012, never came close to suggesting a total overhaul of the inherited judicial system.<sup>68</sup>

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<sup>63</sup> NTC Law 4/2011, 16 November 2011, changed the composition of the Supreme Judicial Council (SJC). Under Qadhafi it was headed by the justice minister, and members included the head of the Supreme Court, the prosecutor general, the deputy justice minister and all heads of department within that ministry. Under the new law, the Supreme Court chief heads the SJC, while its members include the prosecutor general and the heads of the seven appellate courts. Some critics claim that the law fell short in its avowed aim of fostering judicial independence. They point to the fact that the council still is financially dependent on the justice ministry and that both the Supreme Court chief and prosecutor general are appointed by the legislature. Crisis Group interview, Libyan justice sector reform consultant, Tripoli, 28 November 2012.

<sup>64</sup> Article 31 of the Constitutional Declaration (2011) provides: "There shall be no crime or penalty except by virtue of the text of the law. Any defendant shall be innocent until he is proved guilty by a fair trial wherein he shall be granted the guarantees necessary to defend himself. Each and every citizen shall have the right to recourse to the judiciary authority in accordance with the law".

<sup>65</sup> Libya has a four-tier judicial system. At the bottom are district courts (*mahakim juziyya*), with a single judge and jurisdiction over commercial and civil cases valued less than 1,000 Libyan dinars (\$750), as well as over certain family law cases; above these, are courts of first instance (*mahakim ibtidaiyya*) that function both as an appellate court for the district tribunals and as the initial court for all other civil, commercial and family cases; further up the chain are appeals courts (*mahakim al-istinaf*) that also function as the initial tribunal for criminal and administrative cases. The Supreme Court (*al-mahkama al-ulya*) serves as a constitutional court and a court of cassation, deciding appeals of civil, commercial, criminal, administrative and family cases. For more details, see "Formulation of a security sector and rule of law programme for Libya", EU delegation in Libya 2012/299178/1, October 2012.

<sup>66</sup> Crisis Group interviews, GNC member, Tripoli, November 2012.

<sup>67</sup> Crisis Group interviews, Tripoli, June-September 2012. The Supreme Court's head, addressing Ali Zeidan's cabinet during the first council of ministers, said, "we should be proud of our courts and judges, even if in the past they made some mistakes". Crisis Group observations of remarks delivered by Kamal Dahan, to the cabinet, prime minister's office, Tripoli, 21 November 2012.

<sup>68</sup> The Judicial Reform Committee, officially called the National Committee for the Development of the Judiciary (*al-lajna al-wataniyya li-tatwir al-qadaa*), is a seventeen-member body composed of judges, prosecutors, lawyers and academics. In its January 2013 report, it acknowledged the need to restore public trust in the judiciary and recommended reforming the judicial system to guarantee its "independence, integrity and impartiality". The report underscored that the purpose of the reforms should be to "build, not destroy; reform and not damage". "Second part of the proposals

The mufti of Tripoli, the highest religious authority, essentially adopted the same position.<sup>69</sup> As he saw it, lawmakers' principal tasks were threefold: eliminate articles that deviate from principles of Islamic law;<sup>70</sup> repeal laws that distort the regulatory framework; and purge the system of judges who had been regime cronies.

Given this widespread consensus, trials against former regime officials began in mid-2012 in pre-existing courts. According to current members of the judiciary, internal screening was carried out to ensure that only judges with clean records were selected to adjudicate such high-profile cases.<sup>71</sup> However, this was never publicly announced, leading many ordinary citizens to distrust the trials and cling to the conviction that "these judges will never be able to deliver justice against those to whom they were paying lip-service not long ago".<sup>72</sup>

Lack of security, public distrust of the judiciary, procedural flaws and limited investigative capabilities caused postponements and limited the number of trials that actually started. Delays and structural shortcomings also affected the main transi-

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made by the National Committee for the Development of the Judiciary", submitted to the Supreme Judicial Council, undated (after 13 January 2013).

<sup>69</sup> Crisis Group interview, Sheikh al-Sadeq al-Ghari, mufti of Libya, Tripoli, 26 November 2012. The mufti emphasised the need to remove judges most closely involved with the regime, as well as those who were corrupt. However, he did not question the overall judicial structure or the codes and laws that regulated its work. "The judicial system is complicated and cannot just be fixed in one day. It is not like reforming the administration of a ministry. Removing judges is more complex. We need to take out those who were working in the People's Court and those who have a bad reputation either for what they did or for the position they took during the revolution". When asked if he favoured a reorganisation of the court system and the reintroduction of separate Sharia courts, he said, "it doesn't matter if there are separate Sharia courts or not. The only thing that counts is that the laws that are applied and that regulate the judicial system are compatible with Sharia. The important thing is that the state reactivates the judiciary quickly". Ibid.

<sup>70</sup> To this end, the NTC set up a special committee, as Qadhafi had done in the 1970s, to ensure conformity of the codes and laws with Sharia. Crisis Group interview, Gheith Fakhiri, deputy of the mufti of Libya, Benghazi, 4 May 2012. The NTC appointed Fakhiri and seven other legal experts in Sharia, criminal, civil and penal law to revise existing codes to ensure their compatibility with Sharia. With regard to criminal laws, Fakhiri said that he did not expect the committee to make significant amendments, since the changes implemented by Qadhafi's *tashra'iyah* commission in the early 1970s and additional amendments as recent as 2010 already had brought the codes in line with Islamic law (this view contrasts with the Mufti's who claimed that Qadhafi-era Shariatisation of the legal codes was limited, see above). These changes included introduction of *hudud* (literally *fixed*, but generally used to mean corporal) punishments for theft, brigandage, fornication or adultery, false accusation of fornication and alcohol consumption. Corporal punishment, though theoretically available, was rarely if ever applied under Qadhafi. Crisis Group interviews, Adel al-Msellati, former head of Tripoli's Appeals Court, Tripoli, 2 May 2012 and Ahmed el-Gehani, Libya's representative to the ICC, Benghazi, 23 August 2012.

<sup>71</sup> Crisis Group interview, member, Supreme Judicial Council, Tripoli, August 2012.

<sup>72</sup> Crisis Group interview, activist and supporter of the political exclusion law protesting in front of the GNC, Tripoli, 22 January 2013. The political exclusion law calls – among other things – for disbarment of certain categories of judges (see above). The activist, who belongs to an unnamed civil society organisation that in January and February 2013 set up tents in front of the GNC and in Tripoli's Martyrs' Square to call for the law's implementation, added: "In the early days of the 17 February revolution, people who took part in anti-regime demonstrations were being sentenced to jail. Who was sending them to prison? The judges. And where are these men now? Still there ... in their old positions. So how can the government make us believe that these trials [against members of the former regime] – or any trial, as a matter of fact – will deliver justice?" His group submitted five demands to the GNC's political exclusion law drafting committee, including removal of "anybody who worked in the judiciary and prosecutors' offices, and worked for the interest of those in power against the Libyan [people] and their legal rights".

tional justice institution established by the NTC, the Fact-Finding and Reconciliation Committee, which by April 2013 had yet to begin its work.<sup>73</sup> This reality, combined with four decades of arbitrary justice, diluted the impact of whatever guarantees were offered. Plainly, they failed to allay public scepticism regarding the state's ability to deliver justice. Instead, many took matters into their own hands.

The situation was complicated by the proliferation of armed groups that detained thousands outside the official legal framework. Distrustful of the Qadhafi-era judiciary and emboldened by their newfound power, so-called revolutionary brigades – and, at times, criminal gangs posing as such – operated above and beside the law, hindering the work of investigators and judges.

#### A. *Lack of Confidence*

In essence, the NTC was asking the public to take a double leap of faith. First, it was urging it to trust a judicial system that – the abolition of special courts aside – looked very much like the one at whose hands it had suffered in the past.<sup>74</sup> Yet, as Salah al-Marghani – a lawyer and human rights activist who would become justice minister – put it, “there is little trust towards the judges who are still considered to be Qadhafi’s judges”.<sup>75</sup> Secondly, it was asking the public to ignore the widespread chaos and emergence of a parallel judicial system in which independent armed groups assumed state functions, arresting, detaining and kidnapping individuals without judicial oversight or accountability.<sup>76</sup>

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<sup>73</sup> The Fact-Finding and Reconciliation Commission (also referred to as the Truth-Seeking and Reconciliation Body) is tasked with investigating cases of abuse – moral, physical or criminal – dating as far back as 1969. Depending on circumstances, it can order payments to victims or refer the case to state prosecutors. It can be seized by ordinary citizens, prosecutors or the justice ministry. Based in Tripoli, it oversees seven local branches across the country. NTC Law 17/2012, 26 February 2012, “On National Reconciliation and Transitional Justice”; Crisis Group interview, Sheikh Ali Bashir al-Shabani, head of the Sabratha branch of the commission, Sabratha, 14 January 2012. Both foreign and domestic legal experts argue that the NTC law contains several flaws. It is limited in scope and does not define the goal of the transitional justice process – whether to deal with former regime abuses, ongoing communal conflicts or both; and it is not, they say, sufficiently geared toward victims, mentioned only in relation to compensation. They also fault the commission for being a quasi-judicial entity (all members are elderly, male judges) and claim that its purpose – to achieve national reconciliation and transitional justice – would have been best achieved through the appointment of local, respected leaders instead. Some of these criticisms are well founded, and the government has sought to address them. In December 2012, Salah al-Marghani, the new justice minister, submitted a draft Transitional Justice Law; as opposed to its predecessor, it specified that members of the commission could be professionals, such as sociologist, archivists and psychologists. However, this version, too, fails to explicitly mention whether communal conflicts or score settling carried out during the transitional period are to be covered. Members of local branches appear to believe they are, but confessed that “given the current security situation, it would be impossible for us to start investigating the violence carried out by armed groups; these will probably be the last type of cases that we will look into – many years from now”. Crisis Group interview, Ali Bashir al-Shibani, president, Sabratha branch of the commission, Sabratha, 14 January 2013. Delays risk enshrining a culture of impunity among civilian brigades.

<sup>74</sup> Popular scepticism regarding formal assurances of fair process is well-founded. The former regime repeatedly claimed it would follow procedures it then ignored. Crisis Group interviews, legal scholars, former detainees, Tripoli, June-November 2012.

<sup>75</sup> Crisis Group interview, Salah al-Marghani, Tripoli, 10 August 2012. Al-Marghani was appointed justice minister in November 2012.

<sup>76</sup> See “Snatched and detained: Libya’s ‘jungle law’”, Reuters, 21 June 2012. Speaking at the time the NTC still ruled, a foreign legal adviser spoke of “a crisis of legitimacy: of the judiciary, of the

A government minister living within a military compound and circulating with eight armed guards as protection against armed men opposed to her anti-corruption policy, described the situation in mid-2012 as “anarchic”:

Before, there was fear and anarchy. Now the fear has gone, and the anarchy is there. So, I always say, OK there was fear of a dictator, and that’s why order was kept, basically without law. Law wasn’t applied, but there was order. Now there’s no order, everything’s a mess because there’s no fear, and I think the way to bring back order is to apply the law. People should fear the law, not a dictator.<sup>77</sup>

During the first year after Qadhafi’s ouster, the state enjoyed only limited enforcement capacity due to disarray within its security forces. Authorities did not seek to remove even the more controversial judges who had been political appointees or had backed the regime during the 2011 war.<sup>78</sup> Criminal courts barely functioned, and only minor misdemeanours were tried during the first nine months that followed the end of hostilities.<sup>79</sup> In some peripheral areas, such as the town of Derna in eastern Libya and its surrounding region of Jebel Akhdar, courts did not function at all.<sup>80</sup> Civil cases report-

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government and of the detention system”. Crisis Group interview, Tripoli, May 2012. The NTC, a self-appointed body, often was accused of lacking transparency, both in membership selection and proceedings.

<sup>77</sup> “Libyan Health Minister criticises ‘new corruption’”, Euronews television channel (online), 29 August 2012.

<sup>78</sup> Adel al-Msellati, who backed the uprising and was appointed head of Tripoli’s Appeals Court after Qadhafi’s ouster, said he kept judges who had supported the regime. A small percentage chose not to return, but those who did were allowed to resume their former positions “as long as their actions did not constitute an obstacle to the overall functioning of the court. We did not ask our staff to take an oath of allegiance to the 17 February revolution or anything of the sort, but if their actions became a problem and caused disruption, then we would suspend them. But there were very few such cases”. Crisis Group interview, Tripoli, 2 May 2012.

<sup>79</sup> By May 2012, civil trials in Tripoli began to be held regularly, yet only a few dozen minor criminal cases were reaching trial stage. Judges typically did not handle serious criminal cases due to the lack of security, the widespread availability of weapons and consequent threat of retaliation. Crisis Group interview, Salah Abu Ghaliya, judge in Tripoli’s Criminal Court district 11, Tripoli, 2 May 2012. In other major cities such as Benghazi and Misrata, judges were hearing some criminal cases as of June 2012 but, as in Tripoli, these generally involved minor violations. The courts in Sirt did not operate before October 2012. Crisis Group interviews, Tripoli, Misrata, Bani Walid, July–October 2012.

<sup>80</sup> In late December 2012, Mustafa Tarabulsi, president of the Court of Appeals of the Jebel Akhdar, suspended all local cases “in order to maintain security and protect the court and its staff”. Libya Channel news, 30 December 2012. The decision came in the wake of an attack against the region’s attorney general, a threat against the life of the president of Derna’s Court of First Instance and what Tarabulsi described as a “general lack of security in the region”. In March 2013 only consensual settlements, mainly over personal status matters, were being handled in Derna’s appeals court. Crisis Group observations, Derna, March 2013. An explosive placed in front of Derna’s district court caused extensive damage to the building’s façade. “Derna courthouse bombed”, *Libya Herald*, 30 March 2013. The government sought to dismantle “illegal” armed groups in Derna in late September 2012, and some brigades, such as the Martyrs of Abu Salim, apparently acquiesced, abandoning their facilities in the outskirts. However, over subsequent months the government continued to struggle to impose its authority in the town, which in March 2013 still lacked a police force and army units. On several occasions local armed groups attacked state security officials Tripoli had deployed to the town, and unidentified groups or individuals threatened local officials who had called for dismantlement of armed groups and reactivation of the judiciary. Throughout this period, members of Islamist groups operating in and around Derna challenged state courts, calling for the establishment of Sharia courts. Crisis Group interviews, human rights activist, Tripoli, September 2012; se-

edly were still rife with corruption; according to several lawyers, the situation worsened following Qadhafi's fall insofar as there was less scrutiny than in the past.<sup>81</sup>

Rumours also spread that state officials were pocketing money in exchange for freeing former regime officials.<sup>82</sup> Some former detainees allege that payments were directed at armed groups managing detention centres rather than at state officials. Although all these accusations remain unsubstantiated, the perception that officials were arbitrarily releasing Qadhafi-era officials remains widespread, further undermining public trust. Calls to "cleanse" the system of judges suspected of malfeasance or of having enjoyed close ties to the previous regime have intensified.<sup>83</sup>

Fingers are being pointed not only at judges, but also at the security sector as a whole. Many citizens likewise view the police – tasked with conducting preliminary investigations, recording witness statements and carrying out arrests – as Qadhafi-era relics. For this reason, armed groups exercised informal supervision over local police stations throughout most of 2012.<sup>84</sup> Fearing retribution for past abuse, many

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curity official from Derna, Tripoli, November 2012; government officials, Tripoli, January 2013; activists and religious leaders, Derna, March 2013.

<sup>81</sup> A Libyan lawyer said, since the end of the war, there is even less control over what judges do. The state is so weak, and judges feel that they run no risk". Crisis Group interview, Tripoli, 2 September 2012. Libya ranked 160th of 176 in Transparency International's 2012 Corruption Perception Index.

<sup>82</sup> Former detainees claim that many mid-rank Qadhafi-era officials or individuals who were arrested are being asked by their captors to pay 50,000-60,000 Libyan dinars (\$40,000-\$46,000) for release. Others claim that some detainees are forced to sign sale agreements for their property. Crisis Group interviews, former detainee, Tripoli, 28 November 2012; relative of Tripoli resident currently detained, Tripoli, 11 March 2013. According to a former rebel fighter, "everybody can just buy his way out: the law only applies to those who are really poor, have no connection or are 'symbols' of the former regime". Crisis Group interview, Tripoli, 26 November 2012. Another reported way to secure release is to be backed by a member of another armed brigade. Several who have been abducted claim they were released after a family member or other contact appeared at the place of detention with members of another local brigade. Crisis Group interview, former detainee, Misrata, 28 June 2012. One reported that he was abducted and released only after the intervention of an old acquaintance who had set up his own revolutionary brigade. "If he had not come together with other members of his *katiba* (armed group), I don't know what would have happened to me. I would probably still be detained today". Crisis Group interview, Tripoli, August 2012.

<sup>83</sup> On 21 November 2012, the weekly newspaper *Al-Umma* published what it dubbed a "black list of judges", identifying 87 suspected of "being corrupt, accepting bribes, or ruling against the law". This prompted an uproar among members of the judiciary and led to the arrest of the paper's editor-in-chief, Amara Hassan al-Khatabi, for whom a local prosecutor demanded a sentence of fifteen years imprisonment. Despite calls from the justice minister and human rights organisations to release him on bail, as of mid-April he still was detained; however, given deterioration of his health, in early April he was transferred to a Tripoli hospital where he reportedly remained "under heavy guard". Crisis Group interview, lawyer familiar with the case, Tripoli, January and April 2013; "Ailing al-Khatabi taken from jail to hospital", *Libya Herald*, 6 April 2013; "Libya: Release Ailing Newspaper Editor", Human Rights Watch, 12 April 2013.

<sup>84</sup> Qadhafi's police was held in low regard by many Libyans. A lawyer said, "if your car was stolen, and you went to the police to make a statement and ask them to open an investigation, nothing would happen. But if you told them that inside the car there was a gun or some sensitive document that should not fall into wrong hands because it could be used against the 'system' [*nizam*], then within a day your car was there. They only worked to defend the regime, not the people". Crisis Group interview, Tripoli, June 2012. A former revolutionary brigade commander spoke disparagingly of the post-Qadhafi police: "Where is the police? Do you call policemen those guys who sit in the car all day and don't even dare come out when they witness a traffic accident?" Crisis Group interview, Tripoli, June 2012. By late 2012, some observers described improvements in the police, largely due to the greater means the government put at their disposal. Crisis Group interview, security sector consultant, Tripoli, 6 June 2012; member of the security forces, December 2012.

police officers fled during the uprising and did not report back to work; those who remained in office tended to be powerless, unarmed and subservient to the will of armed brigades.<sup>85</sup> Indeed, some former police officers joined the armed groups, seeking protection or status.<sup>86</sup>

The situation evoked a vicious cycle: the proliferation of armed groups undermined people's trust in the judicial system; this lack of trust in turn vindicated the armed groups' claim that it was their duty to take matters in their own hands; and the actions of the groups further undermined the state judicial institutions' ability to function. Militias that had taken up arms against the former regime and then held on to them to fill the security vacuum after it collapsed accumulated weapons and consolidated control over entire neighbourhoods and areas. Accusing many judges of being Qadhafi-era holdovers and of releasing detainees in exchange for payment, armed groups proclaimed themselves defenders of the people's quest for justice.

In October 2012, the Supreme Judicial Council (SJC) presented the GNC with a draft law on vetting judges.<sup>87</sup> It suggested that all judges be dismissed and that a secret committee – comprising the chief of judicial inspections and other members of the judiciary who could show “tangible participation in the 17 February revolution” and “are proven to have good ethics” – would be responsible for readmitting judges and prosecutors meeting certain qualifications. Whether this can restore public confidence in the judiciary is unclear. Moreover, in its current form, it risks giving rise to a politicised judiciary; most troubling is the lack of transparency<sup>88</sup> and of the right to appeal.<sup>89</sup>

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<sup>85</sup> According to a police station chief in Tripoli, 20 per cent of patrol units under his command did not return to their jobs after Qadhafi's fall, either because they feared reprisal or they resided outside the city and no longer wanted to work in the capital. He said that greatest problem the police faced was lack of qualifications: “Not everybody here is smart; some don't even know how to read. Education was bad, and the regime benefited from keeping its security forces ignorant”. According to him, all police should go through training, “not only the *thuwwar*”. Crisis Group interview, Mabruk Abu Dhreir, head of Qawt Shaal police station, 18 August 2012.

<sup>86</sup> Crisis Group observations, former members of the Qadhafi-era state security forces embedded in the Supreme Security Committee (SSC), a parallel police force composed mainly of civilian revolutionary brigades, and Liwa Qaaqa [Qaaqa Brigade], a powerful Tripoli-based armed group (whose leader is from Zintan) incorporated into the army, Tripoli, Misrata, Zliten, June-July 2012.

<sup>87</sup> Draft law on the reform of the judiciary presented by the Supreme Judicial Council to the GNC on 16 October 2012.

<sup>88</sup> The committee is not obliged to disclose reasons for an exclusion; it is accountable solely to the GNC. Vetting criteria spelled out in the draft law include some that are unquantifiable, such as having sentenced someone to jail “unfairly”, or “having issued verdicts to please the regime”. The law also proposes to exclude those “famous for being corrupt” and former members of the People's Court or People's Prosecution. As the draft currently stands, excluded judges can seek reappointment to administrative jobs within the justice sector with the justice minister's approval. However, employment in any other government job of equal rank requires approval of the prime minister. Salah al-Marghani, a human rights activist and current justice minister, said prior to his nomination, “the judiciary must be restructured, but not massacred. There needs to be proper investigations into their past miscarriage of justice. It is wrong to politicise judges: they just need to be faithful to the law, not to the political establishment”. Crisis Group interview, Tripoli, 10 August 2012.

<sup>89</sup> The Mufti of Libya has been adamant that there be no right of appeal, calling on the GNC to amend the Constitutional Declaration so as to prevent individual judges from retaining the right to appeal on grounds that their disbarment was unconstitutional. Although the draft law does not establish appeal mechanisms, in principle disbarred judges could resort to the courts since Article 31 of the Constitutional Declaration (2011) states that “each and every citizen shall have the right to recourse to the judiciary in accordance with the law”. “I support the draft law to reform the judici-

## B. Collapse of the State Security Apparatus

As noted, a core problem plaguing the judicial system is the virtual collapse of the state security apparatus and the widespread availability of weapons. Armed groups that emerged victorious simultaneously took on the roles of police, prosecutors, judges and jailers. Armed brigades set up investigation and arrest units; drafted lists of “wanted” (*matlubin*) individuals; set up checkpoints or forced their way into homes to capture presumed outlaws or people suspected of aiding the former regime; and, in some cases, ran their own detention facilities.<sup>90</sup>

In implementing their policy, the armed brigades went after a large number of suspects. The mere possession of pro-Qadhafi songs or photographs saved on a mobile telephone often justified immediate detention,<sup>91</sup> as did hailing from a town or community accused of siding with Qadhafi forces during the war.<sup>92</sup> In many cases,

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ary, but it is not enough. As things stand now, any judge who is excluded can then go to the appeals court and can get his case overturned and get reappointed. We need to prevent that”. Crisis Group interview, Sheikh al-Sadeq al-Ghariani, Mufti of Libya, Tripoli, 26 November 2012.

<sup>90</sup> According to former captives who had been held in such makeshift prisons in the capital, armed groups carried out arbitrary detentions in private villas, once own by Qadhafi-era officials, along the airport road, in the Gharghur neighbourhood and even in a government building behind the Supreme Court. Crisis Group interviews, Tripoli, June-September 2012 and January 2013. In March 2013, the government evacuated some of these buildings. The government has not sanctioned any of the lists of “wanted” individuals; indeed, no official list exists. The Commission for the Application of Integrity and Patriotism, the NTC-appointed body tasked with vetting high-ranking administrative and political appointments, announced that it possessed a list of 4,465 “wanted” individuals from around the country, but a member clarified that this referred to fugitives from justice, not former Qadhafi-era officials sought by armed brigades. A commander of a local branch of the Supreme Security Committee (SSC) explained that SSC units put together lists of “wanted” individuals for most towns on the basis of official documents found after the 2011 war and through interrogations. “After liberation, in most towns we found lists of those to whom the Qadhafi forces had distributed guns or vehicles during the war, so that provided a starting point. Then we had the other lists of people employed in the security forces and those who were members of the *lijan thawriya* [revolutionary committees]. We interrogated those we had arrested to check them against the names and whereabouts of those on our lists. We also monitored telephone calls and knew who was keeping contact with those [loyalists] abroad”. Local SSC forces drafted a list of 1,000 “wanted” people in Zliten alone, a town of 200,000 residents. In Bani Walid, he claimed, there were 5,000 wanted individuals, including some from other areas whom the SSC believed were hiding there prior to the October 2012 siege. Crisis Group interviews, Abdulmajid Biuk, member, Integrity Commission, 27 November 2012; SSC commander, Zliten, 12 November 2012.

<sup>91</sup> A list drafted by the Bani Walid Inventory, Documentation and Information Centre (*markaz al-hasr wa al-tawthiq wa al-malumat*) made available to Crisis Group in November 2012 mentions 130 people from Bani Walid detained in Misrata. In most cases, reasons for the arrest are marked “unknown”, though a few instances mention carrying a mobile telephone containing either songs or pictures celebrating Qadhafi; being a military officer; belonging to the Warfalla tribe (Bani Walid’s principal tribe); or having a name that matches that of a “wanted” individual.

<sup>92</sup> Emhamed Ali Mohammed Elaheemer, an elderly member of the Mashasha tribe, which has a long history of communal tensions with Zintan, said that his son, Fathi, was killed after being tortured in captivity at the end of 2011. His story is a rare insider’s account of torture in detention. Fathi reportedly disappeared on 5 October 2011, and two days later armed men showed up at his Tripoli home demanding that his brother Youssef follow them back to their headquarters. Youssef complied and discovered that Fathi, who had been abducted on his way home, also was being held at the brigade’s headquarters. “Youssef said that they gave him electric shocks and that later Fathi was brought in and tortured there in front of him in order to force Youssef to reveal the names and addresses of his brother’s friends”, the father said. Since Youssef said nothing, “they took Fathi outside the room and threatened him with something other than beating, and when they brought him

presumed ties to the former regime appear to have been little more than pretexts to retaliate against people against whom the armed brigades held personal or professional grudges or as a means of extorting a ransom.<sup>93</sup> Since mid-2012, the number of abductions of individuals, including foreigners, with no genuine link to the former regime or to the recent war appears to have markedly increased.<sup>94</sup> International human rights organisations have documented numerous cases of torture, several resulting in death, but many more remain unreported for fear of retaliation.<sup>95</sup>

Some of these activities unfolded with state acquiescence. In late 2011, the transitional government headed by Abdul Rahim al-Keib granted the Supreme Security Committee (SSC) official recognition as a parallel police force.<sup>96</sup> Members of this

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back in the room, Fathi started to confess without even waiting for the questions to be over". Youssef was released, but they heard nothing about Fathi for days. "50 days after his arrest we found him dead in Tripoli's central hospital. All over his body were signs of torture". Crisis Group interview, Emhamed Ali Mohammed Elaeemer, Sghegha, 12 July 2012.

<sup>93</sup> Several Libyans claim to have been detained by armed men responding to a request or tip provided by a former acquaintance holding a personal grudge. One said, "I know exactly who fingered me. When, the day after my abduction, my family went to my former workplace asking if anybody knew where I had been taken, some employees suggested they ask one person in particular. When they found and threatened him, he told them where I was and what brigade had taken me. So I know that he was the person who tipped them off". Crisis Group interview, former detainee, Tripoli, November 2012.

<sup>94</sup> Statistics on abductions are unavailable. However, according to the justice minister, "they have visibly risen at the end of 2012, even in Tripoli, and we are very worried about it". Crisis Group interview, Salah al-Marghani, Tripoli, 7 January 2013. Most abductions appear to target Libyans, although several foreigners also were taken for a variety of reasons. On 31 July 2012, seven Iranian aid workers with an official invitation from the Libyan Red Crescent were abducted in Benghazi. According to security officials, members of a local Islamist brigade held the group to determine whether they were there to proselytise; they were released after two months. Similarly, another armed group arrested 50 Egyptian Copts in Benghazi in early March 2013, accusing them of proselytising. One died in custody, but it is unclear whether from natural causes or torture. The government criticised the detention and reiterated that arbitrary detentions would not be tolerated. Crisis Group observations, press conference, prime minister's office, 3 March 2013. Other foreigners briefly abducted include the commercial attaché of the Austrian embassy (by gunmen while jogging in an upper-class Tripoli residential neighbourhood) and, in May 2012, the manager of the Libyan branch of Repsol, the Spanish oil and gas company. Libyans abducted include Nabil Al-Alam, head of the Libyan Olympic Committee (July 2012); Sulayman Dogha, a prominent journalist (June 2012); and Abdulmalik Bel Eid, a ten-year old boy kidnapped for no apparent political reason in late November 2012. His captors demanded a 500,000 dinar (\$400,000) ransom. Crisis Group interviews, October-November 2012; see also "Iranian Red Crescent workers freed in Libya: ministry", 6 October 2012; "Abducted 10-year old freed after authorities swoop on telephone intercept intelligence", *Libya Herald*, 1 December 2012.

<sup>95</sup> Crisis Group interviews, Libyan and international human rights activists, Tripoli, October-December 2012. For more details on torture and deaths while in the custody of armed groups, see "Militias Threaten Hopes for New Libya", Amnesty International, February 2012, and "Libya: Rule of Law or Rule of Militias?", Amnesty International, July 2012.

<sup>96</sup> The NTC executive committee established the SSC in September 2011 through decree 41/2011; its principal task was to secure key security installations in the capital following the withdrawal of pro-Qadhafi security forces. It was dismantled but immediately re-created in December 2011. See prime ministerial decree 388/2011. This time the SSC was provided with a broader mandate and new name. It was given the right, inter alia, to arrest, detain and interrogate suspects and open branches throughout the country. Its new name was *al-lajna al-amniya al-ulya al-muaqqata*, the Temporary Supreme Security Committee, to underscore its interim nature. For a discussion, see Crisis Group Report, *Divided We Stand*, op. cit. While critics of the SSC fault the government for enshrining the authority of lawless groups, opinions are divided. Some consider it a principal source of problems;

body, which by summer 2012 exceeded 100,000, were legally entitled to open probes, conduct arrests and refer cases to prosecutors. Although some of its units by and large followed legal procedures,<sup>97</sup> that was not the norm for an organisation that lacked a formal command and control structure. As a result, official recognition essentially granted legal imprimatur to oftentimes arbitrary conduct.<sup>98</sup> Worse, according to several former fighters and members of the judiciary, roughly 150 ex-criminals, officially still wanted by the law, currently are in charge of revolutionary brigades.<sup>99</sup> SSC commanders themselves acknowledged that criminals had infiltrated their ranks.<sup>100</sup> A judge asked: “How can we hold these criminals accountable if they no longer are in our custody and have become part of the security forces, either officially or unofficially?”<sup>101</sup>

Theoretically a temporary security force, the SSC has proved difficult to dislodge.<sup>102</sup> Despite several attempts to integrate at least parts into the police force and its stated intention to dismantle the SSC by December 2012, the government encountered strong resistance, and some units continue to operate. An SSC leader went so far as

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others see it as part of the solution. The head of an armed group called the SSC “a bunch of crooks and outlaws”, and a government official called its persistent authority “the chief obstacle to ensuring the rule of law”, likening the institution to *al-aman al-dakhili*, Qadhafi’s parallel security force that dealt with internal political opposition. Crisis Group interviews, brigade leader, Tripoli, 13 September 2012; government official, December 2012. The spokesperson for the prosecutor’s office said the SSC comprised “good people who want to work” and dismissed allegations that it was acting outside the law. Crisis Group interview, Taha Bara, 18 June 2012.

<sup>97</sup> Crisis Group observations, headquarters and detention centre of SSC’s Isnad al-Thani (Support unit no. 2) in the Fornaj area of Tripoli, 17 June 2012. On the day of this visit, 54 people were held in the unit’s detention centre; most had been there three to four weeks; one had been there for more than 45 days. According to the base deputy commander, 45 days was the legally acceptable period to hold offenders without having to refer them to a prosecutor and transfer them to a proper detention facility. (This appears to be a questionable reading of the law, however). Living conditions seemed reasonably good, and detainees had access to medical facilities; there were no visible signs of torture, though Crisis Group was always escorted by a member of the unit. In late February 2013, this unit came under investigation after a detainee’s death; all remaining detainees allegedly were transferred elsewhere. “Security unit disbanded after doctor dies in detention”, *Libya Herald*, 2 March 2013.

<sup>98</sup> A military prosecutor complained that some members of the SSC *isnad* (support) brigades “worked as a police force but placed themselves above the law: they are not organised; they capture people without any respect for the law and without any orders”. Crisis Group interview, Tripoli, 23 December 2012. An SSC unit reportedly was responsible for the December 2012 abduction of Hamid al-Tubuly, a prominent blogger. He was released only after President Mohamed Magarief personally intervened. See “Abducted social network activist Hamid Al-Tubuly hits out at the SSC, denies involvement with Mohammed Qaddafi”, *Libya Herald*, 11 December 2012.

<sup>99</sup> Crisis Group interviews, Tripoli, 5 November 2012.

<sup>100</sup> See statement by SSC commanding officer Mohammed Sweisi on Libya Wataniya radio, 4 November 2012. His comments followed the outbreak of clashes with another SSC commander, who apparently was a former convicted criminal. Sweisi acknowledged the SSC “had made some mistakes in the people they included in their ranks”. Akram Warfalli from the Security Support Committee (*lajna al-isnad al-amni*) also admitted that former criminals had infiltrated the SSC. Libya Ahrar TV channel, 4 November 2012.

<sup>101</sup> He noted that authorities knew the exact whereabouts of some of these criminals but could not order their arrest. Crisis Group interview, judge, Bani Walid, 7 July 2012.

<sup>102</sup> A large billboard with the words “Temporary Supreme Security Committee” (*al-lajna al-amniya al-ulya al-muaqqata*) hangs over the entrance of most SSC headquarters around Tripoli. Starting in December 2012 the word “Temporary” was sometimes spraypainted out. Crisis Group observations, June, October and December 2012.

to ask “the police [to] integrate into the SSC” rather than the other way around.<sup>103</sup> After his replacement in November 2012, former Interior Minister Fawzi Abd al-Aal – who had been behind the decision to expand the SSC’s size and authority – urged that it remain in existence and denied it was intended as a “temporary” body.<sup>104</sup>

The SSC aside, hundreds of other armed groups that emerged after the war also carry out their own policing activities. Nominally under the authority of either the defence or interior ministry, these *katibas* (brigades) for the most part act independently, with little or no government oversight or direction from the general prosecutor’s office. One, Liwa Qaaqa, a well-known Tripoli-based militia formally under defence ministry authority, began rounding up pro-Qadhafi former combatants;<sup>105</sup> over time, it began arresting civilians in Tripoli. The head of its investigation unit, a police investigator for the past two decades, said:

People come to us from all around Tripoli and report problems or complaints about neighbours that are causing trouble, or former regime members who have been spotted around, and ask us to do something about it. People don’t trust the

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<sup>103</sup> See statement by Juma Belhaj, head of the SSC in Misrata, on Tobactus television channel, 18 December 2012. Referring to the newly-appointed interior minister, he asked: “Who are you, Ashur Shwayl, to get rid of the SSC?” He added, “the army and the police personnel have to join the SSC, not the other way around”. His comments came in response to Shwayl’s statement that “there will be no solution except through their integration (*indimaj*) and by making them [the SSC] part of the interior ministry forces”, on al-Manara radio, 13 December 2012. On 1 January 2013, roughly 1,000 SSC members surrounded the GNC and the access roads to protest the government’s decision to integrate the SSC into the police force; they demanded that the SSC remain as a parallel force under the interior ministry and called on GNC members to dismiss Shwayl. On 5 January 2013, Prime Minister Ali Zeidan announced he was considering the possibility of creating a separate force, exclusively manned by members of civilian armed groups, that would fall under the chief of staff’s authority. Unlike the existing coalition of defence ministry-approved brigades, known as Libya Shield Forces (LSF), this new body would recruit fighters on an individual basis rather than through wholesale integration of brigades over which the ministry exercises no genuine authority. Its members would include fighters from the LSF, the SSC or any other so-called revolutionary brigade. Crisis Group interviews, officials, SSC members, Tripoli, January 2013; Ali Zeidan’s address on Libya Wataniya radio, 5 January 2013. On the LSF, see Crisis Group Report, *Divided We Stand*, op. cit.

<sup>104</sup> At a 30 November 2012 SSC celebration in Misrata, former Interior Minister Fawzi Abd al-Aal stated that “there can be no security in Libya without these men [of the SSC]”. He denied that the force’s name implied that it was a transitory institution. The temporary aspect of its role, he said, was “compiling a database to complete the list of all the names of its members and our security needs; but we never said that the SSC in itself would be temporary”. This change of stance was noticeable as well in remarks by several SSC officials. In late 2012, two commanders, who in the middle of the year had acknowledged that the body would be absorbed into state security services by the end of 2012, explained that there was no exact date for dismantlement; instead, the SSC would end “when there was a state that could be trusted”. Crisis Group interviews, SSC commanders, Zliten, Tripoli, June and November 2012. “We are the first ones who want to be part of the state security forces and have a strong state. But how can they ask us to disappear when there are still forces within this state that have an interest in undermining it?”. Crisis Group interview, SSC commander, Zliten, November 2012. Since November 2012, religious leaders in the east have been openly encouraging young people not to join the police or the army, which one defined as “protectors of the government, but not of the people nor of the 17 February revolution .... Only the *thuwwar* are protectors of the revolution”. See Sheikh Muhamed al-Jehani, at [www.youtube.com/watch?v=OchEkcdkO-Q](http://www.youtube.com/watch?v=OchEkcdkO-Q), 21 November 2012.

<sup>105</sup> The brigade secured strategic sites in the capital’s western neighbourhoods in late August 2011, when Tripoli fell. In particular, it guarded the Petroleum Institute in Siyahiya, where it found and arrested several dozen foreigners whom it accused of being mercenaries. Crisis Group interview, Othman Mleghta, commander, Liwa Qaaqa, June 2012.

police, and in any case the police cannot do anything for you because they don't have arms and cannot confront individuals who are armed. Our brigade is strong and well armed. We conduct the investigation and then go to arrest the suspects.<sup>106</sup>

Members of this and similar brigades insist their actions are a necessary complement to the deficient national police force. Yet, many brigades typically act in defiance or ignorance of legal procedures: they arrest people without a warrant from the prosecutor's office, instead responding to tips provided by friends or acquaintances, and arrest people at checkpoints, in the middle of a street or at their homes.<sup>107</sup>

Allegations of abuse are rife. Some armed groups reportedly use official police summons to lure suspects from their houses but proceed to take them to their headquarters where they are often said to be tortured.<sup>108</sup> Other detentions allegedly occur without even the pretence of legality. Armed groups are also known to threaten violence to compel prosecutors to take on a case.<sup>109</sup>

Authorities acknowledge they lack appropriate means to control armed groups. The police do not have sufficient manpower, as many officers did not report back to work after the 2011 war; although they boast new cars, they are short of weapons,

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<sup>106</sup> Crisis Group interview, Mansur Ali Khawaja, head of investigations, Liwa Qaaqa, Tripoli, 4 June 2012. He claimed that arrests are carried out by a special unit of eight men armed with rifles and equipped with vehicles mounted with heavily artillery. It reportedly shows up at a person's house or waits for him to exit with his car, then takes him to brigade headquarters for interrogation. Not all arrests lead to formal investigations and prosecution. Some individuals, including Juma Al-Gammati, a prominent local politician, report having been detained by members of this brigade and released after being beaten and threatened. The case currently is before a court. Crisis Group interview, Tripoli, November 2012. In late January 2013, the brigade leader said they had stopped carrying out police work and begun focusing on protecting key locations in the capital, oil installations in the west and the south of the country and parts of the Western border. Crisis Group interview, Othman Mlegta, Liwa Qaaqa headquarters, Tripoli, 24 January 2013. However, some individuals familiar with the brigade disagreed, claiming that it still ran a detention facility in its Tripoli headquarters. Crisis Group interview, diplomat, Tripoli, January 2013.

<sup>107</sup> Crisis Group interviews, former detainees, Tripoli, October 2012-January 2013.

<sup>108</sup> For example, a young Misratan reported having been extensively tortured by members of a local armed group that had showed up with a police summons at his front door in early June 2012. Crisis Group interview, Misrata, 29 June 2012. While a local police chief said that some brigades carried out what he called "extrajudicial work", he denied any police involvement in this case; in contrast, a local prosecutor believed that allegations of collusion between local armed groups and police were credible. Crisis Group interviews, Misrata, 31 June 2012. Similar incidents were reported elsewhere. Crisis Group interviews, Tripoli, 4 December 2012.

<sup>109</sup> In April 2012, an armed group from Zawiya abducted a Libyan neurosurgeon whom it accused of negligent treatment of an anti-Qadhafi fighter during the uprising. The surgeon, Hisham Ben Khayal, rejected the charge, claiming he had not been the treating doctor. Still, the brigade reportedly held him incommunicado in its headquarters for a week, beating him with whips. It later transferred him to Zawiya's Jedayem prison and allegedly persuaded a local prosecutor to charge him with breaching laws related to medical conduct. The general prosecutor described the decision to transfer the case to a criminal court as "illegal"; nevertheless, Ben Khayal remained in detention until 2 April 2013 when Tripoli's Court of Appeals acquitted him for lack of evidence. Only two hours after the verdict, a member of the same armed group which had abducted him in 2012 entered the Court of Appeals and allegedly threatened the judge and prosecutor in the case. At a rally in Tripoli's Martyrs Square, the doctor's daughter, Rawiya, held up a placard saying, "Qadhafi is no longer a person, it's a behaviour". Crisis Group observations of footage of the rally, Tripoli, 15 June 2012; see also "Libyan surgeon accused of neglect faces spurious charges", Amnesty International, 7 June 2012; "Amnesty International welcomes the release of Hisham Ben Khayal", Amnesty International, 8 April 2013.

since most of their arsenal was seized by armed groups during the war. Wanis al-Sharif, the former top security official in the east, said, “it would be impossible for me to give the order to arrest a militia member. Impossible”.<sup>110</sup> Although a minister claimed that the government would start reining in some Tripoli militias – those “against whom there is substantial evidence of torture and manning illegal detention centres” – he added that it would have to proceed cautiously, “because some of these groups are armed to the teeth, and we don’t know how they will react if we make a move against them”.<sup>111</sup> By the same token, prosecutors lament that they cannot confront armed groups or defend themselves against possible retaliation should they do so; as a result, they often feel compelled to comply with their requests.<sup>112</sup>

Public opinion regarding the brigades is far from universally negative; indeed, given overall problems in terms of law and order and obstacles faced by the government in this respect, many Libyans, officials included, see them as providing a critical service – which only makes the issue all the more difficult to tackle.<sup>113</sup> Some commanding police officers defended them, arguing that the real troublemakers are among the 16,000 former detainees set free during the uprising, well armed and supported by their own armed group that masquerades as a “revolutionary brigade”, while pursuing their own interests and beyond the reach of the police. A police chief said:

The real problem we are facing is caused by those criminals – not the real *thuwwar* (revolutionaries) – who pretend to be patriots, pose as revolutionary leaders and claim to be doing whatever they are doing in order to prevent Qadhafi loyalists from operating inside Libya. In truth, they are just bands of criminals doing all sorts of illegal activity.<sup>114</sup>

Government efforts to curb the armed groups – whether the more legitimate ones or those headed by former criminals posing as *thuwwar* – have been dampened by a recent wave of killings targeting high-ranking Qadhafi-era security and army officers in the east. Over eighteen senior security officers have been killed in and around Benghazi since mid-2012, in what some residents describe as revenge attacks carried out by more radical Islamists, who previously suffered abuses, allegedly at the hands of these security officials.<sup>115</sup> These also include Faraj al-Dreisi, the newly appointed

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<sup>110</sup> See Karim Fahim, “Benghazi violence is beyond the control of even the city’s powerful militias”, *The New York Times*, 28 November 2012.

<sup>111</sup> Crisis Group interview, minister, Tripoli, January 2013.

<sup>112</sup> A lawyer lamented: “Prosecutors seem only to be doing the paperwork for the *thuwwar*” and faulted Tripoli’s general prosecutor for complying with armed groups’ requests whenever they showed up with arbitrarily detained people. Crisis Group interview, Elham Saudi, founder, Libyan Lawyers for Justice, Tripoli, 12 August 2012.

<sup>113</sup> A minister said, “some of the brigades are terrible and just want to cling on to power; but others are truly excellent and committed to supporting the government”. Crisis Group interview, Tripoli, January 2013.

<sup>114</sup> Crisis Group interview, police officer, Tripoli, August 2012. Qadhafi released thousands of detainees at the beginning of the 2011 uprising and handed them weapons in an attempt to bolster support for the regime.

<sup>115</sup> Among those killed in 2012 and early 2013 were Mohammed Hadia, army general and head of armaments at the defence ministry; Colonel Suleiman Bouzrida, former intelligence official; air force Colonel Badr Khamis al-Obeidi; Captain Adel Baqramawi; Benghazi police chief Colonel Mohamed Ben Halim; Benghazi security directorate chief Faraj al-Dreisi; and Lt. Colonel Nasser Maghrabi. Sources close to Benghazi security officials claim that a list with the names of some 100 intended targets exists. Crisis Group interviews, Benghazi, August 2012.

Benghazi security chief (and veteran Qadhafi-era security official), whom gunmen killed on 21 November 2012, only days after he ordered his men to restrain outlawed armed groups still operating in the city.<sup>116</sup>

On 3 December 2012, Naji Hamed, a police officer who led the large anti-militia rally in Benghazi in September, escaped an assassination attempt; his brother-in-law was killed instead.<sup>117</sup> Then, on 2 January 2013, gunmen abducted the head of Benghazi's criminal investigation unit, who was in charge of looking into al-Dreisi's assassination. Explosions and attacks against police stations and the courthouse have rocked the eastern capital since mid-2012, with a peak of deadly violence in mid-December, when six attacks against police stations occurred within a few days.<sup>118</sup> Similarly, in Derna, some 300km east of Benghazi, revenge attacks against former members of the security forces have killed at least 30 people since the end of the war.<sup>119</sup> This reality has further crippled police authority in these eastern cities.

### C. Impunity

Overshadowing the security situation has been the lack of accountability for crimes committed by rebel fighters during and after the 2011 conflict.<sup>120</sup> Rather than being investigated, those suspected of such acts often are hailed as national heroes. The state's unwillingness or inability to look into the unlawful killing of prisoners of war throughout 2012 has contributed to the fighters' feeling of operating above the law. Although this might be a prudent course of action to avoid an open confrontation between government forces and independent armed groups, it inevitably carries the risks of entrenching lawlessness and becoming a trigger of violence.

The NTC in effect gave legal sanction to impunity in May 2012 when it amnestied those who had committed crimes – including murder and forced displacement – during the uprising.<sup>121</sup> The broader impression that action taken in defence of the

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<sup>116</sup> On 10 October 2012, al-Dreisi issued an order to the chiefs of police stations in Benghazi stating: "To the head of departments and national security stations, you are authorised to use force against all outlaws of armed brigades, those who storm your headquarters in order to release detainees, confiscate your weapons, sabotage equipment or damage vehicles. I will take full responsibility for such decisions as an official". "Benghazi security directorate chief assassinated", *Libya Herald*, 21 November 2012.

<sup>117</sup> Hamed helped organise the "Save Benghazi" rally that took place on 21 September 2012, in the wake of the attack against the U.S. consulate. See "Save Benghazi organiser narrowly escapes assassination attempt, brother-in-law killed", *Libya Herald*, 3 December 2012. Tens of thousands took to the streets to protest not only the assault, but also the continued existence of rebel militias. Later that night, demonstrators stormed the compounds of three Islamist brigades – 17 February, Ansar al-Sharia and Rafallah al-Sahati – with violent clashes occurring at the latter's base.

<sup>118</sup> Eight were killed in six separate attacks against police stations in Benghazi during that week.

<sup>119</sup> Crisis Group interviews, member, Derna local council, Derna, March 2013.

<sup>120</sup> In March 2012, a UN commission of inquiry concluded that these forces had committed war crimes and crimes against humanity but that no investigation had been carried out. "Report of the International Commission of Inquiry on Libya", Human Rights Council, 2 March 2012, A/HRC/19/68. Likewise, Human Rights Watch blamed armed groups for the extrajudicial killings of Muammar Qadhafi and his son Muatasim, as well as 66 other prisoners captured in Sirte. See "Death of a Dictator: Bloody Vengeance in Sirte", Human Rights Watch, October 2012.

<sup>121</sup> Law 38/2012 on "Special Procedures during the Transitional Period" grants immunity from prosecution to "revolutionaries" for "military, security and civilian acts required by the 17 February Revolution" committed with the "purpose of leading the revolution to victory". The same law grants legal weight to interrogation reports and other information collected by "revolutionaries", legitimising the seizure, detention and interrogation of detainees outside a legal framework.

new order is de facto legitimate has emboldened armed groups, many of whom justify ongoing illegal activity as necessary to safeguard the “17 February revolution”. Stories abound: for example, of captors of people who have died under torture who request relatives to sign statements affirming that the deceased were plotting subversive activity;<sup>122</sup> and of rival armed groups clashing for control over smuggling activity justifying the violence as part of a search for Qadhafi loyalists.<sup>123</sup> An armed group member admitted: “If you listen to the security forces, any crime occurring in the country today is the work of some loyalist or another, or part of an operation to hunt down loyalists [of the former regime]. It is all a big lie”.<sup>124</sup>

Legal immunity awarded to the fighters, their status as heroes of Libya’s liberation, together with the apparent ability of some of them to extort false statements or confessions, has made it extremely difficult to prosecute *thuwwar*, even for more recent wrongdoings. Although the general prosecutor’s spokesman asserted that the state had detained a number of fighters, this is not necessarily evidence of a firm governmental approach.<sup>125</sup> Rather, they appear to have been handed over by their militias or relatives in response to retaliatory threats issued by the victims’ family or tribe.<sup>126</sup> Even those fighters who fall into government hands seldom face justice: potential witnesses refuse to testify for fear of retribution;<sup>127</sup> prosecutors are reluctant

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<sup>122</sup> Crisis Group interview, Tripoli, November 2012.

<sup>123</sup> Crisis Group interviews, security official and local notable involved in mediation efforts among warring armed groups close to the Tunisian border, January 2013.

<sup>124</sup> Crisis Group interview, revolutionary fighter, Tripoli, November 2012. An official concurred: “It is easy to accuse the *azlam* [loyalists] for these actions, but I don’t really think they are responsible for the acts of which they are accused”. Crisis Group interview, Tripoli, September 2012. Belief that former regime officials still are actively seeking to subvert the transition and causing security problems remains widespread. The head of a revolutionary brigade claimed it had intercepted a number of telephone calls proving that exiled Qadhafi loyalists “were actively plotting against the new state” and suggested that former regime elements, rather than Islamist militants, might have masterminded the 11 September 2012 attack against the U.S. consulate in Benghazi. Former Prime Minister Abdulrahim al-Keeb, in a press conference the morning after the assault, said, “there is no doubt that Qadhafi loyalists are actively trying to undermine the country’s stability”. Crisis Group observations, joint press conference of Prime Minister Abdulrahim al-Keeb and GNC President Mohamed Magarief, prime minister’s office, Tripoli, 12 September 2012.

<sup>125</sup> Crisis Group interview, Taha Bara, Tripoli, 18 June 2012.

<sup>126</sup> By July 2012 approximately twenty members of armed groups had been handed over to state prosecutors in Misrata but, according to local residents, all these *thuwwar* were delivered by the brigades themselves, keen to avoid clashes with other armed groups, or by the fighters’ families, which wanted to prevent a family feud. A Misratan allegedly tortured by members of a brigade, said, “it is impossible for the police to detain a member of *katiba* here in Misrata. The police cannot even go out and detain a normal person without the backing of a *katiba*, so how do you think they are going to do it against a member of a revolutionary group?” Following his own abduction, he filed a report with the local prosecutor but said, “I don’t expect the police to be able to do anything. But at least I did not stay quiet”. Crisis Group interview, Amin al-Sahli, Misrata, 30 June 2012. Members of local branches of the Fact-Finding and Reconciliation Commission, to whom local residents can reach out to seek redress for past and current grievances, admit to being unable to look into crimes committed after the end of the 2011 war. “If the state cannot provide strong security forces we will not be able to address the crimes that took place after the liberation ... so it is likely that events that took place after the liberation will be the last issues that the Commission will deal with”, said the head of the Sabratha branch. Crisis Group interview, Ali Bashir al-Shibani, Sabratha, 14 January 2013.

<sup>127</sup> People who witnessed the abduction of an injured Mashasha fighter being transported by ambulance to a Tripoli hospital in June 2012 and subsequently killed illustrate this point. At a checkpoint along the Tripoli airport road, members of a Zintani brigade stopped the ambulance. According to

to proceed for similar reasons;<sup>128</sup> and detaining officers, afraid of being attacked, often release them or hand them over to another armed group.<sup>129</sup> In a rare case that reached trial, fellow members of the suspect's armed group ambushed the judicial police vehicle transporting him to court and set him free.<sup>130</sup> An international human rights activist summed up the difficulties in carrying out justice against *thuwwar*:

Efforts by lawyers and judges to bring to justice revolutionaries alleged to have committed acts of torture and ill-treatment have either been blocked by the office of the general prosecutor, prompted retaliatory violence, like the bombing of the court house in Benghazi, or led to death threats against lawyers, victims and in some cases their families. This has made many lawyers too fearful to bring cases forward, particularly those alleging acts of torture at the hands of the SSC, certain powerful militia groups or military councils.<sup>131</sup>

Feeling immune, many brigade members openly boast that they are on a quest to hunt down individuals who hunted them in the past. A Derna fighter vowed to kill a former security officer from Tripoli who, years earlier, purportedly had called him "a useless pig from the east" in front of his entire family. "What justice", he asked, "can the state deliver? At best, a judge might sentence a person to a few years in jail and that is it".<sup>132</sup> He laughed at the suggestion that he might be held accountable for his intended action.

The November 2012 formation of Ali Zeidan's government and appointment of the new interior minister, Ashur Shwayl – himself a police officer – appear to have reinvigorated official determination to curb the armed groups' authority. Shwayl listed the SSC's integration into the police force as a priority, stating he no longer would tolerate illegitimate armed groups or condone abductions, kidnappings and storming of homes without a proper warrant from the prosecutor's office.<sup>133</sup> The prime minister echoed this stance in several broadcast addresses.<sup>134</sup> Should concrete steps follow, tensions with armed groups are certain to rise; several people with ties to the brigades expressed concern that Shwayl could become a target in what they

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testimony by the ambulance driver and recorded on film, when the armed men at the checkpoint learned that the injured person was a Mashasha fighter, they forced the driver and another passenger at gunpoint to leave him and drive off. The wounded man was found shot dead the following day. His family brought the case before the military prosecutor, as the relevant brigade fell under the defence ministry's authority. As of April 2013, however, the two witnesses had refused to provide witness statements, fearing that brigade members would seek revenge. Crisis Group interview, judge familiar with the case, Tripoli, November 2012.

<sup>128</sup> Crisis Group interview, member of an armed group, Tripoli, November 2012.

<sup>129</sup> Crisis Group interview, Abdullah Banun, lawyer and head of a Sufi community, Tripoli, 22 November 2013.

<sup>130</sup> Crisis Group interview, Salah Abeid Allah, head of Bani Walid's Court of First Instance, Bani Walid, 24 November 2012.

<sup>131</sup> Crisis Group interview, Libya representative, OMCT, Tripoli, 13 March 2013. A law criminalising torture and forced disappearances, which the GNC passed on 9 April 2013, arguably could embolden lawyers to take on cases against brigade members. The law imposes a minimum jail sentence of five years for the infliction of mental or physical pain to a detainee and life imprisonment in the event of a detainee's death. Omar Hemidan, GNC spokesperson, press conference, Tripoli, 8 April 2013. Like all Libyan laws, it is not retroactive and therefore its provisions only apply to future cases.

<sup>132</sup> Crisis Group interview, Derna fighter, Tripoli, November 2012.

<sup>133</sup> Crisis Group interview, adviser to the prime minister's office, 18 December 2012. See also Prime Minister Ali Zeidan, press conference, Tripoli, 7 January 2012.

<sup>134</sup> Ibid; publicly broadcast cabinet session, Tripoli, 10 January 2013.

described as a de facto “open war” between police and revolutionary brigades. One such Tripoli resident said:

Shwayl is a good guy. He is the only one who has spoken out against the attacks against Benghazi police stations. All the others stayed silent. He is smart, but he has entered a very dangerous game. He and perhaps even some other ministers risk being killed or kidnapped if they continue like this.<sup>135</sup>

#### D. Detention

Armed groups continue to detain thousands accused of links to the former regime. Some were released after preliminary investigation, but many are being held without due process and without having seen a judge. Of the roughly 7,000 still in detention, some 3,000 are said to be in facilities officially run by the state.<sup>136</sup> The rest remain in makeshift prisons under the control of armed groups, mainly in Tripoli and Misrata.<sup>137</sup> In May 2012, the NTC gave the interior and defence ministries a two-month deadline to refer to proper judicial authorities detainees “against whom there is sufficient evidence attesting that they have committed acts considered crimes under the law or otherwise set them free”.<sup>138</sup> However, details were not fleshed out and, so far, it appears that local judicial districts have decided on their own how to proceed, forming screening committees in consultation with local authorities and armed groups.<sup>139</sup>

Ultimately, the deadline passed without any significant number of releases; only in early August did these committees begin sending an initial group of detainees home. The process ran into serious problems in Misrata,<sup>140</sup> and in a Tripoli prison,

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<sup>135</sup> Crisis Group interview, Tripoli resident with family ties to the SSC, Tripoli, December 2012. Tellingly, on 31 March 2013, members of an armed group kidnapped and detained Mohamed al-Ghattous, an adviser to the prime minister, as he was driving through the outskirts of Tripoli. He was released after ten days. Reuters, 9 April 2013.

<sup>136</sup> Some facilities the justice ministry considers under state control do not necessarily fit that description; in at least one detention centre visited by Crisis Group, only a small wing housing a dozen detainees was managed by the judicial police. The rest of the facility, with 400 detainees, as well as the outer perimeter were under the local SSC force’s authority. Crisis Group observations, Mager prison, Zliten, 20 September 2012.

<sup>137</sup> As noted above, there is some controversy over numbers. International human rights groups, the UN and some local organisations have called on the state to carry out a screening process in order to try those who committed crimes and set free those against whom there is no evidence. In his briefing to the UN Security Council, Special Representative Tarek Mitri said, “while there has been some progress in the screening and processing of conflict-related detainees, this has remained limited in scope. UNSMIL continues to urge the Libyan authorities to accelerate the screening of these detainees, the release of those against whom there is insufficient evidence, and the transfer of detainees to state-controlled facilities”. “Security Council briefing”, op. cit., 29 January 2013.

<sup>138</sup> See NTC Law 38/2012, Article 1.

<sup>139</sup> In Misrata, members of the local city council and of the military and civilian prosecution, as well as representatives of the brigades who guarded the detention facility, formed the screening committees under SSC supervision. They were to determine whether detainees should fall under the military prosecutor’s or general prosecutor’s jurisdiction or be released. After the initial screening, judicial review procedures also differed. In a Tripoli prison, the military prosecution (*al-niaba al-askariya*), reviewed the case of detainees under its jurisdiction, while the criminal investigations unit (*al-baath al-jinai*) or the unit for the prevention of crime (*mukafahat al-jarima*) screened those who fell under the general prosecutor’s authority. Crisis Group interviews, international rule of law adviser, Tripoli, 4 December 2012; former detainee, Tripoli, 28 November 2012.

<sup>140</sup> The SSC released a few dozen people in Zliten and about 100 in Misrata. By late June 2012, the Misrata prosecutor had received several detainee files from the SSC but none from brigades con-

where a first batch of a dozen detainees had been sent to the criminal investigations unit for screening, only three were let out before the armed group in charge of their detention halted further releases.<sup>141</sup>

Releases were hindered by three factors: fear that freed detainees would carry out revenge attacks against former jailers, as happened in Misrata; threats by Libyans harbouring grievances toward detainees to kill them upon their release and retaliate against their jailers and screening officials; and objections voiced by some jailers.<sup>142</sup> As a result, people familiar with the screening process contend that the small number of actual releases came about due to personal connections with the jailer rather than proper investigations or evidence gathering.<sup>143</sup>

Problems have been most acute in the case of detainees under the general prosecutor's jurisdiction. Those screenings took place outside detention facilities, either in prosecutors' offices or in the offices of various branches of the security forces. This fuelled distrust between jailers – whether judicial police or independent armed groups – and screeners. In contrast, in the case of military prosecutions, interviews occurred inside the facilities themselves, creating what military prosecutors described as “a more positive, trusting atmosphere”.<sup>144</sup>

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trolling detention facilities. Crisis Group interview, Abdellatif Baju, chief prosecutor, Misrata, 31 June 2012. The screening process in Misrata came to an abrupt halt within a few days, when armed groups objected to certain releases, and a jailor allegedly was shot by a released detainee.

<sup>141</sup> According to a former detainee in the old Tajura prison – a facility officially under state custody since April 2012 yet where the judicial police consist of a former armed group with only minimal respect for ministerial directives – sixteen detainees were transferred to the criminal investigation unit in early August. Investigators from that unit released three detainees on the spot for lack of evidence. As soon as guards from the detention facility found out, they reasserted custody of the thirteen awaiting review and set out to look for the three who had been let go. Two of the latter fled the country, one was recaptured. According to the former detainee who was released in late October 2012, for the following two months no further screening of the 200 detainees who fell under the general prosecutor's jurisdiction took place. Screenings slowly resumed in 2013. Crisis Group interview, former detainee, Tripoli, 28 November 2012 and 21 March 2013.

<sup>142</sup> Crisis Group interviews, human rights activists, security officers, Tripoli, Benghazi, August–October 2012. The judicial police on guard in a number of state-controlled facilities often are civilian brigades lacking training in prison management and unwilling to conform to state standards. According to a human rights activist, even state officials have been prevented from visiting certain state-controlled prisons, “because the head of the prison did not want to allow a prosecutor to interview a detainee”. Crisis Group interview, Libya representative, OMCT, Tripoli, 13 March 2013.

<sup>143</sup> Crisis Group interview, justice ministry official, Tripoli, January 2013.

<sup>144</sup> A military prosecutor involved in the screening process at several facilities on the outskirts of Tripoli said, “we worked inside the prison, day after day; the guards got to know us, and that made them trust us. We work independently. Some members of the *kataib* (armed groups) tried to pressure us, but we didn't care. We managed to free those we concluded were not guilty according to the law. Those who were just fighting and were captured on the front line, we cannot accuse them of anything, and so we released them”. Crisis Group interview, military prosecutor, Tripoli, 23 December 2012. Colonel Rahmouna, chief military prosecutor at the time, confirmed that their screening process was more successful than their civil counterparts'. By the end of August, military prosecutors had received some 1,000 detainee files, which they processed within two months; “many of them are being freed”, he said. Even so, Rahmouna saw limitations, in particular that he had neither capacity nor mandate to compel the brigades to allow the screening. “Many *thuwwar* refuse, so we can only screen those in detention facilities whose guards agree to the screening process”. Ibid. In the old prison of Tajura, five military prosecutors flanked by two military police interviewed some 200 detainees; unlike their civilian counterparts, who were prevented from completing the screening of a similar number, military prosecutors succeeded in releasing more than half. Those deemed by prosecutors to require a trial were transferred to a military facility in the interim. Crisis

Overall, problems surrounding the screening process have added to tensions between armed groups and government authorities whom the *thuwwar* accuse of seeking to free former regime loyalists and who typically expected the process merely to validate their claims – regardless of whether there was sufficient evidence to warrant a trial.<sup>145</sup>

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Group interview, former detainee, Tripoli, 28 November 2012; military prosecutor, Tripoli, 23 December 2012.

<sup>145</sup> Crisis Group interview, SSC commander, Zliten, September 2012. In early 2013 the government appears to have won the support of a few brigades from Misrata that agreed to transfer detainees from the city's three main makeshift prisons to a former air force base being refurbished as a detention centre. The government also decided to transfer to Misrata some twenty prosecutors in order to expedite the screening process. Whether these measures will succeed has yet to be seen; the transfer is scheduled for late May 2013. Justice ministry decree 219/2013, 18 February 2013.

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## IV. In Court

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With most post-conflict detainees awaiting judicial review and with scant public trust in the judicial system, Libya's new rulers have been under pressure to show armed groups and the general public that they are moving toward bringing former regime loyalists to justice. After some delays, due largely to chaos in state institutions, including the judiciary, the first trials against Qadhafi-era officials occurred in mid-2012, in either ordinary criminal courts or their military counterparts. The few cases to have reached trial in both types of courts illustrate – in different ways – the challenges the judiciary faces.

In line with its commitment to effect a clean break from the past and ban special courts, the state referred non-military former regime officials in its custody to the ordinary criminal justice system. The decision, hailed as “very courageous” by a human rights activist at the time, appeared promising.<sup>146</sup> Defendants were given access to a lawyer;<sup>147</sup> proceedings were open to the public; and most sessions were broadcast on state television. Defence witnesses answered questions without apparent coercion, and defendants, seated behind metal bars, were allowed to question them.<sup>148</sup> In the newly refurbished high-security facility on the outskirts of Tripoli where detainees were both tried and incarcerated, authorities also provided access to medical facilities.<sup>149</sup> On several occasions, courts agreed to postpone hearings to allow the defence

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<sup>146</sup> Crisis Group interview, human rights activist Salah al-Marghani, Tripoli, 10 August 2012. He was appointed justice minister in November 2012.

<sup>147</sup> Crisis Group observations, public hearings of trials against Qadhafi-era officials in the courtroom of the adjoining Correction and Rehabilitation Centre in Tripoli's Hadba neighbourhood, July-December 2012. According to Libyan law, once a case reaches the trial stage, a defendant is obliged to have a lawyer, private or assigned by the court (Article 161, 1953 Code of Criminal Procedure, CCP). The law also states that, “in any other case other than *flagrante delicto*, and in the case of haste or fear of evidence loss, investigators may not interrogate any accused or confront him with other accused persons or witnesses except after summoning his lawyer to appear, if any” (Article 106). The lawyer of Abu Zeid Dorda claims that he was not present when prosecutors interrogated his client, but he has had no problem accessing him since the trial started. The reason for the lack of access during the interrogations could be explained by the fact that, despite being a trial in an ordinary court, until December 2012 prosecutors continued to follow procedures of the People's Courts, which bar the presence of a lawyer during interrogations. However, human rights organisations complained that even after it became obligatory to follow ordinary criminal procedures, authorities had prevented detainees from seeing their lawyers. Former Prime Minister al-Baghdadi al-Mahmudi, also incarcerated there, complained to UN officials that he was not given adequate access to his Libyan lawyers. Crisis Group interview, Daw al-Mansuri Aoun, defence attorney representing Abu Zeid Dorda, Tripoli, 29 July 2011; “United Nations visits al-Baghdadi al-Mahmudi in prison”, press release, UNSMIL, 28 February 2013; Crisis Group interview, human rights activist, March 2013.

<sup>148</sup> Authorities authorised the broadcast of the first hearings, which consisted primarily of the confirmation of charges, but did not authorise broadcast of the subsequent hearings when witness statements were made. Crisis Group observations of the trial against Abd al-Ati al-Obeidi and Muhammad Zwai, 7 January 2013, when the defence was allowed to question witnesses.

<sup>149</sup> A doctor and ambulance were stationed outside the courtroom during the trials. The doctor stated that the physical conditions of the detainees in the Correction and Rehabilitation Centre at Hadba in Tripoli, where most high-level former regime officials are kept, are checked daily and that specialists were on call. He dismissed accusations that had circulated in foreign media in June 2012 regarding the alleged torture of former Prime Minister al-Baghdadi al-Mahmudi, who had been extradited from Tunisia. Similar allegations of torture emerged in February 2013 but were refuted by the government and by UNSMIL, which visited the former premier and asserted that he had “unequivocally” denied allegations of torture. Crisis Group interview, doctor in charge of medical

more time to study the prosecutors' submissions, a stark contrast to the hurried sentencing of past political tribunals.<sup>150</sup>

The main problem emerging from these prosecutions is that they are too few and – from the perspective of many armed group members – too slow. These complaints feed into the already widespread feeling that the state is unable to carry out justice. That these delays and referrals might be a healthy sign of commitment to due process often is ignored.<sup>151</sup> Similarly, rather than being praised as a positive development ensuring respect for civil liberties, the December 2012 Supreme Court order that criminal courts follow proper procedures often is viewed as evidence of the judiciary's ongoing collusion in defence of Qadhafi-era officials.<sup>152</sup> Many fighters as well as ordinary citizens insist on quick retribution against these officials, even if they were not directly implicated in repressing the uprising, viewing them as guilty for standing by Qadhafi.<sup>153</sup> For others, swift justice for political opponents is simply the only type of justice they know.<sup>154</sup>

Even military courts – which currently enjoy ample jurisdiction over civilians and consequently, according to prosecutors, could handle up to half of the detainees

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facilities at the prison and court at the Hadba complex, Hisham al-Atri, Tripoli, 26 June 2012; "United Nations visits al-Baghdadi al-Mahmudi in prison", *op. cit.*

<sup>150</sup> The defence attorney for a former regime official said, "that is good. Justice needs time. It cannot be rushed". Crisis Group interview, Daw al-Mansuri Aoun, Tripoli, 29 July 2012.

<sup>151</sup> Even ordinary Libyans, with no links to revolutionary armed groups but actively engaged during the uprising against Qadhafi, expressed concern that the delays in the trials undermine trust in the state and urged the government to "do something" in order to "show the people what these close associates of Qadhafi did". "Some of these people have been imprisoned for almost two years, but we don't know what is happening to them .... When Qadhafi came to power, he immediately put on trial the members of the previous regime. They were shown on television, and the charges were broadcast for everyone to see; and even later we would often see confessions on television. That served the purpose of showing the public what these men were guilty of. I am not saying that we should do the same now, but you must realise that that is what Libyans are used to, and they are wondering what is happening with these prisoners now. We need to interview them, get them on television, hear about the crimes of the Qadhafi-era so that those who still want the Qadhafis to come back can hear and learn about what they did". Crisis Group interview, Libyan writer, Tripoli, 22 December 2012.

<sup>152</sup> See Constitutional Chamber of the Supreme Court, ruling 59/25, 23 December 2012. A café owner with ties to a Tripoli brigade watched state television broadcast footage from the trial of former Prime Minister al-Baghdadi al-Mahmudi and said, "I really cannot understand what all these delays are about. Why is it so difficult to reach a verdict for these guys? They supported the regime during the 17 February revolution, and that is in itself a crime. And why are months going by without bringing Saif [Qadhafi's son] to court? I bet it is just a way to buy time in order to bring them back in the system". Crisis Group interview, Tripoli, 14 January 2013.

<sup>153</sup> According to international justice sector advisers, Misrata prosecutors and members of the city's committee in charge of screening detainees have urged prosecution of low-ranking support staff serving Qadhafi-era security officials, including drivers, cooks and accountants. Libyans with ties to Misrata detainees likewise claim that their relatives played no role in the violence during the 2011 war. Crisis Group interviews, international justice sector advisers, Tripoli, December 2012; family members of detainees, Tripoli, October and December 2012.

<sup>154</sup> A lawyer said, "some armed groups understand the procedures and the way our justice system works; indeed some of these groups are in charge of state detention centres and have the responsibility of bringing accused Qadhafi-era officials to court. But others just don't get it. They are convinced that the state is plotting against them when officials say that ordinary criminal trials require time. They are used to thinking that justice is the swift and arbitrary justice they witnessed under Qadhafi". Crisis Group interview, Tripoli, November 2012.

awaiting trial – have their share of problems.<sup>155</sup> Conceived of as battlefield courts, they lack independence,<sup>156</sup> and two of the three judges that compose this type of court are not required to have any legal training.<sup>157</sup> Although some military prosecutors are aware of international standards governing the trial of enemy combatants (and notably that guilt cannot simply follow from standing by the former regime) and have ordered acquittals on that basis, that is far from the norm. In the absence of quick remedial steps, these tribunals could render the expedited form of justice for which many armed groups call.<sup>158</sup> Worrying examples abound, from the questionable conviction of foreigners accused of working for Qadhafi<sup>159</sup> to the charges levelled against former NTC chief Mustafa Abdel Jalil.<sup>160</sup>

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<sup>155</sup> Crisis Group interview, lawyers, military prosecutors, Tripoli, December 2012.

<sup>156</sup> According to international legal experts, military courts lack independence from the government because two of the three officers on them fall under the defence minister's authority, as do military prosecutors. Crisis Group interview, international legal expert, Tripoli, June 2012.

<sup>157</sup> Crisis Group interview, lawyers, military prosecutors, Tripoli, December 2012.

<sup>158</sup> A military prosecutor in Tripoli said, "the [International Committee of the] Red Cross gave us training. We know that we cannot consider soldiers guilty of a crime simply because they stood by the regime. In Tripoli, we are releasing these types of people. But what other prosecutors in other cities across the country are doing, I really don't know". Crisis Group interview, Tripoli, December 2012. Human rights activists from Misrata noted that some prosecutors in that city, which has the highest number of detainees still awaiting trial, are considering trying former combatants for "taking arms against Libya" (Article 165 of the Penal Code, which carries the death penalty). Crisis Group interview, international rule of law adviser, Tripoli, December 2012. Tripoli's military prosecutor called this "a total misinterpretation and misuse of the law". Crisis Group interview, Tripoli, December 2013. He added: "This article [165] is intended for those who fought for a foreign country against Libya; but these detained men were actually fighting for Libya, because the Qadhafi regime was – legally speaking – Libya".

<sup>159</sup> A June 2012 military trial against a group of nineteen Ukrainians, three Bielorussians and a Russian accused of working as mercenaries for Qadhafi's regime was concluded in four quick hearings. According to diplomats familiar with the case, proceedings were deeply flawed, and evidence suggesting they were in Libya as oil workers was ignored. Crisis Group observations of military court trial 1/2012, Tripoli *mujamma al-mahakim* court house, 4 June 2012; Crisis Group interviews, diplomats, Tripoli, July 2012. As of April 2013, the group was being held in a makeshift prison run by Liwa Qaaqa, awaiting their appeal scheduled to begin on 1 May. Crisis Group observation, Liwa Qaaqa headquarters, Tripoli, January 2013. A diplomat said, "in the current climate, where military officers are under pressure to demonstrate their allegiance to the revolution and to distance themselves from the former regime, how can you expect a brigadier to acquit these people?" Crisis Group interview, Tripoli, July 2012.

<sup>160</sup> In December 2012, a military judge charged Jalil for his alleged responsibility in the July 2011 killing of Abdel Fatah Younis, who had defected in February 2011 and became the rebel forces' commander. Jalil said the proceedings "were totally outside of the law" and accused eastern tribal leaders of forcing the military prosecutor's hands. Abdel Jalil, on Libya Wataniya radio, 19 December 2012. Benghazi's military court eventually withdrew its jurisdiction over the case.

## V. Creeping Lawlessness

Due to shortcomings in the state's prosecutorial capacity and legal impunity enjoyed by armed groups, individuals and brigades who emerged victorious after the 2011 war too often consider themselves above the law. As noted, this has translated into kidnappings, revenge killings and attacks against religious minorities, foreign representatives, activists and lawmakers;<sup>161</sup> moreover, several small skirmishes have opposed rival armed groups. For their part, security forces have proved unable, at times even unwilling, to curb these incidents, generating a widespread perception among ordinary citizens of creeping lawlessness. Speaking in March 2013, a Tripoli resident said, "under Qadhafi we were afraid of being arrested. Now, we fear being killed".<sup>162</sup>

A cycle of violence followed by retaliation has given rise to fears of a dangerous pattern of score settling, often based on little more than presumptions and suppositions. A human rights activist noted: "Even those killed have sons, brothers, cousins, who similarly vow to retaliate against the killer of their lost one".<sup>163</sup> Tellingly, the words "the killer must be killed" (*al-qatil yuqtal*) have begun to appear, spray-painted, in a number of eastern cities.<sup>164</sup>

In response, the government has appeared largely unable to intervene, at times lacking the means, at others the authority to act. This impotence extends to the protection of sites belonging to the country's cultural and historical heritage but that some hard-line religious groups consider idolatrous. After Islamists (or criminals posing as such) ransacked his *zawiya* (religious school) in the Tripoli medina, a Sufi leader lamented: "[Prime Minister] Zeidan called me to say he was sorry for what had happened. But what am I going to do with his apologies?"<sup>165</sup> With no substantial investigations having taken place following any of the attacks against Sufi shrines, these sites continue to be targeted.<sup>166</sup>

In turn, the erosion of state authority has further emboldened armed groups, some of which appear to be aligned with specific political factions.<sup>167</sup> On at least two

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<sup>161</sup> A series of attacks against Sufi mosques and shrines in Misrata, Zliten, Tripoli, Derna and on the outskirts of Benghazi occurred in mid-2012 and have continued sporadically ever since. In October 2012, during the attack on Bani Walid, unidentified assailants demolished a section of the town's main Sufi shrine and the adjoining school in its entirety. Since late 2012, a number of attacks also have targeted Christians (see above). Aside from the 11 September 2012 assault in Benghazi that killed the U.S. ambassador and three others, violence against foreign targets include shots fired on 12 January 2013 at the Italian consul and occasional attacks against UN and UK embassy vehicles as well as Red Cross offices and staff members.

<sup>162</sup> Crisis Group interview, Tripoli resident, Tripoli, 14 March 2013.

<sup>163</sup> Crisis Group interview, activist, Derna, March 2013.

<sup>164</sup> Crisis Group observations, graffiti, Derna and Benghazi, March 2013.

<sup>165</sup> Crisis Group interview, Abdullah Banun, former NTC member and Sufi leader, Tripoli, 22 November 2013. Approximately 70 people broke into the religious school, stole books, old manuscripts, some objects and the community's antique banners. A few days after a member of the Sufi community reported the incident to the local police station, a bomb exploded in his car. According to Banun, a respected lawyer, community members said they recognised the culprit and brought him to the station; the police allegedly transferred him to an SSC-affiliated brigade, which soon released him.

<sup>166</sup> As recently as 28 March 2013, unknown assailants used grenade launchers to demolish the 500-year-old Sidi Mohamed al-Andalusi shrine in Tajura, on the outskirts of Tripoli. Crisis Group observations, Tajura, 30 March 2013.

<sup>167</sup> Examples of linkages between politicians and armed groups abound. Othman Mleghta, the head of the Tripoli-based Liwa Qaaqa armed group, is the brother of a leader of Jibril's National Forces

occasions in early March 2013, brigades or armed protesters have taken aim at the GNC itself, raising questions about its ability to function.<sup>168</sup> Similar attacks occurred intermittently against the prime minister's office and the justice ministry.<sup>169</sup> Some brigades have battled over control of strategic oil terminals or fields in an apparent attempt to grasp the lucrative rights to secure the facilities.<sup>170</sup> Taken together, such developments have compounded both domestic and international concerns regarding prospects for economic and political normalisation.

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Alliance (NFA). Similarly, Anwar Magarief, whose brother is Mohamed Magarief, GNC president and head of the National Front party, leads a brigade based in the eastern city of Ajdabiya but known to be occasionally active in Tripoli. Crisis Group interview, security officer, Benghazi, March 2013.

<sup>168</sup> On 3 March 2013, members of an armed group officially integrated into the armed forces slipped into the GNC hall and opened fire on security forces, wounding three and damaging the hall. They were reacting to reports that the GNC was planning to remove protesters who had occupied the hall for over a month, demanding financial compensation for wounds suffered during the war. GNC members moved their next session to Tripoli's Kremia meteorological centre; there another group of protesters, this time demanding that the GNC approve a draft political exclusion law, stormed the hall and pressured legislators to pass the law at gunpoint. After a twelve-hour siege, legislators were allowed to leave, but shots were fired at the vehicle carrying President Mohamed Magarief. The GNC suspended its activities for a week while legislators considered relocating to another town. Finally, on 13 March, Hasan al-Amin, a member from Misrata who headed the GNC's human rights committee and had spoken out against illegal detentions, announced his resignation following threats directed against him by armed groups from Misrata. Libya TV channel, 13 March 2013.

<sup>169</sup> SSC-affiliated armed men attacked the justice ministry on 31 March 2013 to protest the minister's intention to close the detention centre in Tripoli's Mtiga airport, considered an unofficial prison under the authority of the SSC. See Associated Press, 25 March 2013.

<sup>170</sup> In early March two armed groups, allegedly from Zintan and nearby Zwara, exchanged heavy gunfire around ENI's Mellitah natural gas complex, 60km west of Tripoli, forcing the operation to close for several days. The Zwara brigade reportedly challenged Zintan's authority to guard the site. Crisis Group interview, diplomat, Tripoli, 22 March 2013.

## VI. Conclusion

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As part of its challenging transition process, Libya will need to break the cycle of violence and lawlessness to which the rebellion and its aftermath, a history of distrust towards the justice sector and present delays in reactivating the courts have all contributed. The perceived disarray of the judiciary has led individuals and armed groups – many of whom needed little encouragement – to step in, round up thousands of suspects accused of being pro-Qadhafi loyalists and detain them in total disregard of official procedures. Considering themselves above the law, some brigades and individuals have carried out targeted assassinations and torture, while engaging in criminal activities. This has prompted a pattern of abuse and violence that in turn has fuelled resentment and grievances, further eroding confidence in the state's ability to deliver justice. Breaking this cycle requires simultaneous efforts on interdependent fronts:

**Judicial reform and accountability.** Victims of Qadhafi-era officials rightfully demand accountability for past crimes and removal from office of perpetrators; armed groups in particular understandably express frustration at the slow pace of this process and at the unreformed character of a distrusted judiciary, and such frustration at times can assume violent forms. This should serve as impetus to get the judicial system as well as a proper vetting process up and running.

Judicial reform – including, inter alia, amending legislation inherited from the past, building an independent and capable police force and enhancing the capacity of prosecutors – inevitably will take time. Yet, some shorter-term steps can help restore public confidence. A first measure would be to send clear signs that judicial personnel found to be either corrupt or guilty of unlawful behaviour, notably condoning torture, will be dismissed after undergoing a vetting process. This would best be undertaken by an independent committee, rather than through the direct exclusion of judges who manned Qadhafi's "special" courts, as the draft law on political exclusion presently proposes.

More broadly, Libya needs a comprehensive transitional justice strategy encompassing criminal trials but also appropriate vetting mechanisms and truth commissions. The Fact-Finding and Reconciliation Commission and its local sub-committees should begin operating alongside the ordinary criminal justice system, tackling both past and ongoing abuses.

Alongside these steps, the government should reach out to the general public – suspicious of an apparatus seen as a carry-over from the former regime – and explain features of the justice system and transitional justice approach, highlighting changes carried out since Qadhafi's fall.

**Reining in armed groups.** None of this should serve as an excuse for authorities to condone – or turn a blind eye toward – what at times is tantamount to an overbroad, arbitrary punishment of entire communities and broad segments of society or to the seemingly indiscriminate use of force against alleged regime loyalists in disregard of minimal due process. The complacent attitude toward brigades' treatment of Tawergha and Bani Walid residents is a case in point.

Prime Minister Zeidan's commitment to disband illegal brigades and his justice minister's attempts to end arbitrary detentions are welcome steps in this regard. They will have to tread carefully, of course, lest they alienate those well-armed groups that enjoy genuine popular credentials born of their participation in the

uprising. Fighting them has proven dangerous; likewise, insisting that they integrate the police or army (still considered by many as Qadhafi-era vestiges) or that they immediately hand over detainees to state authorities – particularly in the absence of evidence that security forces and the judiciary have been reformed and can be trusted – would be a high risk exercise. Conversely, agreeing to the integration of armed groups into state bodies without proper screening for crimes could well institutionalise lawlessness.

Ultimately, little of this will mean anything unless a basic sense of security is restored. Members of the judiciary or of various fact-finding committees should be afforded adequate protection. They cannot be expected to risk their lives or well-being in order to hold individuals accountable.

In all this, members of the international community can play an important supporting role. The UN support mission (UNSMIL) has a mandate to support rule of law and transitional justice; already, it is providing advice on prosecutorial strategies, transitional justice programs and detention policy. It should continue doing so, while enhancing technical assistance to the Fact-Finding and Reconciliation Commission and its local branches. Numerous states and non-governmental organisations are engaged in efforts to promote the rule of law and disseminate information on transitional justice; this too should be continued, although their work ought to be better coordinated and not circumscribed to Tripoli alone.

There is no quick fix to Libya's security problems. But taking immediate measures to restore confidence in the judiciary and enhance its capacity to deal with abuses, both past and present, would be a first, significant step forward.

**Tripoli/Brussels, 17 April 2013**

Appendix A: Map of Libya



Based on UN map no. 3787 Rev. 7 (February 2012). The town of Tawergha has been added.

## Appendix B: Glossary of Acronyms

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CCP	Code of Criminal Procedure
GNC	General National Congress, Libya's elected legislature since August 2012
GPC	General People's Congress, Libya's national legislature from 1977 to 2011
HRW	Human Rights Watch
ICC	International Criminal Court
ICPS	International Centre for Prison Studies
LLFJ	Libyan Lawyers for Justice
LSF	Libya Shield Forces, coalition of armed groups operating under the chief of staff
NFA	National Force Alliance, political coalition led by Mahmud Jibril
NTC	National Transitional Council, interim legislative body representing anti-Qadhafi forces from February 2011 to July 2012
OMCT	World Organisation Against Torture
RCC	Revolutionary Command Council, Libya's governing body from 1969 to 1977
SJC	Supreme Judicial Council, managing body of Libya's judiciary
SSC	Supreme Security Committee, parallel police force composed mainly of civilian brigades
STDS	Special Tribunal for the Defence of the State, colonial-era special court
<i>Thuwwar</i>	litt. revolutionary; commonly used word to describe members of civilian armed groups that took part in the 2011 uprising against Qadhafi
UNDP	United Nations Development Programme
UNSMIL	United Nations Support Mission to Libya

## Appendix C: About the International Crisis Group

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Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes CrisisWatch, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

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**April 2013**

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*Drums of War: Israel and the "Axis of Resistance"*, Middle East Report N°97, 2 August 2010 (also available in Hebrew and Arabic).

*Squaring the Circle: Palestinian Security Reform under Occupation*, Middle East Report N°98, 7 September 2010 (also available in Arabic and Hebrew).

*Gaza: The Next Israeli-Palestinian War?*, Middle East Briefing N°30, 24 March 2011 (also available in Hebrew and Arabic).

*Radical Islam in Gaza*, Middle East/North Africa Briefing N°104, 29 March 2011 (also available in Arabic and Hebrew).

*Palestinian Reconciliation: Plus Ça Change ...*, Middle East Report N°110, 20 July 2011 (also available in Arabic and Hebrew).

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### North Africa

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