



**NATIONAL INTEGRITY  
SYSTEM ASSESSMENT**  
LIBYA 2014

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# TABLE OF CONTENTS

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|   |            |
|---|------------|
| <b>I. INTRODUCTORY INFORMATION</b>  | <b>2</b>   |
| <b>II. ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT</b>                 | <b>4</b>   |
| <b>III. EXECUTIVE SUMMARY</b>   | <b>11</b>  |
| <b>IV. COUNTRY PROFILE: FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM</b> | <b>17</b>  |
| <b>V. CORRUPTION PROFILE</b>  | <b>24</b>  |
| <b>VI. ANTI-CORRUPTION ACTIVITIES</b>                                     | <b>28</b>  |
| <b>VII. NATIONAL INTEGRITY SYSTEM</b>                                     | <b>30</b>  |
| 1. LEGISLATURE  | 32         |
| 2. EXECUTIVE  | 46         |
| 3. JUDICIARY  | 58         |
| 4. PUBLIC SECTOR  | 721        |
| 5. LAW ENFORCEMENT AGENCIES   | 87         |
| 6. ELECTORAL MANAGEMENT BODY  | 98         |
| 7. SUPREME AUDIT INSTITUTION  | 112        |
| 8. ANTI-CORRUPTION AGENCY   | 123        |
| 9. POLITICAL PARTIES  | 133        |
| 10. MEDIA   | 147        |
| 11. CIVIL SOCIETY   | 160        |
| 12. BUSINESS  | 169        |
| <b>VIII. CONCLUSIONS AND RECOMMENDATIONS</b>                              | <b>186</b> |
| <b>IX. BIBLIOGRAPHY</b>   | <b>199</b> |

# I. INTRODUCTORY INFORMATION

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A National Integrity System Assessments is a tool developed by Transparency International to evaluate a country's integrity system, namely the legal safeguards it has in place against corruption and how these work in practice. The assessment follows a rigorous methodology that will allow for comparison in the country over time.

This report presents the National Integrity System assessment of Libya based on research undertaken between April 2014 and November 2014. It is the first of its kind in Libya, a country in a phase of transformation at all levels of the political landscape since the revolution in 2011. The study describes the status of the Libyan National Integrity System during April – November 2014. Significant turmoil erupted in May 2014 and increased following the parliamentary election in June 2014 with armed groups fighting for control of the capital and other areas of Libya. The fighting caused diplomats and foreign organisations to evacuate the capital, Tripoli. In late August, the Islamist militia, Libyan Dawn, took control of Tripoli and caused an effective division of the country. The recently elected House of Representatives had to escape to the city of Tobruk in Cyrenaica and has no military power to challenge Libyan Dawn.<sup>1</sup> Furthermore, on 6 November the Supreme Court declared the country's internationally recognised and democratically elected House of Representatives illegal and unconstitutional, thus leaving the country with no parliament. Libya faces a serious risk of territorial disintegration, where Islamists control the west and Benghazi, and the more liberal government asserts its control in the far east, supported by armed federalists. Various regions are considering breaking away from Libya and the security situation is in a very poor state.<sup>2</sup>

The research team would like to express its gratitude to all those who despite the difficult circumstances have contributed to the report in the form of interviews, review of draft versions of the reports and critical advice. Also a special thanks to the European Union (EU), which granted the funds to make this research possible. Finally, the research team would like to thank the Secretariat of Transparency International in Berlin for guidance along the way.

A gender-balanced Advisory Group, formed in connection with the research consisting of 11 people from different regions, organisations and institutions in Libya has provided invaluable input. The Advisory Group consists of representatives from Civil Society Organisations (CSOs), business, the government, researchers and the international donor community. Members of the Advisory Group are:

- Dr Faraj Nejm, University of Benghazi, Academia, Benghazi
- Motasim Alem, Arkam Investment, Business, Tripoli
- Medhat Ghdamsy, National Economic Development Board, Government, Tripoli
- Dr Issa Tuwegiar, Former Minister of Planning, Government, Tripoli
- AbuAzoum AlLafi, National Caucus for Fazzn, Union of Civil Society, CSO
- Sae'eeda Berween, Ministry of Local Governance, Government
- Sarah AbuSrweil, UNODC, Donor community, Tripoli
- Mohamed Hammouda, Libyan Public Policy Forum (LPPF), CSO
- Mohamed Oushah, National Economic Development Board, Government
- Tarek Megerisi, Freelance Consultant / Analyst

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<sup>1</sup> *The Guardian*, 29 August 2014, "War in Libya – the Guardian briefing".

<sup>2</sup> Mohamed Eljarh, 6 November 2014, "The Supreme Court Decision That's Ripping Libya Apart", *Foreign Policy/Transitions*.

- Elham Saudi, Lawyers for Justice (LFJL), CSO

A number of informants have provided their expert knowledge through interviews with the research team. Individuals interviewed included:<sup>3</sup>

- Rehab Alhaj, founder of the New Libya Foundation/Civil Society Incubator Centre
- Khaeri Aboushagor, Libya Office Manager, DW Academy
- Esam Garba, Head of the International Cooperation Department, Ministry of Planning
- Omar Titish, Ministry of Labour
- Aref Kashar, Managing Partner at Kashar & Associates
- Dr Abdulmenam Mohamed, Programme Manager at EUNIDA
- Nizar Ibrahim, Director of the International Relations Department, Ministry of Information
- Fathi Mahdi Traiki, Management Consultant at the National Economic Development Board
- Dr Bashir Ghariani, Public Administration Consultant
- Dr Mohamed Khalil Fayad, Professor of Economics at the Faculty of Economics, University of Benghazi
- Ken Taylor, Police Adviser at the British Embassy in Libya
- Osama Mdalal, National Economic Board
- Anonymous source, employed in an international organisation that has supported the General National Congress (GNC)
- Anonymous source, employed in an international organisation that has supported Libyan political parties
- Niklas Kabel Pedersen, former Election Operations Advisor imbedded in the High National Electoral Commission (HNEC) for International Foundation for Electoral Systems (IFES) Libya
- Anonymous source, employed in an organisation that has supported the Libyan judiciary
- Tarek Megerisi, freelance consultant/analyst
- Medhat Ghdamsy, Head of the economic policies section at the National Economic Development Board and member of the Advisory Group
- Ibrahim Ali, chairman of the Libyan Transparency Association
- Aladdin Elmessallati, Deputy President, National Audit Bureau
- Youssef Kalefa, Director of Planning and Management, National Audit Bureau

The research team consisted of:

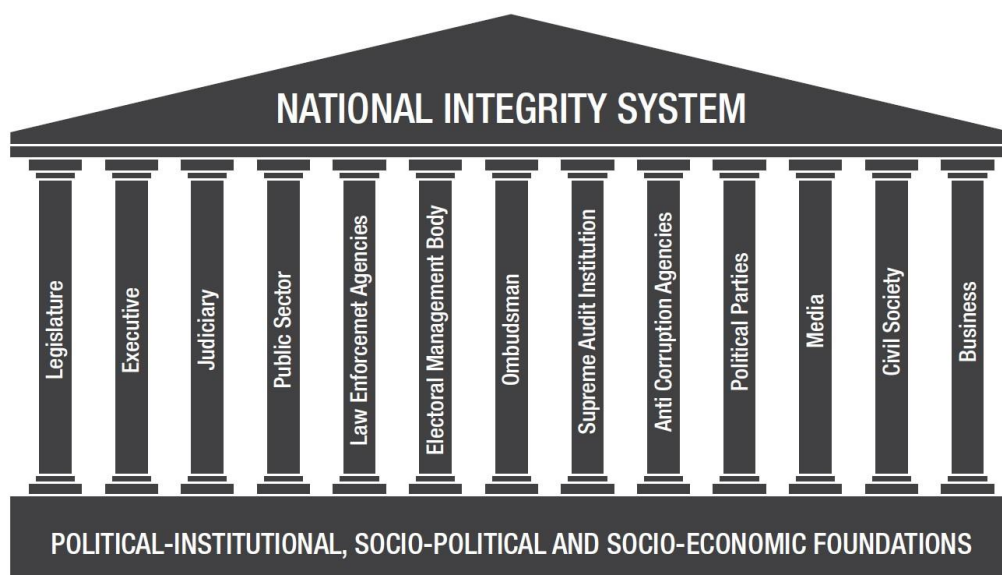
- Jakob Mathias Wichmann, Voluntas Advisory (lead researcher)
- Alexander Kjærum, Voluntas Advisory (assistant researcher)
- Andreas Bang, Voluntas Advisory (supporting researcher)
- Nedal Swehli, Diwan Market Research (national researcher)
- Sherif Jenan, Diwan Market Research (national researcher)
- Louise Scheibel Smed, Nordic Consulting Group (project coordinator/policy papers)
- Marie-Louise Appelquist, Nordic Consulting Group (project coordinator/policy papers)
- Jacob Mundy, Assistant Professor of Peace and Conflict Studies, Colgate University (peer review)

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<sup>3</sup> Some interviewees have requested anonymity, which the research team has respected.

## II. ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT

The National Integrity System assessment approach used in this report provides a framework to analyse both the vulnerabilities of a country to corruption as well as the effectiveness of national anti-corruption efforts. The framework includes the principal institutions and actors that form a state. These include the branches of government, the public and private sector, the media, and civil society (the ‘pillars’ as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.



A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country's institutional landscape with regard to integrity, accountability and transparency, and the key gaps in the anti-corruption framework. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbours systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.

The country still bears the authoritarian legacy of Gaddafi and has not had much time (three years since the revolution) to redefine and/or establish the institutions, regulatory framework, rules and procedures necessary for a functioning democratic political and administrative system. However, the ongoing state-building, the process of reforming governance institutions and the vital work on

developing a new constitution, initiated in April 2014, offer a golden opportunity to advocate for building the principles of transparency, accountability and integrity into the constitution. In this respect, it is the hope that the assessment can function as a lever in this constitutional process both for enhancing knowledge on some of the core traits of a democratic and accountable system and also help increase participation and advocacy efforts by CSOs. The National Integrity System assessment 2014 can furthermore work as a “baseline” in a country which is trying to build a democracy and a democratic culture from scratch and can hence enable monitoring of progress over time in the critical years to come.

## Definitions

The definition of “corruption” which is used by Transparency International is as follows:

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The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.<sup>4</sup>

“Grand corruption” is defined as “Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good.”<sup>5</sup> “Petty corruption” is defined as “Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.”<sup>6</sup> “Political corruption” is defined as “Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.”<sup>7</sup>

## Objectives

The key objectives of the National Integrity System assessment are to generate:

- an improved understanding of the strengths and weaknesses of Libya’s National Integrity System within the anti-corruption community and beyond
- momentum among key anti-corruption stakeholders in Libya for addressing priority areas in the National Integrity System

The primary aim of the assessment is therefore to evaluate the effectiveness of Libya’s institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in Libya to advocate for sustainable and effective reform.

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<sup>4</sup> *The Anti-Corruption Plain Language Guide*, Transparency International, 2009, p.14.

[www.transparency.org/whatwedo/pub/the\\_anti\\_corruption\\_plain\\_language\\_guide](http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide) [accessed 21 December 2012].

<sup>5</sup> *Anti-Corruption Plain Language Guide*. p. 23.

<sup>6</sup> *Anti-Corruption Plain Language Guide*. p. 33.

<sup>7</sup> *Anti-Corruption Plain Language Guide*. p. 35.



## Methodology

In Transparency International's methodology, the National Integrity System is normally formed by 13 pillars representing all key public and private institutions in a country. It should be noted that the ombudsman institution does not exist in Libya and therefore this pillar has been omitted and 12 pillars have been assessed.

| CORE GOVERNANCE INSTITUTIONS | SUBJECT FOR ASSESSMENT IN LIBYA  |
|------------------------------|--|
| Legislature                  | The GNC  |
| Executive                    | Cabinet  |
| Judiciary                    | District Courts<br>Courts of First Instance<br>Courts of Appeal<br>Supreme Court |
| PUBLIC SECTOR AGENCIES       | SUBJECT FOR ASSESSMENT IN LIBYA  |
| Public sector                | Various  |
| Law enforcement agencies     | Police force<br>Public prosecutors<br>The military<br>Core militias              |
| Electoral management body    | High National Elections Commission   |
| Supreme audit institution    | Audit Bureau<br>Administrative Control Authority                                 |
| Anti-corruption agency       | National Anti-Corruption Commission  |
| NON-GOVERNMENTAL ACTORS      | SUBJECT FOR ASSESSMENT IN LIBYA  |
| Political parties            | Various  |
| Media                        | Various  |
| Civil society                | Various  |
| Business                     | Various  |

Each of the 12 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity, in terms of resources and independence
- its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
- its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfil their assigned role with regards to preventing and fighting corruption



Each dimension is measured by a common set of indicators. For every dimension, the assessment examines both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality.

| DIMENSION                     | INDICATORS (LAW AND PRACTICE)               |
|-------------------------------|---|
| Capacity                      | Resources<br>Independence                   |
| Governance                    | Transparency<br>Accountability<br>Integrity |
| Role within governance system | Pillar-specific indicators                  |

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritise areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the “foundations” – in which the 12 pillars operate.

|          |         |         |         |
|----------|---------|---------|---------|
| POLITICS | SOCIETY | ECONOMY | CULTURE |
|----------|---------|---------|---------|

The National Integrity System assessment is a qualitative research tool. It is guided by a set of “indicator score sheets” developed by Transparency International. These consist of a “scoring question” for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, for the resources available in practice to the judiciary, serve as but one example of the process:

|                             |   |
|-----------------------------|---|
| <b>PILLAR</b>               | Judiciary   |
| <b>INDICATOR NUMBER</b>     | 3.1.2   |
| <b>INDICATOR NAME</b>       | Resources (practice)  |
| <b>SCORING QUESTION</b>     | To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?  |
| <b>GUIDING QUESTIONS</b>    | Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary’s budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practising lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge’s knowledge of the law, judicial skills including court and case management, judgement writing and conflicts of interest? |
| <b>MINIMUM SCORE (0)</b>    | The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.  |
| <b>MID-POINT SCORE (50)</b> | The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.  |
| <b>MAXIMUM SCORE (100)</b>  | The judiciary has an adequate resource base to effectively carry out its duties.  |

The guiding questions, used by Transparency International worldwide, for each indicator were developed by examining international best practices, as well as by using our own experience of existing assessment tools for each of the respective pillars, and by seeking input from (international) experts on the respective institutions. These indicator score sheets provide guidance for the Libya assessment, but, when appropriate, the lead researcher has added questions or left some questions unanswered, as not all aspects are relevant to the national context. The full toolkit with information on the methodology and score sheets is available on the Transparency International website.<sup>8</sup>

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key experts, and written questionnaires. Secondary sources included reliable reporting by national CSOs, international organisations, governmental bodies, think tanks and academia.

<sup>8</sup> [www.transparency.org/policy\\_research/nis/methodology](http://www.transparency.org/policy_research/nis/methodology).

To gain an in-depth view of the current situation, a minimum of two key informants were targeted for interviews for each pillar – at least one representing the pillar under assessment and one expert on the subject matter but external to it.

## The scoring system

While this is a qualitative assessment, numerical scores are assigned in order to summarise the information and to help highlight key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale in 25-point increments including five possible values: 0, 25, 50, 75 and 100. The scores prevent the reader getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts. Indicator scores are averaged at the dimension level, and the three dimensions scores are averaged to arrive at the overall score for each pillar, which provides a general description of the system's overall robustness.

|             |        |
|-------------|--------|
| VERY STRONG | 81-100 |
| STRONG      | 61-80  |
| MODERATE    | 41-60  |
| WEAK        | 21-40  |
| VERY WEAK   | 0-20   |

The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores.

## The National Integrity System assessment process in Libya

The country's stage of transition and high levels of insecurity have constituted a significant challenge for the National Integrity System assessment process.

As mentioned in the introduction, the Libya assessment was undertaken only three years after the revolution, which ended 42 years of authoritarian rule in the country. The country still bears this authoritarian legacy and has not had much time to redefine and/or establish the institutions, regulatory framework, rules and procedures necessary for a functioning democratic political and administrative system. This has posed a significant challenge for the research as many issues have been unclear, laws have been inaccessible and it has been difficult to find reliable interviewees. Laws are not gathered and published collectively and access to non-published regulations has thus relied on coincidences and whether key informants have been able to provide them to the research team or not. As such, the process has become a finding in itself, i.e. when key informants are in doubt or have conflicting views of whether a certain code of conduct exists, it proves that access to information and access to key regulations in Libya is poor.

A second key challenge for the research process has been the fact that Libya has been plagued by political unrest and insecurity during the time of this research, which has limited the ability of the researchers to follow the standard National Integrity System methodology. Even though key informants, both external and internal to each pillar, had been identified and their participation confirmed at the outset of the research, some informants internal to the system were impossible to reach after the unrest broke out. Some of the pillar reports are therefore based on external interviews only, but in these cases the researchers have made sure to carry out additional interviews with external informants in order to triangulate information.

The situation in Libya has furthermore made it impossible to carry through all Advisory Group meetings and the National Integrity System workshop as planned. One Advisory Group meeting was held at the onset of the research with positive feedback and acknowledgement from the Advisory Group members but due to the security situation, it has not been possible to conduct more Advisory Group meetings, nor to have the National Integrity System workshop. The researchers have made sure to send all pillar reports to the Advisory Group members for comments and Advisory Group members and interviewees have been contacted individually by the end of the research in order to further triangulate data, have critical comments and to get their final input into the final draft version of the report.

The assessment process in Libya has, as such, had as strong a consultative component as possible, and the researchers have sought to involve the key anti-corruption actors in government, civil society and other relevant sectors. When the security situation in Libya allows, the Transparency International Secretariat should consider organising a National Integrity System workshop in order to create more awareness about the study and the importance of creating an integrity system that rests on transparency and accountability.

# III. EXECUTIVE SUMMARY

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This assessment of the Libyan National Integrity System evaluates the legal basis and behaviour of Libyan public, private sector and non-governmental institutions in terms of their capacity to prevent corruption and maintain the integrity of the system. The report examines the extent to which key Libyan institutions (in total 12 so-called 'pillars' of the integrity system) function as intended and whether Libya has an effective strategy for fighting corruption. To assess how conducive the environment is to promote and sustain integrity, the study also analyses the economic, political and socio-cultural foundations upon which these institutions operate. This study thus provides an overall picture of the Libyan National Integrity System and its capacity to prevent corruption between April and November 2014. During the research period, the country went through growing unrest and insecurity and, eventually, civil war. Militias took control of the capital, Tripoli, and the newly elected parliament fled to Tobruk and was declared unconstitutional by the Supreme Court. These developments led to a fundamental erosion in the status of the Libyan integrity system.

The main conclusion is that the Libyan integrity system is in an extremely poor state. The legacy from the Gaddafi regime with 42 years of dictatorship, informal structures and flourishing corruption has left little or no institutions upon which to build a well-functioning state. Most institutions, laws and regulations are either outdated or of very recent origin and implementation of the laws is severely hampered by a malfunctioning central and local government and the unstable security situation. Laws are not systematically accessible and it is difficult to get a full overview of the existing legal framework in Libya. This leads to a clear discrepancy between law and practice and in general there is a lack of implementation of the legal framework. To a large extent, informal and unregulated structures define the Libyan society more than state and formal institutions do, which is undermining transparent and accountable governance and state-building in Libya.

Libya's democratic development is seriously affected by the poor security situation in the country. Across almost all pillars, there is fear of coercion and attacks from militias, which in the justice system leads to a climate of impunity. Cases do not end up in court and perpetrators are not held accountable, as prosecutors are reluctant to take on sensitive cases. At the same time, neither public prosecutors, nor police officers are held accountable for any wrongdoings. While this obviously hampers the weak democratic foundation of Libya, the militias play a major role at the local level where they fulfil government roles, for example, act as local police forces and run prisons. They have been a main actor in providing security at the local level, since the state has been unable to reach out beyond the central level. So while militias represent a severe security challenge to pose a significant threat to security, Libya's integrity system and democratic transition at the national level, for many Libyans they are the main guarantor of security at the local level and thus present Libyans with a thorny security dilemma. The poor security situation and the role of the militias escalated after the election in June 2014 and a full-blown civil war broke out. In this context, law enforcement agencies proved incapable of fulfilling their role to improve security, burdened by their collapse during the 2011-revolution and the heavy legacy from the Gaddafi regime during which its internal structures were extremely dysfunctional. A group of militias refused to acknowledge the election results and took over control of Tripoli in August. As the newly elected House of Representatives has no military power, the militias are still (November 2014) controlling the capital. On 6 November, the Supreme Court declared the country's internationally recognised and democratically elected House of Representatives illegal and unconstitutional. International observers expressed concern that the court was forced to rule as it did, as no explanation for the declaration was given.

The current reality is discouraging to Libyans who had high expectations for the post-Gaddafi era and wished for a state built on democratic principles, good governance and respect for human rights. Various international donors and public institutions have taken initiatives toward combating administrative corruption and key actors, such as religious leaders, have expressed support for anti-corruption. This suggests that anti-corruption initiatives are relatively high on the agenda and that some level of political will exists to engage in the fight against corruption in Libya. However, at present results leave a lot to be desired and the mechanisms for combating corruption, such as transparency, integrity and accountability are not functioning properly. The integrity system has many serious weaknesses that permeate almost all individual pillars and thereby undermine the system in its totality.

## FOUNDATIONS

The foundation of the pillars in the integrity system is weak. The economy is funded almost exclusively (95 per cent) by oil revenues. Even though revenues have been used to improve infrastructure and to create a moderate safety net for the population, the fact that almost the entire economy is financed by oil revenues as opposed to via taxes creates an “accountability vacuum” between the public sector and the general population. It is this vacuum that armed militias are trying to fill by running state-like operations, such as a police force and prisons, and on several occasions the government’s authority has been directly challenged by militias who have seized oil facilities, have kidnapped the prime minister, etc.

Prior to the revolution, Libya had the highest nominal gross domestic product (GDP) per capita in Africa, but the distribution of wealth is unequal and significant poverty and social inequality exists. The country has a moderate safety net with free health care and education, which, however, has important gaps in terms of coverage and quality. The Libyan population is ethnically quite homogenous and the main divisions in society run along regional and tribal lines. In general, Libyans have a very high degree of trust in their fellow citizens but a very low degree of trust in public authorities. Conflict drivers are mostly related to various groups that try to ensure their own interests and could be resolved through negotiations when the authorities are capable of providing a better security environment. However, the current security situation is undermining state authorities and militias are increasingly fortified. This is inevitably diminishing hopes for a near future solution and for the restart of a much-needed state-building process.

## STRENGTH AND WEAKNESSES OF THE LIBYAN INTEGRITY SYSTEM

The majority of the 12 pillars are characterised as weak and only a few institutions in the Libyan integrity system stand out as relatively strong. The electoral management body has been able to organise three nationwide elections that were characterised as free and fair by international observers; the Audit Bureau has fulfilled its role as an oversight mechanism and has scrutinised the executive on an increasingly critical, if inconsistent basis; and, despite poor capacity, political parties, the media and CSOs have been able to put some critical issues on the public agenda.

Despite these few positive highlights, key institutions in Libya remain weak. The judicial system – key to underpinning the rule of law – is in a state of disarray and an estimated 9,000 individuals remain in government or militia custody without any formal trial or sentencing. The entire justice system is suffering severely from the legacy of the Gaddafi rule, where corruption, informal structures, dysfunctionality of departments, unclear lines of communication, and lack of integrity and control mechanisms was the modus operandi. Nepotism and favouritism were general traits of the judiciary during Gaddafi’s rule, and only a few judges were replaced after the revolution. The

judiciary struggles with a major backlog of cases from the Gaddafi era and the revolution, all at the same time as the system is being reformed. Experienced prosecutors and judges play an important role in this process, but also form part of the problem.

Other government institutions are also in the state of formation or rebuilding and these institutions have generally found it difficult to convey their power beyond the capital. For most of the institutions, the weakness stems from their lack of capacity in terms of independence and resources. For example, the division of powers between the executive, legislative and judiciary arms of government is not sufficiently clear and the removal of two prime ministers between 2012 and 2014 showed that the legislature has too strong powers over the executive.

There is a general lack of human resources across the pillars and the professional qualifications of employees in public and private agencies are poor. In private organisations, such as CSOs, the media and political parties, the lack of proper qualified staff hampers development opportunities and the organisations' ability to fulfil their role as watchdogs. In public agencies the Political and Administrative Isolation Law disqualifies the majority of staff associated with the former regime from being employed in the new state apparatus. It aims at clearing out remnants of the former regime and start on a clean slate, but the law also increases the skills-gap since experienced officials cannot resume office in the public sector. The lack of human resources leads to an inefficient use of finances and an increased risk of flaws and mismanagement. Furthermore, nepotism and favouritism flourish and new staff, also at management level, is often hired due to their network and not their merits. This severely hampers the development of the public sector and increases the citizens' mistrust in the sector.

The risk of conflict of interests is enhanced by the fact that there is a lack of common rules of procedures or codes of conduct that apply to the different agencies in the public sector. In several cases, informants in this study had conflicting opinions on whether such regulations exist, which shows that even if they exist, they are not sufficiently disseminated and enforced.

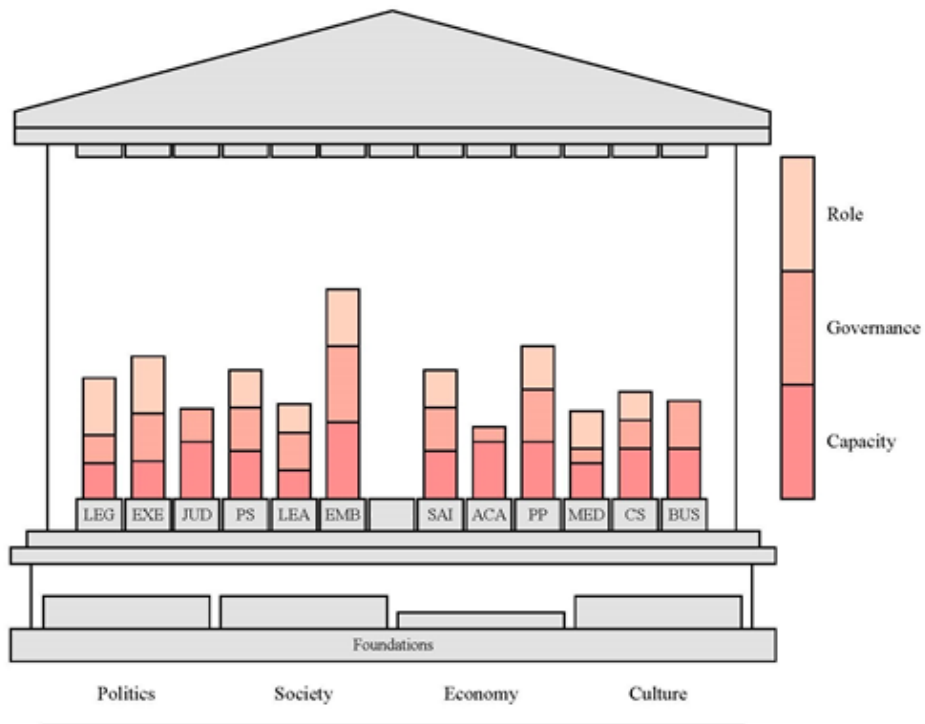
The legislative is tasked with, but has limited effective power, to check the executive, which has been characterised and still is characterised by vast overspending. Many public sector entities have more people on payroll than actually work full time. Spending has not been monitored, as financial resources have historically not been a constraint in the oil-rich country. With the recent establishment of the National Audit Bureau and the Anti-Corruption Commission, Libya is trying to address this. While the Anti-Corruption Commission is not yet up and running efficiently and transparently, the audit institution is actually showing good progress and has been able to put key issues in relation to spending and integrity on the public agenda.

In addition to capacity, the internal institutional governance is also poor, especially in terms of integrity mechanisms. A low level of integrity in the public sector is fundamental for the entire Libyan integrity system, as the public sector constitutes by far the largest employer in Libya and the biggest part of the economy. Even though rules and regulations are in place and in many cases uphold international standards, their low level of application allows for undue interference and does not promote accountability and integrity. The mere fact that it has been extremely difficult, and in many cases impossible, to get access to or even confirmation on the existence of laws, regulations and codes of conduct for the researchers as well as the informants (internal to the pillars as well as external) indicates a low level of transparency.

Lastly, key institutions, such as the judiciary, law enforcement agencies, anti-corruption agencies and businesses, perform very poorly in relation to their role in combating corruption. There are hardly any anti-corruption activities in these institutions and the few initiatives taken have not been sufficient to significantly combat corruption and inform about the devastating effects corruption has on the economy and the country as a whole.



The National Integrity System temple below illustrates these characteristics of the system.



|      |                           |      |                           |
|------|---------------------------|------|---------------------------|
| LEG. | Legislature               | SAL. | Supreme Audit Institution |
| EXE. | Executive                 | ACA. | Anti Corruption Agencies  |
| JUD. | Judiciary                 | PP.  | Political Parties         |
| PS.  | Public Sector             | MED. | Media                     |
| LEA. | Law Enforcement Agencies  | CS.  | Civil Society             |
| EMB. | Electoral Management Body | BUS. | Business                  |

## RECOMMENDATIONS

The current security situation in Libya seriously challenges the implementation of the below recommendations. Some stability needs to be established first in order to enable improvements in the integrity system. However, improving access to information and CSOs and citizens' involvement in the ongoing reform processes might have a positive effect in terms of building trust in the state.

### 1. Constitution-making process

The constitution-making process opens a window of opportunity for the participation of different stakeholders, which can increase accountability and the sense of ownership of the new constitution by more Libyans. One key recommendation in this process is to ensure that the roles of the executive, the judiciary and the legislative branches of government are clearly defined, not overlapping and that each institution's independence is secured. A modern system of checks and balances should be put in place and be embedded in the constitution.

### 2. Reform of the justice sector

There is an urgent need for the judiciary and the law enforcement agencies in Libya to become more credible institutions to secure the entire integrity system and avoid parallel structures that challenge state authority. It is recommended that international donors and national partners ensure that the reform process is transparent, for example, by conducting public hearings, and communicating to both stakeholders and citizens; that citizens and organisations are involved and heard in the reform process by reserving seats for CSOs in boards and committees; and that the legitimacy of the judiciary reform process is established from the outset by involving both the supply side (the judiciary, the public sector, etc.) and the demand side (citizens and CSOs).

### 3. Transparency in the public sector and access to information

The low level of trust that the Libyan people have in the very dominant public sector is detrimental to the integrity system. In order to build trust, it is recommended to focus on the improvement of transparency in the public sector in general in order for citizens, CSOs, the media, etc. to be able to access information about its work and its functioning. It is therefore recommended to develop, adopt and enforce a law on access to information, as well as ensure easy accessibility to laws, rules and regulation by collecting all essential documents in one central place, for example, in an online database/website. Furthermore, there should be short versions in the common language of all laws, rules and regulations for easy access by the public should be published here, and the state budget, vacancies in the public sector, asset declarations and financial interest of public employees should be publicly disclosed.

### 4. Focus on potential conflicts of interest (integrity and accountability in the public sector)

There are no common rules of procedures/codes of conduct applicable to the entirety of the public sector. Therefore, it is recommended to: develop, adopt and enforce a general code of conduct that includes rules and regulations regarding recruitment, gifts, hospitality, post-employment, etc.; conduct training of public officials in conflict of interest in employments and in their work functions; and establish a public agency with the mandate to handle citizens' complaints of the public sector.

### 5. Focus on civil society

CSOs and the media are important actors in the attempt to create a society with a more balanced participation of different stakeholders and as such enhance the accountability mechanisms in Libya. Therefore, it is recommended to establish a legal framework that enhances the ability of CSOs and the media to operate independently; involve citizens and organisations in the development of new legislation (for example, through reserved seats in decision-making bodies) and hold public hearings on all new laws; and establish a civic education programme on rights and responsibilities that could raise awareness of rules and regulations that apply to the public sector and inform citizens of complaint opportunities and mechanisms.

## 6. Anti-corruption agencies reforms

Anti-corruption agencies (ACA) are key actors in preventing corruption, initiate corruption prevention reforms and increase knowledge of corruption prevention. In Libya the legal framework helps to ensure the independence of its relatively new-founded National Anti-Corruption Commission, but the commission has so far not been able to fulfil its mandate. In this respect the following is recommended:

- a) Establish a code of conduct for the staff to ensure that the ACA in its internal operations becomes a model for other public institutions to follow
- b) Enhance the preventive, investigative and technical capabilities of the ACA, by 1) ensuring a central role for the ACA in legislative reforms related to anti-corruption and 2) capacity building with the assistance of experts the ability of ACA staff to conduct research and awareness activities on corruption and on corruption investigation skills
- c) Consolidate the various public agencies working on anti-corruption in Libya under the auspices of the National Anti-Corruption Commission to ensure a uniform and integrated approach to combating corruption
- d) Publish information on ACA activities and investigations conducted to increase transparency and credibility of the agency

## 7. Law enforcement agency reforms

The Libyan law enforcement agencies face several significant challenges, specifically from the multitude of militias in the country challenging their monopoly on power, as well as from low levels of trust in the population. In this respect the following is recommended:

- a) Define procedures on how to deal with wrongdoings by police officers and public prosecutors, including both disciplinary and criminal codes, adequate investigative capacity, procedures for punishment and appeal procedures
- b) Establish an independent body in charge of overseeing such procedures, receive complaints from citizens and investigate alleged wrongdoings
- c) Secure increased state budget for law enforcement agencies, including more human resources and technical equipment

## 8. Business sector reforms

The Libyan business sector has traditionally been weak in Libya with the economy dominated by the public sector. With corruption widespread in the country, the business sector is seen both as a victim and contributor to the problem. In this respect the following is recommended:

- a) Ensure the implementation of the existing law requiring budget transparency for business entities, particularly the banking sector; ensure the more forceful application of law no. 47 2012 excluding companies in certain illegalities from conducting business and of law no. 2 2005 on combating money laundering
- b) Establish stronger legislation regulating the integrity of the business sector to include stronger punitive measures and the crime of bribery committed abroad
- c) Establish a forum for engagement between civil society and the business sector, especially the various chambers of commerce, to collectively engage in promoting an anti-corruption agenda in Libya. This could include a campaign to promote the signing up of businesses to the UN Global Compact initiative
- d) Together with the leading Chamber of Commerce, develop an updated and comprehensive corporate governance code to enhance integrity in the business sector, including provisions on transparency and openness, financial reporting, risk management, internal controls and auditing

# IV. COUNTRY PROFILE: FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

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## FOUNDATIONS OF THE NATIONAL INTEGRITY SYSTEM IN LIBYA

Since the National Integrity System is deeply embedded in the country's overall social, political, economic and cultural context, a brief analysis of this context is presented here for a better understanding of how these context factors have an impact on integrity on the whole. There are four different types of "foundation" to the system: political-institutional foundations, socio-political foundations, socio-economic foundations and socio-cultural foundations.

### POLITICAL-INSTITUTIONAL FOUNDATIONS

To what extent are the political institutions in the country supportive of an effective National Integrity System?

Score: 50

Libya is in a state of transition toward democracy and rule of law after 42 years of authoritarian rule under Gaddafi and the political institutions are in general weak and ineffective in ensuring political and civil rights. However, there are positive tendencies and Libya has improved in a number of parameters.

During the early weeks of the revolution, a number of representatives from local councils in rebel cities formed a National Transitional Council (NTC). The NTC promulgated a Constitutional Declaration in August 2011, stating the basis of rule in the transitional period until the approval of a new constitution. The Constitutional Declaration of the NTC calls for the establishment of a political democratic regime based on political multitude and a multi-party system. In the Constitutional Declaration the NTC abolished the restrictions on political party formation that had been enforced during the Gaddafi era and instead ensured the right to form political parties and CSOs. This led to the formation of dozens of parties of varying ideologies, including nationalist, liberal, leftist, Islamist and Salafist, as well as parties reflecting local, tribal and regional power bases.<sup>9</sup> However, most of the parties formed were either single-issue or single-person parties and not cohesive, organisationally capable units.

In July 2012 Libya held its first free and fair elections for a 200-member chamber – the GNC – to replace the NTC. The seats were split as follows: 80 seats were reserved for parties and 120 seats reserved for individual candidates. In addition, a very progressive gender quota was promulgated, which included both a horizontal and vertical zipper entailing that every second party list had to have a woman as the first candidate and every second candidate on the party lists had to be female. The

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<sup>9</sup> JMW Consulting and Ellen Lust, *Libyan Political Party baseline Assessment*, 2013.

election was deemed to be free and fair by outside observers<sup>10</sup> and 142 party lists had formed to contest the party seats along with 2,639 individual candidates contesting the 120 individual seats. The National Forces Alliance dominated the races for party list seats, winning roughly 50% of the total party seats. The Justice and Construction Party did better in the races for individual seats. It won 34 individual seats in total; 17 party seats and 17 individual seats. Salafi parties performed the best in the individual candidate races, winning 23 individual seats and only four party seats.<sup>11</sup>

The Constitutional Declaration also contains language that will move Libya in the direction of a rule of law-based society, respecting basic human rights. Once ranked among the nine least free countries in the world,<sup>12</sup> Libya is today classified as being partly free.<sup>13</sup> Additionally, in 2012 Libya experienced the biggest progress of any country in the Economist Intelligence Unit democracy index from no. 125 to 95 out of 167 countries and was subsequently classified as a hybrid regime rather than an authoritarian regime.<sup>14</sup> Article 7 of the Constitutional Declaration places obligation on the state to respect human rights and basic freedoms, and contains a commitment to join international and regional human rights instruments.<sup>15</sup> In addition, the declaration makes references to democracy and equality before the law, but it provides no guarantee of equal rights for women. Furthermore, new provisions for the protection of freedom of religion and conscience, freedom of expression, and freedom of association, among others, leave room for improvement. Thus, while the declaration moves Libya closer to a society with respect for the rule of law and human rights it could contain more firm language to ensure that such rights are respected.<sup>16</sup>

This is especially important since the facts-on-the-ground are not very conducive to the rule of law, respect for political institutions or human rights. The new authorities have inherited a country with a legacy of impunity, weak and mistrusted institutions, and arbitrary rule where some people lived above the law and others outside of its protection.<sup>17</sup> Under the Gaddafi regime, emergency law and special “revolutionary” and military courts were used to arrest and put political opponents on trial. The former regime furthermore failed to build functioning institutions in the country and the institutional landscape left behind was characterised by competing structures and informal networks. These informal power structures, which can take the form of tribes, ethnic groups, religious groups, etc., that emerged to fill the institutional void in the country have – since the revolution – become one of the challenges to building a strong central authority, as these structures are reluctant to diminish their own position of power at the expense of centralised authority. Similarly, institutions that were independent of the state were not allowed to operate, so there was only limited civil society activity to fill the institutional gap in the country.

The judicial system – key to underpinning the rule of law – is in a state of disarray and an estimated 9,000 individuals remain in government or militia custody without any formal trial or sentencing.<sup>18</sup> Other government institutions are also in the state of formation or rebuilding and these institutions have generally found it difficult to convey their power beyond the capital. A key challenge for the central authorities has been the lack of law enforcement institutions and the proliferation of arms and militias, which undermines the state’s authority.<sup>19</sup> The militias have on several occasions directly challenged the central government’s authority by, for instance, seizing oil facilities, kidnapping the prime minister, and besieging the parliament and key government ministries. However, while militias

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<sup>10</sup> *New York Times*, “Libya’s Election”, 9 July 2012.

<sup>11</sup> JMW Consulting, *Libyan Parliamentary Election Study*, 2013.

<sup>12</sup> Freedom House, *Freedom in the World 2010*, 2010.

<sup>13</sup> Freedom House, *Freedom in the World 2014*, 2014.

<sup>14</sup> The Economist Intelligence Unit, *Democracy Index 2012 – Democracy at a Standstill*, 2012.

<sup>15</sup> Democracy Reporting International, *Libya’s Transition – The Constitutional Declaration: A basis for Democracy?*, 2011.

<sup>16</sup> Democracy Reporting International, 2011.

<sup>17</sup> Amnesty International, *Libya: Rule of Law or Rule of Militias?*, 2012.

<sup>18</sup> Freedom House, *Freedom in the World 2013*, 2013.

<sup>19</sup> Freedom House, 2013.

represent a severe security challenge at the national level, for many Libyans they are the main guarantor of security at the local level and thus present Libyans with a thorny security dilemma.<sup>20</sup>

Libyans, however, generally support democracy and more than 80% believe it is the best form of government.<sup>21</sup> In addition, Libyans characterise democracy by the protection of human and political rights, which is conducive for the establishment of the rule of law and proper governance.<sup>22</sup>

## SOCIO-POLITICAL FOUNDATIONS

To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective National Integrity System?

Score: 50

The Libyan population is quite homogenous and the main divisions in society run along regional, ethnic and tribal lines. Conflict drivers are mostly related to various groups trying to ensure their own interests and could be resolved through negotiations when the authorities are capable of providing a better security environment.

Ethnically, Libya is a relatively homogenous country with 97 per cent of its people being of Arab or a mixture of Arab-Berber origin. There are ethnic minority groups, including Amazigh, Tuareg and Tebu, which constitute approximately 3 per cent of the population.<sup>23</sup> In addition, there are a significant number of migrant workers, especially from sub-Saharan Africa and South Asia. There are no significant religious minorities in Libya. The Constitutional Declaration stipulates that all Libyans shall enjoy the same civil and political rights and have the same opportunities without discrimination due to religion.<sup>24</sup> Nevertheless, in practice, freedom of religion has been difficult to assess after the revolution and there have been reports of desecrations of Sufi and Catholic graves at the beginning of 2012.<sup>25</sup>

Libya has historically been divided into three regions: Tripolitania in the west, Cyrenaica in the east and Fezzan in the south. Within these regions various tribes have a large influence on local decision-making. The clashes between these different tribes and groups generally revolve around four issues:

- The historical division of the country is the source of some conflict, as groups in the east in particular are trying to gain regional autonomy. The broader population, however, generally does not support such moves for regional autonomy.<sup>26</sup>
- Settling justice after the civil war with rival groups trying to secure justice focusing on issues such as handover of disputed land, prisoners and suspects.<sup>27</sup>
- Redistribution of and access to resources such as profits from the thriving smuggling business or control of oil facilities.<sup>28</sup>

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<sup>20</sup> Lindsay Benstead, Alexander Kjærsum, Ellen Lust and Jakob Wichmann, 'Libya's Security Dilemma', Washington Post / Monkey Cage Blog, 7 April 2014.

<sup>21</sup> JMW Consulting and the National Democratic Institute, *Committed to Democracy and Unity*, 2014.

<sup>22</sup> JMW Consulting & National Democratic Institute, 2014.

<sup>23</sup> [www.cia.gov/library/publications/the-world-factbook/geos/ly.html](http://www.cia.gov/library/publications/the-world-factbook/geos/ly.html) [accessed 26 May 2014]

<sup>24</sup> Constitution, 2011, article 6

<sup>25</sup> <http://berkeleycenter.georgetown.edu/essays/religious-freedom-in-libya> [accessed 26 May 2014]

<sup>26</sup> JMW Consulting & National Democratic Institute, 2014.

<sup>27</sup> Wolfram Lacher, "Fault Lines of the Revolution – Political Actors, Camps and Conflicts in the New Libya", *Stiftung Wissenschaft und Politik*, 2013.

<sup>28</sup> Lacher, 2014.

- Racial tensions with darker-skinned Libyans, such as the ethnic Tebu, Tuareg and Tawergha, as well as sub-Saharan migrants facing discrimination and assaults, in part due to allegations that they were employed as mercenaries by Gaddafi during the revolution.<sup>29</sup>

The conflict drivers are not very deep and mostly related to the fact that groups in the current state of insecurity and transition are trying to secure their own interests and power. Such issues could be resolved through peaceful negotiations when central and local authorities are capable of enforcing and upholding such agreements. There have already been examples of local authorities successfully intervening in tribal and ethnic conflicts. For instance, in April 2014 members of the Misrata Local Council intervened in a violent conflict between two groups from Sebha and managed to persuade both parties to accept an agreement that allows neutral Misrata forces to take control of the city's military barracks and airport.<sup>30</sup> Additionally, there have been examples of tribes successfully negotiating on their own without interference or meddling from the authorities. In August 2014, the two main tribes in Kufra, the Zwai tribe and the Tebu tribe, which had been fighting since February 2012, took the first steps toward reconciliation in the city.<sup>31</sup>

Minority groups were marginalised under the former authoritarian regime and the new Libyan government has committed itself to ensure that all citizens enjoy the same rights and are treated equally. There are, however, several reports of incidents of maltreatment of sexual and religious minorities in the country. In addition, the main ethnic minority groups, Amazigh, Tebu and Tuareg, decided to boycott the election for the Constitution Drafting Assembly as the three groups were collectively only assigned 10 per cent of the seats in the assembly.<sup>32</sup>

CSOs were banned during the former regime but have begun to flourish after the revolution. Many are still in the process of developing their internal organisations and securing funding and their capacity to represent interest groups in society vis-à-vis the political system is still in a state of development. A positive example of civil society influence was the drafting of the 2012 election law for the GNC where especially the influence of non-governmental organisations (NGOs) working on gender and women's issues helped secure the very progressive gender quota in the GNC. The same NGOs were, however, less successful in securing progressive quotas for the Constitution Drafting Assembly and in the recently held parliamentary elections the quotas were 10 per cent and 15 per cent respectively.<sup>33</sup>

## SOCIO-ECONOMIC FOUNDATIONS

To what extent is the socio-economic situation of the country supportive of an effective National Integrity System?

Score: 25

Significant poverty and social inequality exists in Libya. The country has a moderate safety net with free health care and education, which, however, has important gaps in terms of coverage and quality. Its economy is overly reliant on oil revenue and dominated by the public sector, while the private sector is small and Libya ranks very poorly regarding the ease of doing business.

<sup>29</sup> [www.ft.com/cms/s/0/85eb66f4-80f9-11e4-896c-00144feabdc0.html#slide0](http://www.ft.com/cms/s/0/85eb66f4-80f9-11e4-896c-00144feabdc0.html#slide0) [accessed 23 January 2015]

<sup>30</sup> Jamal Adel, "Peace and Reconciliation Break out in Kufra", *Libya Herald*, 16 August 2014 (2014a).

<sup>31</sup> Jamal Adel, "Twelve Detainees Released as Sebha Peace Talks Make Progress", *Libya Herald*, 7 May 2014 (2014c).

<sup>32</sup> Jamal Adel, "Tebus Announce Boycott of Constitutional Committee Elections; Tuareg Split", *Libya Herald*, 17 February 2014 (2014b).

<sup>33</sup> [www.aljazeera.com/news/middleeast/2014/06/libya-prepares-vote-amid-tensions-201462411369559322.html](http://www.aljazeera.com/news/middleeast/2014/06/libya-prepares-vote-amid-tensions-201462411369559322.html) [accessed 11 November 2014]



Prior to the revolution, Libya had the highest nominal GDP per capita in Africa. The revolution disrupted the oil production and the continuous instability is severely affecting the GDP. Libya now ranks 109 in the world in GDP per capita with other African countries such as Botswana, Equatorial Guinea, Gabon and South Africa having surpassed Libya. Despite signs of economic recovery in 2012, it is estimated that the country's economy will retract in the short term.<sup>34</sup>

Libya's economy is driven by its vast oil and gas resources, which account for 80 per cent of the GDP, 95 per cent of export earnings and 99 per cent of government income.<sup>35</sup> The significant revenue from oil has to some extent been used to improve infrastructure, education and health facilities in the country and Libya ranks 64 in the world in human development – the best-ranked country in Africa.<sup>36</sup> This is, among other, due to the existence of free universal health care and education. In addition, oil revenue is used by the government to subsidise food, electricity and gasoline. Besides the energy sector, the service and construction sectors have expanded during the last five years and could become a bigger part of Libya's GDP in the long run.<sup>37</sup> Agricultural production does not play as big a role in Libya as in other Arab countries.<sup>38</sup> Challenging climate conditions and poor soil quality limit agricultural production and as a result Libya imports approximately 80 per cent of its food.<sup>39</sup>

The large public sector installed by the previous regime has to a large extent prevented private corporations from emerging, which has resulted in a small private sector. While there are signs of a more vibrant private sector after the revolution, the Libyan business environment remains significantly challenged. The World Bank ranks Libya among the bottom three countries in its 2014 report on the ease of doing business. Libyan corporations are particularly confined when it comes to resolving insolvency, property registration and dealing with construction permits.<sup>40</sup> In addition, the informal sector in Libya, which is estimated to make up 30 per cent of the total economy, also constitutes a significant challenge for the business environment, as the nature of the informal sector hinders any type of corporate governance.<sup>41</sup> Key issues for the development of the private sector in Libya include significant barriers in the form of regulations and red tape for small- and medium-sized enterprises to start up. For example, regulations put high capital requirements on start-ups, which poses a significant problem for most entrepreneurs, especially because the banking sector in Libya is hesitant when lending out capital.

Despite the relatively high levels of human development, a vast number of Libyans do not benefit from the oil-driven economy. It is estimated that 30 to 40 per cent live below the poverty line.<sup>42</sup> There are important regional differences with the western region and the capital Tripoli being the most economically developed regions, while the southern and eastern regions in Libya in many regards remain underdeveloped.

Unemployment, and especially youth unemployment, continues to pose a significant problem in Libya. The unemployment among Libyans below 24 years of age is estimated to be above 50 per cent.<sup>43</sup> Despite universal education, there is often a mismatch between the skills of the educated Libyans and the demand from the labour market, and private businesses often look for foreign workers, both for high-skilled and low-skilled jobs.<sup>44</sup> Libyan women enjoy rather easy access to the labour market compared to other countries in the Arab world. Due to an effort to boost its legitimacy, the previous regime made several efforts to promote a more open and inclusive role for women,

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<sup>34</sup> CIA, 2014, and The World Bank, *MENA Quarterly Economic Brief*, issue 2 January 2014 (2014a)..

<sup>35</sup> CIA, 2014.

<sup>36</sup> UNDP, *2013 Human Development Report*, 2014.

<sup>37</sup> CIA, 2014.

<sup>38</sup> World Bank, *Labor Market Dynamics in Libya*, 2013.

<sup>39</sup> CIA, 2014.

<sup>40</sup> The World Bank, *Harnessing the Global Recovery – A Tough Road Ahead*, 2014 (2014b).

<sup>41</sup> AfDB, OECD, UNDP & UNECA, *African Economic Outlook: Libya 2012*, 2012.

<sup>42</sup> CIA, 2014, and The National, [www.thenational.ae/news/world/africa/poverty-persists-in-libya-despite-oil-riches](http://www.thenational.ae/news/world/africa/poverty-persists-in-libya-despite-oil-riches) [accessed 26 May 2014]

<sup>43</sup> The World Bank, 2014a.

<sup>44</sup> World Bank, *Rapid Assessment of the Libyan Labor Market*, 2012.

which resulted in an increase from 14 to 27 per cent of women in the labour force between 1986 and 2006.<sup>45</sup>

Lastly, while the oil sector is the main driver behind economic growth in Libya, it is also a potential source of corruption and mismanagement. Libya's oil reserves are the ninth largest in the world and are managed by the National Oil Corporation. Libya's resource governance ranks 55 out of 58 countries with significant oil, gas and mining sectors. The low ranking is especially due to poor performance in the institutional and legal framework, as well as safeguards and oversight within the sector.<sup>46</sup>

## SOCIO-CULTURAL FOUNDATIONS

To what extent are the prevailing ethics, norms and values in society supportive of an effective National Integrity System?

Score: 50

Similar to its neighbouring countries, Libya's cultural life is largely influenced by family values and religious ideals and as a result religious leaders play an important role in society. Libyans generally have a low degree of trust in the public system but significantly higher trust in their fellow citizens.<sup>47</sup>

Family values are very important and it is essential for most Libyans to maintain a good family reputation, which often results in personal feelings and needs being suppressed on behalf of the well-being of the group.<sup>48</sup> Libyans are generally conservative in outlook and religious in nature; however, very few are devoted to the radical branches of Islam.<sup>49</sup> Nevertheless, religion plays a major role in Libya and permeates many aspects of life. The vast majority of Libyans consists of devoted Muslims and practices a personal religion that includes daily prayers as well as fasting throughout the month of Ramadan.<sup>50</sup>

Religious figures and institutions play a central role in Libyan cultural life and society including the office of the Grand Mufti. The Grand Mufti, who issues religious opinions regarding Islamic law, is the leading religious authority in most Sunni Muslim countries.<sup>51</sup> The Grand Mufti did not exist during the Gaddafi era but was created by law no. 15 2012 adopted by the NTC. The position is held by Sheikh Sadeq al-Gharyani, who heads the Fatwa Council and has become a very influential figure in Libyan society. While the law is open for interpretation it grants the Grand Mufti and the Fatwa Council legal immunity and it permits the institution to interfere in political matters; however, the precise responsibilities of the office are not clearly defined.<sup>52</sup> After being appointed by the NTC, al-Gharyani pronounced that Libya's challenges can – to a large extent – be solved by eliminating administrative corruption, establishing rule of law, as well as mechanisms to hold public servants accountable for their actions.<sup>53</sup> In addition, al-Gharyani has also condemned the assassination of officers loyal to the Gaddafi regime and insisted that justice can only be served through a trial in the

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<sup>45</sup> Ronald Bruce St John, "Libyan Myths and Realities", *Royal Danish Defence College*, August 2011.

<sup>46</sup> Revenues Watch Institute, *The 2013 Resource Governance Index: Libya*, 2013.

<sup>47</sup> JMW Consulting and NDI, 2013.

<sup>48</sup> <http://www.kwintessential.co.uk/resources/global-etiquette/libya.html> [accessed 08 July 2014]

<sup>49</sup> St John, 2011.

<sup>50</sup> Kwintessential, n.d.

<sup>51</sup> Gerhard Bowering, Patricia Crone, Wadad Kadi, Devin J. Stewart, Muhammad Qasim Zaman and Mahan Mirza, *The Princeton Encyclopedia of Islamic Political Thought*, (Princeton: Princeton University Press, 2012).

<sup>52</sup> Eljarh, "Is Libya's Top Cleric Undermining Democracy?", *Foreign Policy*, 17 February 2014.

<sup>53</sup> *The Tripoli Post*, "Libya: Chairman of Supreme Council for Fatwa Warns Those Calling for Federal Region in Libya", 9 March 2012.

legal system.<sup>54</sup> However, there have also been fears of the Grand Mufti being a barrier to Libya's democratic transition. For instance, prior to the 2012 GNC elections al-Gharyani urged Libyans not to vote for the liberal party, National Forces Alliance, because it allegedly supports secular values. Instead voters were advised to support parties and candidates in favour of Sharia law. The Grand Mufti has also recently issued a fatwa against participating in UN-sponsored talks to end the current crisis in the country. The Grand Mufti's strong political influence was made clear by his office's lead in ensuring a prohibition of interest in banking.<sup>55</sup>

Even though Libya has promoted a more inclusive role for women than other Muslim countries and ensured female representation in the parliament, Libyans generally value men higher than women and society remains largely male-dominated. The majority of all Libyans believe that men should have priority over women in employment,<sup>56</sup> 75 per cent believe that women should not be allowed to travel alone,<sup>57</sup> and nearly 59 per cent agree that being a housewife is as fulfilling as being employed.<sup>58</sup>

In general, the population has a fairly low degree of trust in the public system. Just under half of Libyans (48 per cent) regard public officials and civil servants as either corrupt or extremely corrupt, and nearly half of the population believe that corruption increased from 2011 to 2013. In addition, 75 per cent find corruption to be a problem in the public sector to some extent.<sup>59</sup> On the other hand, citizenship and trust between Libyans is significantly higher. For instance, more than 75 per cent of the population believe that one can interact with people outside the family without being worried about being cheated. Most Libyans know the people in their neighbourhood and it is customary to assist each other with childcare, education and healthcare on a regular basis.<sup>60</sup>

Libyans are generally quite intolerant toward groups that violate the basic values and ethical rules of society, as well as people with a different background. Of the population, 77 per cent do not wish to live next to a homosexual and as many as 82 per cent have an aversion to have an unmarried couple as their neighbours. In addition, 55 per cent do not want to live next to people of a different race and 54 per cent have a dislike for having people with a different religion as their neighbours.<sup>61</sup>

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<sup>54</sup> 'Grand Mufti Issues Fatwa Condemning Assassinations of Qaddafi-Era Officers', Libya Herald, 15 August 2012.

<sup>55</sup> Eljarh, 2014.

<sup>56</sup> JMW Consulting and NDI, 2013.

<sup>57</sup> JMW Consulting and NDI, 2013.

<sup>58</sup> World Values Survey, *World Values Survey Wave 6*, 2014.

<sup>59</sup> Transparency International, 2013.

<sup>60</sup> JMW Consulting and NDI, 2013.

<sup>61</sup> World Values Survey, 2014.

# V. CORRUPTION PROFILE

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Libya is deemed to be one of the most corrupt countries in the world and Transparency International ranked Libya 172 out of 177 countries in their Corruption Perception Index in 2013.<sup>62</sup> Libya signed the United Nations Convention against Corruption in 2003 and ratified it in 2005. As such, an anti-corruption agenda was already present under Gaddafi. Article 6 of the convention requires that signatories establish one or more bodies responsible for preventing corruption by means of implementing various policies as well as increasing the general knowledge of corruption prevention.<sup>63</sup> Therefore, agencies to support financial transparency and limit corruption such as the Board of the General People's Control were established by the regime. However, their impact on the fight against corruption was limited.<sup>64</sup>

## The dominating institution in Libya – the public sector – is perceived to be corrupt

Since the revolution in 2011 there has been an anti-corruption discourse in Libya, but the results of actual anti-corruption measures have been limited. Among other things, the current security situation in Libya is hampering efforts,<sup>65</sup> precluding authorities from addressing the main causes of corruption. One of the main weaknesses in the Libyan integrity system is the large public administration, which the Audit Bureau in 2013 described as performing poorly with poor governance, lack of transparency, poor management and poor implementation across a wide range of sectors.<sup>66</sup> The public sector has an overall unfortunate image, and according to the Global Corruption Barometer, 48 per cent of Libyans perceive public officials and civil servants to be either corrupt or extremely corrupt. As such, the public sector is considered to be the most corrupt institution in Libya along with the police. Moreover, nearly half of the population finds that corruption increased from 2011 to 2013,<sup>67</sup> indicating little or no improvement after the revolution.

Favouritism and nepotism are major issues in the public sector and employees are often not hired because of their merits. This practice, known as *wasta*, which is Arabic for “intermediary”, is an ingrained social practice in Libyan society, whereby typically powerful relatives or members within the same social group are obligated to provide assistance or favourable treatment to others within the same group. With the public sector employing the vast majority of Libyans, upper and mid-level management uses this patronage system to enlarge the circle of people dependent on them for jobs and their livelihood and thus heighten their own influence. A survey from 2012 with higher-level employees from ministries, the government, CSOs and the private sector confirms this impression<sup>68</sup> as 62.6 per cent of the respondents strongly agree that bribery and corruption remains one of the main obstacles against the state implementing development programmes with 93 per cent of the respondents strongly agreeing (60 per cent) or agreeing (33 per cent) that the spread of favouritism hampers their implementation.<sup>69</sup> This is also the case on the managerial level where 83 per cent

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<sup>62</sup> Global Corruption Barometer 2013, [www.transparency.org/country#LBY\\_DataResearch](http://www.transparency.org/country#LBY_DataResearch)

<sup>63</sup> United Nations, Convention Against Corruption, 2003.

<sup>64</sup> Revenue Watch Institute, 2014.

<sup>65</sup> Bertelsmann Stiftung, *Libya Country Report*, 2012.

<sup>66</sup> Sami Zaptia, “2013 Audit Bureau Report Rebukes Government for Giving Poor Value for Money”, *Libya Herald*, 2014 (2014a); Libyan Audit Bureau, *Annual Report 2013*, 2014

<sup>67</sup> Transparency International, 2013.

<sup>68</sup> Ibrahim Nouredin Kamba and Mohd Fu'ad Sakdan, “Reality Assessment of the Corruption in Libya and Search for Causes and Cures”, International Conference on Management, June 2012, Malaysia.

<sup>69</sup> Kamba and Sakdan, 2012.

strongly agree or agree that leaders in the public sector lack the necessary skills to perform their jobs efficiently<sup>70</sup>

## Public–business interactions increase corruption

Even more concretely, another study found that 12 per cent of Libyans believe that officials receive kickbacks for construction permits and 13 per cent found that in order to get a job in the government it is necessary to pay a bribe. It should, however, also be noted that Libya lacks mechanisms for employment, as there are no recruitment or job agencies making it difficult for employers to conduct proper recruitment procedures. In addition, 19 per cent of the surveyed found it necessary to use *wasta* to obtain a construction permit and 26 per cent believed that *wasta* was needed in order to get a job in the government.<sup>71</sup> The construction sector in particular is at high risk for corruption and acceptance of kickbacks as well as awarding contracts to family companies in order to maximise profit are widespread.<sup>72</sup> There are reports of projects being delayed for no particular reason while there are other instances where contracts are awarded, signed and initial payments completed due to the fact that personal interests are involved.<sup>73</sup> This indicates that it is in the interaction between the private and the public sector that corruption often occurs,<sup>74</sup> and it gives larger companies an advantage over smaller ones that often lack the necessary resources to make such payments.<sup>75</sup> The private sector, together with CSOs, is however considered to be among the least corrupt institutions in Libya. Only 31 per cent of Libyans believe that the private sector is extremely corrupt or corrupt (as opposed to 48 per cent of civil servants).<sup>76</sup>

Public procurement is another field with a high risk of corruption in Libya and Transparency International estimates that on average around 10 to 25 per cent of all contract values are lost due to corruption, and in the worst cases it is up to 50 per cent.<sup>77</sup> Large sums are at play when the dominating public sector buys goods and services from public and private companies. The Libyan legal framework requires contracts above LYD 500,000 (US\$408,323) to be put out in open bidding and publicly announced when contracts have been awarded, but this is rarely done in practice.<sup>78</sup> There has not been much research on public procurement since the revolution, but older literature suggests that both regulation and practice around public procurement is weak, has severe loopholes and options for awarding contracts to family and friends, thus enhancing the risk of poor quality and service.<sup>79</sup> As referred to above, the construction business is considered to be particularly corrupt and kickbacks are normally used to get permits and contracts.<sup>80</sup> Besides leading to an inefficient use of resources, this creates a risk of potentially dangerous buildings directly caused by corrupt practices.<sup>81</sup> Since the revolution, Libya has witnessed several cases of buildings collapsing due to poor maintenance and construction, for example, in May and December 2013 when two separate building collapses in Tripoli killed five and three people respectively.<sup>82</sup>

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<sup>70</sup> Kamba and Sakdan, 2012.

<sup>71</sup> JMW Consulting and NDI, 2013.

<sup>72</sup> Umar Khan, "Corruption – The Biggest Problem Facing Libya", *Libya Herald*, 2013.

<sup>73</sup> Khan, 2013.

<sup>74</sup> Interview with Aref Kashar, managing partner at Kashar & Associates, with Sherif Jenan, Tripoli, 10 June 2014 and interview with Dr Mohamed Khalil Fayad, professor of economics and general manager at the Economic Research Center at the University of Benghazi, with Sherif Jenan, Tripoli, 9 June 2014.

<sup>75</sup> Khan, 2013.

<sup>76</sup> Global Corruption Barometer 2013, [www.transparency.org/gcb2013/country/?country=libya](http://www.transparency.org/gcb2013/country/?country=libya)

<sup>77</sup> Working paper # 5/2010 on Public Procurement.

<sup>78</sup> Interview with Dr Bashir Ghariani, Public Administration Consultant, with Sherif Jenan, Tripoli, 10 June 2014.

<sup>79</sup> Socialist people's Libyan Arab jamahiriya public expenditure review, Volume II, main report p. 62, World Bank; A. Jibril, *Illness of the State: Cancer of Administrative Corruption*. Dar Al Manara of Printing and Publishing, Tripoli, Libya, p. 29-51.

<sup>80</sup> Khan, 2013.

<sup>81</sup> Working paper # 5/2010 on Public Procurement.

<sup>82</sup> [www.ndtv.com/article/world/three-storey-building-collapses-in-libya-kills-five-365273](http://www.ndtv.com/article/world/three-storey-building-collapses-in-libya-kills-five-365273) [accessed 29 October 2014], <http://english.ahram.org.eg/NewsContent/1/64/88707/Egypt/Politics-/Three-Egyptians-die-in-building-collapse-in-Libya.aspx> [accessed 29 October 2014].

## The oil sector in Libya – economic driver and potential corruption pitfall trap

How public procurement works in the dominant oil industry is difficult to assess since oil contracts and permits are not published,<sup>83</sup> but the lack of transparency, as well as the poor performance of the public sector and the revenue governance in Libya also increase the risk of corrupt practices in the oil business. A concrete example of corruption could be seen in January 2014 when the Norwegian fertiliser company Yara International was fined 295 million Norwegian crowns which corresponds to LYD 60,1 million (US\$48 million) for paying or agreeing to pay LYD 15 million (US\$12 million) in bribes between 2004 and 2009 to senior government officials in Libya and India, including an oil minister.<sup>84</sup> Furthermore, in 2013 oil terminals were blocked by protesters accusing the government of purposefully not fixing the meters that were damaged during the revolution, thereby allowing the central government to sell oil without the ability to monitor sales.<sup>85</sup> These cases indicate that corrupt practices indeed occur in the Libyan oil industry and this might only be the tip of the iceberg.

Examples from resource rich countries indicate that revenues from oil and gas often lead to large-scale corruption with the effect that resource wealth is not transferred into well-being.<sup>86</sup> In the Libyan case, oil revenues finance a moderate safety net for the Libyan population with free education and health services,<sup>87</sup> but they also finance a large inefficient public sector with a reputation for being the most corrupt institution in the country. Libya's oil reserves are managed by the National Oil Corporation and Libya's resource governance ranks 55 out of 58 countries with significant oil, gas and mining sectors. The low ranking is especially due to poor performance in the institutional and legal framework, safeguards and oversight within the sector.<sup>88</sup> Furthermore, Libya has refused to participate in international initiatives such as the Extractive Industries Transparency Initiative and also lacks a "Publish What You Pay" coalition to give clarity over the amount of capital going from various industries to the government in order to get access to oil, gas and other natural resources.<sup>89</sup> The lack of transparency makes it difficult for CSOs and citizens to monitor public spending and hold the government accountable. Considering the fact that almost the entire public budget (95 per cent) is financed by oil revenues, immense sums of money are clearly being administered without transparency.

According to Revenue Watch the link between the state and the citizens is fragile when the government's budget is based on revenues as opposed to taxes. The government should therefore nurse this fragile link by being transparent about the use of revenues and allow citizens to hold the government accountable.<sup>90</sup> The lack of transparency in Libya regarding the use of oil revenues and public institutions' poor performance are thus jeopardising this already fragile link. The poor performance furthermore leaves a vacuum which armed militias try to fill by running state-like operations, such as local police forces and prisons, and on several occasions the government's authority has been directly challenged by militias who seized oil facilities, kidnapped the prime minister, etc.

The overly reliance on oil revenue also has negative side-effects for the governance system in Libya and increases the risk of corruption. With the volatile oil-prices, the oil revenue reliance makes it difficult for the central government to conduct proper financial management and planning. Furthermore the oil wealth was used by the former regime as a means to employ people in the public sector and thus provide them with a livelihood source to avoid discontent. This has led to a

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<sup>83</sup> "Revenue Watch Seeks to Promote Transparency in Libya's Oil and Gas Industries", *The Tripoli Post*, 4 December 2012.

<sup>84</sup> Reuters, "SocGen Facing Bribery Lawsuit over Libyan Deals: Financial times", 30 March 2014 (2014a).

<sup>85</sup> [www.tripolipost.com/article/detail.asp?c=2&i=10558](http://www.tripolipost.com/article/detail.asp?c=2&i=10558) [accessed 29 October 2014].

<sup>86</sup> Promoting Revenue Transparency 2011 Report on Oil and Gas Companies, Transparency International & Revenue Watch.

<sup>87</sup> UNDP 2014

<sup>88</sup> Revenue Watch Institute, 2013.

<sup>89</sup> Revenue Watch Institute, 2014.

<sup>90</sup> "Revenue Watch Seeks to Promote Transparency in Libya's Oil and Gas Industries", 2012.



culture where salaries in the public sector are more seen as a right than something that is earned and may be one of the root causes of the poor work ethics across the public pillars.

## Inability to ensure accountability and rule of law due to a weak judicial sector and undemocratic practices

The Libyan justice system, which should assist in upholding integrity in the country in general by making sure that justice is served by, for example, prosecuting cases of corruption, remains heavily burdened by the former regime, which was more or less in complete control of the judiciary.<sup>91</sup> Judges were often installed based on their political loyalties and not their legal merits.<sup>92</sup> After the revolution, the authorities have been slow in removing even the most controversial judges that served during the former regime, which affect the public perception of the judicial system. There is a general distrust in the justice sector<sup>93</sup> and 35 per cent of the Libyan population strongly agree or agree that the judiciary is corrupt, while 20 per cent of people who have been in contact with the judiciary have reported paying a bribe.<sup>94</sup> A key issue with the legal system in Libya is the uncertainty in relation to which laws and legal codes to apply and judges reference laws and codes from the Gaddafi regime, the monarchy era and the Ottoman era. The application of different legal standards is a potential venue for corruption in the judiciary. In relation to one of the most controversial laws in post-Gaddafi Libya, namely the Political and Administrative Isolation Law, which disqualifies officials associated with Gaddafi's regime from being employed in the new system, the judiciary has been deprived the right to challenge the law and its implementation, which is a serious accountability issue.

A Libyan newspaper editor named Amara Abdalla al-Khatabi published a list of 84 judges allegedly involved in corruption,<sup>95</sup> and – a month after the release of the list – al-Khatabi was detained by the authorities. He is now being charged under article 195 of the penal code for the “insulting of constitutional or popular authorities”.<sup>96</sup> This example illustrates the limitations on watchdog organisations' ability to act and indicate that even if Gaddafi restrictions were abolished in the interim constitution recent development is going in the wrong direction.

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<sup>91</sup> ILAC, *ILAC Rule of Law Assessment Report: Libya 2013*, 2013.

<sup>92</sup> ILAC, 2013.

<sup>93</sup> ILAC, 2013.

<sup>94</sup> Transparency International, *Global Corruption Barometer*, 2013; [www.transparency.org/gcb2013/country/?country=libya](http://www.transparency.org/gcb2013/country/?country=libya).

<sup>95</sup> Amnesty International, 2013a.

<sup>96</sup> Amnesty International, 2013b.



## VI. ANTI-CORRUPTION ACTIVITIES

In Libya, no comprehensive anti-corruption strategy exists. A survey from 2012 with higher-level employees from ministries, the government, CSOs and the private sector confirms that the state has no clear modalities or mechanisms for combating corruption.<sup>97</sup> However, a number of activities have been undertaken to support the anti-corruption agenda.

First, following the fall of the former regime, there has been an increased popular demand for a state built on democratic principles, good governance and respect for human rights, and a focus on reforming the public administration.<sup>98</sup> As a consequence, a number of efforts have been undertaken to combat corruption with support from, among others, the Grand Mufti.<sup>99</sup>

Second, since 2007 there have been several attempts at public sector reform with the aim of increasing transparency with the assistance of external experts and donors. This reform process has continued after the revolution with a number of anti-corruption initiatives being brought into play by the public institutions themselves.<sup>100</sup> Former Prime Minister Zeidan took the initiative to promote an anti-corruption agenda through more transparency in the public sector in general, and the executive has partaken in the establishment of several public entities such as the GNC and Audit Bureau that has the legal tools to carry out effective oversight of the executive.<sup>101</sup> The executive also introduced a National Identification Number system, which assigns a unique number to each individual that aims at combating corruption by maximising the probability of transfers and payments going to the right persons. The GNC has furthermore established a commission with the aim of increasing transparency and the public sector provides anti-corruption training programmes for employees, albeit with an insufficient scope. However the initiatives have failed to significantly improve public administration and some of the initiatives have never been fully implemented.

The Audit Bureau has become an increasingly critical voice and plays an important oversight role of the executive and the legislature. It has completed detailed audits of the financial management of public institutions, as well as assessed their performance, and in its 2013 yearly report it accuses the executive and legislature of poor performance, poor governance, lack of transparency, poor management and poor implementation across a wide range of sectors.<sup>102</sup> Thus it has contributed to holding the public sector accountable and raising awareness of problematic issues in the sector. How this affects the National Integrity System remains to be seen but the Audit Bureau seems to play an important role in enhancing knowledge of misconduct in the public sector. The bureau is the only oversight mechanism that actually adheres to the principles of transparency and accountability itself, which enhances its legitimacy.

Third, while most of the anti-corruption efforts have focused on the public sector, considerable efforts have also been made by the Libyan authorities in relation to combating corruption in the private sector – both in practice and in relation to the law. Recent legislation has installed provisions that exclude companies involved in certain illegal activities from conducting business in Libya and the authorities have in some cases followed up by enforcing the law in practice. For example, the Libyan state has filed several lawsuits in order to prosecute companies suspected of fraud and corrupt activities. Examples include lawsuits against Goldman Sachs for implementing equity derivatives trades, Société Générale and the Norwegian fertiliser company Yara International for

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<sup>97</sup> Kamba and Sakdan, 2012.

<sup>98</sup> JMW Consulting and NDI, 2014.

<sup>99</sup> The Tripoli Post, 2012.

<sup>100</sup> Bertelsmann Stiftung, 2012.

<sup>101</sup> Zaptia, 2014; Libyan Audit Bureau, 2014.

<sup>102</sup> Zaptia, 2014; Libyan Audit Bureau, 2014.

funneling or paying bribes.<sup>103</sup>

In addition to the lawsuits, the NTC set an example for companies and individuals accused of committing fraud and being affiliated with the former regime.<sup>104</sup> The NTC passed law no. 36 2012 in May 2012<sup>105</sup> and froze the assets of 78 companies and 260 individuals accused of these charges. However, after intense lobbying by influential businessmen the number of companies and individuals who had their assets frozen were reduced by the NTC with law no. 47 2012 to only six companies and 234 individuals.<sup>106</sup>

Fourth, the international community has also supported the anti-corruption efforts in Libya and engaged in a number of programmes to heighten transparency and accountability with mainly UN organisations and the EU being involved in capacity development and enhancement of the public administration. The Office of the Auditor General is currently working with the United Nations Office on Drugs and Crimes as well as the United Nations Development Programme (UNDP) to strengthen institutional oversight mechanisms, internal financial controls, and monitoring and evaluation efforts.<sup>107</sup> The Ministry of Finance is collaborating with the International Monetary Fund (IMF) and the World Bank on public procurement legislation, and policy, public controlling and national account statistics.<sup>108</sup> The Libyan state is additionally cooperating with the EU in order to build a more sustainable public sector. The EU has allocated EUR 4.5 million corresponding to LYD 7,526,445 (US\$6,083,129) to a programme entitled EU Public Administration Facility for Libya, which focuses on state-building and on supporting the public administration.<sup>109</sup> The success of these projects remains to be seen, but initial reforms have been hampered by the poor state of security in the country.<sup>110</sup>

Lastly, civil society and the independent media have also engaged in anti-corruption efforts. The interim constitution established an independent media and the right to form CSOs and political parties, thus increasing the potential of watchdog organisations in Libya.<sup>111</sup> Even though these institutions are limited by their lack of sufficient financial and human resources they have managed to raise awareness of corruption cases and have taken various initiatives to hold the government accountable. The "Eye on the GNC Movement" is an example of this and CSOs report on a monthly basis on GNC meetings and their decisions in order to increase transparency, inform the public of the work of the parliament and thereby enable the public to hold the government accountable.<sup>112</sup> The media has been active in questioning former Prime Minister Ali Zeidan regarding government officials accepting bribes in a case concerning oil sales.<sup>113</sup> Also in November 2012 a Libyan newspaper published a list of 84 judges allegedly involved in corruption<sup>114</sup> and there are increasingly more corruption cases being exposed publicly.

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<sup>103</sup> Reuters, "Former CEO of Norway's Yara Indicted on Corruption Charges", 16 January 2014 (2014b); Reuters, 2014a.

<sup>104</sup> Zaptia, "NTC Freezes 338 Assets of Which 260 Are Individuals and 78 Are Companies", *Libya Herald*, 21 May 2012.

<sup>105</sup> Law no. 36, 2012.

<sup>106</sup> Law no. 47, 2012.

<sup>107</sup> United Nations Country Team In Libya Strategic Framework 2013-2014, 2012

<sup>108</sup> United Nations Country Team In Libya, 2012

<sup>109</sup> EU Election Assessment Team, *Libya Final Report – General Congress Election – 2012*, 2012.

<sup>110</sup> Bertelsmann Stiftung, *Libya Country Report*, 2014.

<sup>111</sup> JMW and Lust, 2013.

<sup>112</sup> Interview with Rehab Alhaj, Founder New Libya Foundation/Civil Society Incubator Centre, with Sherif Jenan, Tripoli, 29 April 2014.

<sup>113</sup> Eljarh, "On Top of Everything Else, Now Libya Has a Corruption Scandal to Worry About", *Foreign Policy*, 2013.

<sup>114</sup> Amnesty International, 2013a.

## VII. NATIONAL INTEGRITY SYSTEM

**LEGISLATURE**

**35 / 100**

# SUMMARY

In 2012 the GNC relieved the NTC of its responsibilities and became the legislative authority in post-revolution Libya. The GNC has made significant improvements compared to the legislature during the previous regime in terms of making information about its activities available to the public. For instance, sessions are now broadcasted on a regular basis and members of the GNC have proven to be very open to conducting sessions with CSOs and to reply to inquiries put forward by citizens. Furthermore, the GNC has adopted a set of rules of procedure, which ensures that the GNC gains a high degree of independence, that the GNC can hold the government accountable and that members of parliament are immune to prosecution of crimes committed in relation to their official duties. These rules are, however, not in effect yet.

Nevertheless, there is no code of conduct in the GNC. Furthermore, the independence of the GNC is severely limited in practice by the militias operating in Libya, and the GNC and its members have frequently experienced armed attacks. For example, various militias allegedly pressured the GNC into passing the Political and Administrative Isolation Law in 2013.<sup>115</sup> This law effectively disqualified anyone involved in the former regime from the new state apparatus, which risks institutionalising historical divisions and, in light of Libya's lack of qualified professionals and talented political leaders, increases the risk of Libya becoming a failed state.<sup>116</sup>

This report focuses on the functioning of the GNC from its inception in August 2012 to 4 August 2014, when power was handed over to the newly elected House of Representatives. It should however be noted that by the end of the research period for this report the GNC had re-established itself claiming to be the legitimate representative body of the Libyan population. Currently two parallel parliaments exist in Libya with the House of Representatives being internationally recognised as the only legitimate parliament.

The table below presents the indicator scores that summarise the assessment of the legislature in terms of its capacity, its internal governance and its role within the Libyan integrity system. The remainder of this section presents the qualitative assessment for each indicator.

| OVERALL PILLAR SCORE: 35 / 100 |                     |     |          |
|--------------------------------|---------------------|-----|----------|
| Category                       | Index               | Law | Practice |
| <i>Capacity</i><br>31 / 100    | Resources           | 25  | 25       |
|                                | Independence        | 75  | 0        |
| <i>Governance</i><br>25 / 100  | Transparency        | 25  | 50       |
|                                | Accountability      | 25  | 25       |
|                                | Integrity           | 25  | 0        |
| <i>Role</i><br>50 / 100        | Executive oversight | 50  |          |
|                                | Legal reform        | 50  |          |

<sup>115</sup> [www.mei.edu/content/libyas-political-isolation-law-politics-and-justice-or-politics-justice](http://www.mei.edu/content/libyas-political-isolation-law-politics-and-justice-or-politics-justice) [accessed 20 May 2014].

<sup>116</sup> Brookings Doha Center/Stanford University, *Personnel Change or Personal Change? Rethinking Libya's Political Isolation Law*, 2014.

# STRUCTURE & ORGANISATION

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The GNC replaced the NTC as Libya's permanent legislative authority in 2012. The GNC is located in Tripoli and is comprised of 200 members of which 80 come from political parties and 120 are individual candidates. Thirty-two seats are reserved for women.<sup>117</sup> According to the rules of procedure of the legislature, the GNC contains the following political bodies: the president, the executive bureau, the plenary and the committees, both permanent and temporary.<sup>118</sup>

The GNC held its first election in July 2012, which international observers regarded as competitive and fair. In total, the election had 374 candidates from party lists alongside 2,630 individual candidates.<sup>119</sup> Elections were held again in June 2014 with approximately 2,000 candidates running.<sup>120</sup> The decrease in participating candidates may have been due to the short time period between the HNEC's announcement of the election date and the election itself, leaving candidates with little time for preparation and campaigning.<sup>121</sup> Prior to the election, 1.5 million out of 3.4 million eligible voters had registered.<sup>122</sup> However, the actual voter turnout was no more than approximately 630,000. The election was characterised by unrest and led to at least five casualties.<sup>123</sup> This election replaced the GNC with a House of Representatives; however, the following analysis focuses on the GNC from August 2012 until August 2014, as the research period was coming to an end when power was transferred to the House of Representatives.

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<sup>117</sup> Maggie Michael, "Libyan Prime Minister Ousted by Parliament", *Washington Times*, 11 March 2014.

<sup>118</sup> Democracy Reporting International/Sadeq Institute/H2O Team, *Analysis of the rules of procedure of the General National Congress of Libya*, 2013.

<sup>119</sup> [www.imf.org/external/np/ms/2013/030613.htm](http://www.imf.org/external/np/ms/2013/030613.htm) [accessed May 20 2014].

<sup>120</sup> BBC News, "Libyan Elections: Low Turnout Marks Bid to End Political Crisis", 26 June 2014 (2014a).

<sup>121</sup> [www.ibtimes.com/libyans-vote-parliamentary-election-despite-hifters-attacks-government-strongholds-east-1611602](http://www.ibtimes.com/libyans-vote-parliamentary-election-despite-hifters-attacks-government-strongholds-east-1611602) [accessed 17 July 2014].

<sup>122</sup> <http://data.libyavotes.ly/en/national> [accessed 7 June 2014].

<sup>123</sup> BBC News, 2014a.

# CAPACITY: RESOURCES

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## LAW

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructural resources to effectively carry out its duties?

Score: 25 / 100

In accordance with article 27 of the interim constitution, the general budget of the state shall be issued by law.<sup>124</sup> Article 28 establishes the Accounting Department which is responsible for financial control of all revenues and expenses belonging to the state.<sup>125</sup> The Accounting Department in the GNC is tasked with drawing up the budget of the parliament. Subsequently, the members of the GNC vote on its passing.

## PRACTICE

To what extent does the legislature have adequate resources to carry out its duties in practice?

Score: 25 / 100

The financial resources allocated to the legislature are perceived to be quite limited.<sup>126</sup> The GNC has however received significant external assistance and the EU has supported the GNC and its staff. The support to the GNC is one component of a wider programme entitled EU Public Administration Facility for Libya, which focuses on state-building and has provided a total of EUR 4.5 million corresponding to LYD 7,526,445 (US\$6,083,129).<sup>127</sup> The UNDP and the United Nations Support Mission in Libya (UNSMIL) have provided technical support and policy advice for the NTC in the early phase of the transition and subsequently for the GNC.<sup>128</sup>

The GNC has recently begun to increase its institutional capacity in terms of hiring more staff and it has established a committee to review the rules of procedure.<sup>129</sup> However, the GNC is challenged by the fact that recruitment of staff does not follow clear rules and the reported occurrence of hiring based on family ties.<sup>130</sup>

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<sup>124</sup> Constitution, 2011, article 27.

<sup>125</sup> Constitution, 2011, article 28.

<sup>126</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>127</sup> [www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/133396.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/133396.pdf) [accessed 20 May 2014].

<sup>128</sup> [www.ly.undp.org/content/libya/en/home/presscenter/articles/2013/06/19/strengthening-capacities-of-gnc-committee-staff/](http://www.ly.undp.org/content/libya/en/home/presscenter/articles/2013/06/19/strengthening-capacities-of-gnc-committee-staff/) [accessed 20 May 2014]; <http://unsmil.unmissions.org/Default.aspx?tabid=5289&language=en-US> [accessed 20 May 2014].

<sup>129</sup> Democracy Reporting International/Sadeq Institute/H2O Team, 2013.

<sup>130</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.



# CAPACITY: INDEPENDENCE

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## LAW

To what extent is the legislature independent and free from subordination to external actors by law?

Score: 75 / 100

The current legal framework ensures a rather high degree of independence of the GNC, even though it is perceived to contain several loopholes, which can be exploited.<sup>131</sup> The Constitutional Declaration from 2011 does not clearly state where the powers of the NTC/GNC end and where those of the executive branch begin. Article 30 requires that ministers must enjoy the confidence of the National Public Conference, i.e. the GNC.<sup>132</sup> Article 24 enables the GNC to dismiss any member of the executive branch by a two-third majority.<sup>133</sup> The GNC's power in terms of its prerogative to approve and dismiss ministers has been viewed as a heavy-handed check on the independence of the executive and as a means to give the GNC extensive powers in relation to the executive branch.<sup>134</sup> Additionally, it is uncertain in the current legal framework if the President of the GNC belongs to the executive branch or to the legislature, nor is it clear which of the two acts as head of state.

The GNC has developed the Rules of Procedure of the General National Council. The rules of procedure stipulate the complete procedure of law-making, including proposal, committee review, plenary debate and voting. They furthermore establish the means to hold the executive accountable.<sup>135</sup> The rules of procedure grant immunity from prosecution to members of the GNC of crimes committed in relation to their official duties. The possible lifting of immunity is decided by the President of the GNC, along with the executive bureau and the justice committee.<sup>136</sup> The rules of procedure have, however, not yet been fully adopted.<sup>137</sup>

Under the interim constitution the legislative branch is separated from the executive and it is possible for the GNC to hold extraordinary sessions if urgent matters, such as security issues, have to be addressed.<sup>138</sup> Article 24 of the interim constitution gives the GNC the power to dismiss the president of the executive, any of its members, as well as the entire government by a two-third majority vote.<sup>139</sup> The legislature can on the other hand not be dismissed.<sup>140</sup>

The GNC is in control of its own agenda, as it is up to the discretion of the congress president to draw up the agenda prior to each parliamentary session.<sup>141</sup> The GNC is furthermore responsible for appointing the speaker and the formation of the various committees. The rules of procedure

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<sup>131</sup> Interview with Medhat Ghamsy, head of economic policies section at the National Economic Development Board and member of the Advisory Group, with Alexander Kjærum, Copenhagen, 19 September 2014.

<sup>132</sup> Constitution, 2011, article 30.

<sup>133</sup> Constitution, 2011, article 24.

<sup>134</sup> Lorianne Updike Toler, "Separation of Powers and the General National Congress", *Libya Herald*, 2 November 2012.

<sup>135</sup> Democracy Reporting International/Sadeq Institute/H2O Team, 2013.

<sup>136</sup> Rules of Procedure of the General National Congress (GNC), 2012, article 57.

<sup>137</sup> [www.sadeqinstitute.org/2013/08/how-can-libya-achieve-good-governance/](http://www.sadeqinstitute.org/2013/08/how-can-libya-achieve-good-governance/) [accessed 20 May 2014].

<sup>138</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>139</sup> Constitution, 2011, article 24.

<sup>140</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>141</sup> Rules of Procedure of the GNC, 2012, article 5 sub-article 3.

establish 31 committees, each of which is composed of five to fifteen members of parliament (MPs).<sup>142</sup> MPs are not allowed to have a seat in more than two committees, unless the third is a human rights committee.<sup>143</sup>

## PRACTICE

To what extent is the legislature free from subordination to external actors in practice?

Score: 0 / 100

In practice, the GNC's independence is threatened by militias and armed groups that have attacked the parliament and individual parliamentarians, and have also pressured the GNC to pass the Political and Administrative Isolation Law. Furthermore the immunity of individual GNC members has several times been lifted and does not appear to provide them with the necessary protection.

Even though the GNC has developed and adopted rules of procedure regarding the legislature, these rules have never been enforced in practice.<sup>144</sup> In May 2014, the GNC held a workshop entitled "Insights on GNC's Rules of Procedure on the International Experiences". It was conducted in collaboration with experts from the EU and the UN, focusing primarily on the structural organisation of the GNC, the legislative process at the level of committees and plenary sittings, and the parliament's oversight role.<sup>145</sup>

The immunity of several GNC members has been removed on the grounds that the members had committed crimes in violation of Libyan penal law according to the attorney general.<sup>146</sup> Thus, immunity seems to provide only a limited amount of protection for the members of the GNC and the lifting of immunity of three members has been criticised by Human Rights Watch.<sup>147</sup>

The GNC has furthermore to a large extent been a tool of the militias, which on several occasions have used their influence to put pressure on lawmakers. For instance, militias reportedly pressured the GNC into passing the Political and Administrative Isolation Law in 2013.<sup>148</sup> The law prohibits anyone affiliated with the Gaddafi regime from working in the public sector.<sup>149</sup> In general, the militias' primary motive was to exclude former Prime Minister Ali Zeidan, who served as a Libyan diplomat during the 1970s, at the expense of a prime minister that would be more malleable and in line with their interests.<sup>150</sup> In addition, members of the militias were generally marginalised and excluded from positions during the Gaddafi era and can therefore not be targeted with the law; thus, they would stand to benefit the most from the law. The militias used public demonstrations and a number of blockades to blackmail the GNC.<sup>151</sup> A committee has been established to implement the Political and Administrative Isolation Law; however, the extent to which the law will actually be implemented remains to be seen.<sup>152</sup> Nonetheless, as a consequence of the adoption of the law, former President

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<sup>142</sup> Rules of Procedure of the GNC, 2012, article 16.

<sup>143</sup> Rules of Procedure of the GNC, 2012, article 12.

<sup>144</sup> [www.sadeqinstitute.org/2013/08/how-can-libya-achieve-good-governance/](http://www.sadeqinstitute.org/2013/08/how-can-libya-achieve-good-governance/) [accessed 20 May 2014].

<sup>145</sup> [http://web.gnc-ly.org/news\\_det\\_page.aspx?news\\_id=6713](http://web.gnc-ly.org/news_det_page.aspx?news_id=6713) [accessed 20 May 2014].

<sup>146</sup> Ahmed Elumami, "Congress Members' Immunity Lifted", *Libya Herald*, 18 September 2013.

<sup>147</sup> *Libya Herald*, "GNC Members at Risk after Immunity Lifted Says Human Rights Watch", 26 September 2013.

<sup>148</sup> Roman David and Houda Mzioudet, *Personnel change or personal change? Rethinking Libya's Political Isolation Law*, Brookings Institution, March 2014.

<sup>149</sup> Political and Administrative Isolation Law 2013, article 1.

<sup>150</sup> Haizam Amirah-Fernández, "Libya and the Problematic Political Isolation Law", *Elcano Royal Institute*, June 2013.

<sup>151</sup> [www.mei.edu/content/libyas-political-isolation-law-politics-and-justice-or-politics-justice](http://www.mei.edu/content/libyas-political-isolation-law-politics-and-justice-or-politics-justice) [accessed 20 May 2014].

<sup>152</sup> [www.academia.edu/5257004/Libyas\\_Political\\_Isolation\\_Law\\_-\\_Politics\\_Justice\\_or\\_the\\_Politics\\_of\\_Justice](http://www.academia.edu/5257004/Libyas_Political_Isolation_Law_-_Politics_Justice_or_the_Politics_of_Justice) [accessed 25 August 2014].

of the GNC Mohamed Magarief, who served as Libya's ambassador to India from 1977 to 1980, chose to resign in May 2013.<sup>153</sup>

The GNC and its members have furthermore been subject to several attacks. In January 2014, unidentified gunmen fired several shots at the GNC chamber as members were discussing a vote of no confidence against former Prime Minister Ali Zeidan. The attack led to the GNC being evacuated.<sup>154</sup> In March 2014, two members of the GNC were shot and wounded as protesters, who demanded that the GNC be dissolved stormed congress.<sup>155</sup> Lastly, in May 2014 seven MPs were detained and later released in an assault on the GNC chamber. The attack was coordinated by ex-Major General Khalifa Hefatar, who temporarily declared the parliament to be suspended.<sup>156</sup>

In practice, the vagueness in the Constitutional Declaration regarding the separation of powers has led to confusion on several occasions. For instance, it is unclear whether the President of the GNC belongs to the executive branch or the legislature and whether the president or the prime minister acts as head of state. In 2012 former President Magarief declared himself head of state to the dismay of much of the political segment.<sup>157</sup> In general, it appears that the GNC has been able to exploit this uncertainty at the expense of the executive branch, as exemplified by the quick ousting of Prime Minister Mustafa Abu-Shagour in October 2012.<sup>158</sup> In contrast, however, there is the election law from March 2014 which transferred significant powers, such as the ability to declare a state of emergency or act as the supreme commander of the armed forces, from the legislature to the executive branch.<sup>159</sup> However, the exact number of bills passed by the GNC against the explicit will of the executive is unknown and it is additionally uncertain how many of the bills that are passed by the GNC originate from the executive relative to the GNC.

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<sup>153</sup> Sami Zaptia, "Magarief Resigns as GNC Head – in Anticipation of Being Forced out by Isolation Law", *Libya Herald*, 28 May 2013 (2013b).

<sup>154</sup> Ashraf Abdul Wahab, "BREAKING NEWS: GNC Attacked, Members Evacuated from the Chamber", *Libya Herald*, 14 January 2014.

<sup>155</sup> BBC News, "Libya MPs Shot and Wounded as Congress Stormed", 3 March 2014 (2014c).

<sup>156</sup> *Libya Herald*, "Seven Congress Members Detained in GNC Attack, Hafter Forces Claim Responsibility", 18 May 2014.

<sup>157</sup> [www.atlanticcouncil.org/blogs/menasource/libyas-fractious-new-politics](http://www.atlanticcouncil.org/blogs/menasource/libyas-fractious-new-politics) [accessed 22 August 2014].

<sup>158</sup> Toler, 2012.

<sup>159</sup> Alison Pargeter, "Why Elections Won't Save Libya", *Al Jazeera America*, 4 July 2014.

# GOVERNANCE: TRANSPARENCY

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## LAW

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

Score: 25 / 100

According to article 66 of the rules of procedure, congress sessions are open to the public.<sup>160</sup> In accordance with article 11 of the rules of procedure, one of the three official observers of the GNC nevertheless has to give authorisation to the public as a whole to attend and follow a particular congress session. Article 11 suggests that it is in the power of the observers to make ad hoc decisions instead of providing general regulation regarding public attendance and the rules of procedure fail to define the role of the observers and their provisions more specifically.<sup>161</sup> At the request of at least 20 MPs or a single member of the executive, congress sessions can additionally be closed if the request is accepted by a simple majority of the GNC.<sup>162</sup> On the other hand, sessions, minutes and the activities of the various parliamentary committees are confidential to anyone outside the GNC, unless the committee gives permission, for instance, to an expert or CSO to offer guidance and advice.<sup>163</sup>

Detailed minutes are required to be completed for each parliamentary session, unless the session is confidential.<sup>164</sup> The minutes must include the members who were absent, ministers present who represented the executive, issues discussed, as well as the decisions of the GNC.<sup>165</sup> The minutes are required to be circulated between MPs; however, there are no provisions in place to ensure that the minutes of the plenary sessions are made accessible to the public, either in printed form or online. Article 35 of the rules of procedure declares that “the congress president shall have the right to decide on printing and publishing of these minutes in an appropriate manner.”<sup>166</sup> It is furthermore the prerogative of the president to delete any speech or statement from the minutes should it be in violation of the provisions in the rules of procedure.<sup>167</sup> Upon adopting a bill, the law is published in the Official Gazette of Libya.<sup>168</sup>

There are no provisions in the rules of procedure which give CSOs any formal role or ensure that the wider public is heard.<sup>169</sup> The GNC has however established a commission in order to increase the transparency of the parliament, which shows some political will to address the lack of transparency.<sup>170</sup> It is unknown whether this act was carried out upon the GNC’s own initiative or to meet donor demands.

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<sup>160</sup> Rules of Procedure of the GNC, 2012, article 66.

<sup>161</sup> Rules of Procedure of the GNC, 2012, article 11,

<sup>162</sup> Democracy Reporting International/Sadeq Institute/H2O Team, 2013.

<sup>163</sup> Rules of Procedure of the GNC, 2012, article 20.

<sup>164</sup> Rules of Procedure of the GNC, 2012, article 67 and 74.

<sup>165</sup> Rules of Procedure of the GNC, 2012, article 75.

<sup>166</sup> Rules of Procedure of the GNC, 2012, article 35.

<sup>167</sup> Democracy Reporting International/Sadeq Institute/H2O Team, 2013.

<sup>168</sup> ILAC, 2013.

<sup>169</sup> Democracy Reporting International/Sadeq Institute/H2O Team, 2013.

<sup>170</sup> Advisory Group, First Meeting, 2014.

Verbatim records of floor sessions are required to be recorded and made public by one of the nine members of the office of the president, elected by the GNC.<sup>171</sup> However, it appears that discussions of draft bills are not required to be made public.<sup>172</sup>

Legislators are not obliged to make information on their assets available to the general public.<sup>173</sup>

## PRACTICE

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

Score: 50 / 100

There are various weaknesses in the transparency of the legislature and even though GNC has taken important steps toward more transparency it is still difficult for the media and the public to access information on the decision-making processes.

Even though the rules of procedure for the parliament have yet to be enforced, the GNC has made significant progress in certain areas. Sessions are now being broadcasted regularly, which did not happen during the former regime and many GNC members have been open to CSOs on an individual basis, in terms of conducting meetings and hearing their proposals.<sup>174</sup> For instance, the drafting process of the election law from 2012 was subject to a high level of lobbying from especially female groups and CSOs, which resulted in the women's quota being adopted to ensure greater inclusion of women in the GNC.<sup>175</sup> In addition, it is also possible for individual citizens to approach the legislative committees that seem to respond to the queries they receive.<sup>176</sup> Nevertheless, the level of transparency in the process of drafting the election law has been explicitly questioned.<sup>177</sup> Furthermore, access of a CSO to the GNC and its members is often contingent on the CSO's networks and contacts in the GNC and thus limited in practice.

There is thus still room for improvement, as it is occasionally still difficult to gain information on the activities of the GNC and its committees for the media as well as citizens. For instance, when the bill defining the remuneration of MPs was discussed and passed it was done behind closed doors, similar to the general practice during the Gaddafi era.<sup>178</sup> In addition, minutes from sessions, as well as voting records, are not published.<sup>179</sup> It is also rather difficult for members of the public and parties that do not hold seats in the GNC to attend parliamentary sessions.<sup>180</sup> Verbatim records are not published in practice and often the agenda of legislative sessions and committee hearings are not consistently published ahead of time, resulting in members of the GNC occasionally attending sessions without knowing the issues to be discussed.<sup>181</sup> The budget of the legislature is also not published in full. Additionally, it appears that neither individual reports nor balance reports on expenditures are made public.<sup>182</sup>

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<sup>171</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>172</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>173</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>174</sup> Democracy Reporting International/Sadeq Institute/H2O Team, 2013.

<sup>175</sup> JMW Consulting, 2013.

<sup>176</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>177</sup> Liam Stack, "Libya Protests Spur Shake-Up in Interim Government", *New York Times*, 22 January 2012.

<sup>178</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>179</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>180</sup> [www.sadeqinstitute.org/2013/08/how-can-libya-achieve-good-governance/](http://www.sadeqinstitute.org/2013/08/how-can-libya-achieve-good-governance/) [accessed 20 May 2014].

<sup>181</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>182</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

In 2012, the Bokra Organization and the H2O Team launched a project entitled “Eye on the GNC”. The project is allegedly neutral in nature and aims at increasing the general public’s awareness of the GNC and bringing voters closer to MPs by monitoring the activities and discussions of MPs as well as assessing their performance.<sup>183</sup> As of 29 June 2014, 36 reports have been published.<sup>184</sup> Thus, the project increases the transparency of the legislature even though it was not established by the GNC.

## GOVERNANCE: ACCOUNTABILITY

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### LAW

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

Score: 25 / 100

The Directorate of Law, a sub-unit in the Ministry of Justice established by law no. 6 1982, has two main responsibilities: drafting of legislation and providing legal guidance. It is possible for any Libyan organisation or CSO to propose new legislation through a discussion with the Directorate of Law and to provide input and comments as part of the consultation process.<sup>185</sup>

In 2013, the Sadeq Institute suggested that Libya could establish, “A special court, or another capable and independent third party, which handles complaints against GNC members, calling them for interpellation and judging whether there is sufficient evidence supporting a complaint to warrant punishment.”<sup>186</sup> This indicates that there currently is no specific court or other public agency tasked with handling complaints filed by citizens against members of the GNC. Nonetheless, article 17 of the rules of procedures requires that each of the parliamentary committees must consider and process complaints within their area of work. However, it is not specified whether this includes complaints against specific members of the committees.<sup>187</sup>

While there does not appear to be a constitutional review system of legislative activities in place, article 33 of the interim constitution allows the judiciary to control any administrative decree.<sup>188</sup>

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<sup>183</sup> [www.ignc.net.ly/about-ignc/](http://www.ignc.net.ly/about-ignc/) [accessed 10 September].

<sup>184</sup> [www.ignc.net.ly/category/reports/](http://www.ignc.net.ly/category/reports/) [accessed 10 September].

<sup>185</sup> ILAC, 2013.

<sup>186</sup> [www.sadeqinstitute.org/2013/08/how-can-libya-achieve-good-governance/](http://www.sadeqinstitute.org/2013/08/how-can-libya-achieve-good-governance/) [accessed 20 May 2014].

<sup>187</sup> Rules of Procedure of the GNC, 2012, article 17 sub-article 4.

<sup>188</sup> Constitution, 2011, article 33.

## PRACTICE

To what extent do the legislature and its members report on and answer for their actions in practice?

Score: 25 / 100

The legislature has proven to be quite open to and engaged in consultations with the public regarding the content of new legislation. For instance, the election law regarding the 2012 GNC election was developed through intense public debate. CSOs, and especially women's groups, influenced the process and insured a rather progressive gender quota for the election.<sup>189</sup> Furthermore, the extension of the mandate of the GNC was agreed upon after several months of consultations and dialogue between the GNC and Libyan CSOs.<sup>190</sup>

Citizens are able to complain about the actions of individual MPs, as well as the GNC as a whole. The authorities appear to engage in investigations of such complaints on the condition that credible evidence is provided.<sup>191</sup> It is, however, unclear if the process of handling such cases is completed based on explicit provisions or if it merely relies on informal practices.

There have also been several reports of MPs using their position for personal interests and subsequently being held accountable by the GNC. For instance, a GNC member allegedly tried to bribe a militia in relation to an oil blockade. The check he had issued was published in the media by the militia as an example of how GNC members operate, and consequently the GNC terminated his seat in parliament, even though he claimed that the check was a falsification.<sup>192</sup>

Nevertheless, there have also been several cases where members of the GNC have violated the rules and been engaged in criminal activities and not held accountable subsequently. There was, for instance, a case against the former President of the GNC Nouri Abusahmain in which the attorney general requested that the immunity of Abusahmain be lifted.<sup>193</sup> However, the ruling faction of the GNC did not meet this request and his immunity remained intact. In other instances, the immunity of GNC members has been lifted when they were suspected of being engaged in criminal activities. Common for all decisions of the GNC, regarding whether to lift a member's immunity and hold them accountable or not, has been that they are solely based on politics and various alliances in the parliament and thus not on a general commitment to heighten the accountability of the institution.<sup>194</sup>

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<sup>189</sup> JMW Consulting, 2013.

<sup>190</sup> Mohamed Eljarh, "Citizens versus Lawmakers in Libya, *Foreign Policy*, August 2013.

<sup>191</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>192</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>193</sup> Al Arabiya, "Gunmen storm Libya parliament, stop PM vote", 29 April 2014.

<sup>194</sup> Interview with Medhat Ghdamsy, 2014.



# GOVERNANCE: INTEGRITY

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## LAW

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

Score: 25 / 100

No comprehensive code of conduct for legislators exists,<sup>195</sup> and there is no legal framework that outlines specific rules and regulations for legislators regarding gifts and hospitality, post-employment, lobbying, as well as publication of asset declarations.<sup>196</sup>

According to the rules of procedure, legislators are however not permitted to hold other official positions in order to avoid potential conflicts of interest.<sup>197</sup> While the rules of procedure stipulate the importance of freedom of speech for legislators, article 2 prohibits members from making statements that contradict public order or ethics.<sup>198</sup> Furthermore, the President of the GNC can disallow members from speaking if they use abusive language against a party or a member of the GNC.<sup>199</sup>

## PRACTICE

To what extent is the integrity of legislators ensured in practice?

Score: 0 / 100

The above-mentioned incident with the oil blockade supports the general perception that legislators lack integrity and are corrupt. In the 2013 Global Corruption Barometer, 38 per cent of the respondents perceived the legislature in Libya to be either corrupt or extremely corrupt.<sup>200</sup>

There are no known examples of legislators making the nature of their relationship with lobbyists or their asset declarations publicly available.<sup>201</sup>

The current rules of procedure, which prohibit legislators from making statements in contradiction to “public order and ethics”, could potentially reduce freedom of speech if the implementation of this provision leads to critical remarks being banned.<sup>202</sup> However, the enforcement of this provision is yet to be seen.

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<sup>195</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>196</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>197</sup> Rules of Procedure of the General National Congress, 2012, article 46.

<sup>198</sup> Rules of Procedure of the General National Congress, 2012, article 2.

<sup>199</sup> Democracy Reporting International/Sadeq Institute/H2O Team, 2013.

<sup>200</sup> [www.transparency.org/gcb2013/country/?country=libya](http://www.transparency.org/gcb2013/country/?country=libya) [accessed 21 May 2014].

<sup>201</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>202</sup> Democracy Reporting International/Sadeq Institute/H2O Team, 2013.

# ROLE: EXECUTIVE OVERSIGHT

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To what extent does the legislature provide effective oversight of the executive?

Score: 50 / 100

There are several mechanisms in place to ensure that the GNC can provide effective oversight of the executive. It is first of all within the GNC's power to establish committees of inquiry that are capable of summoning ministers and bureaucrats for questioning.<sup>203</sup> One of the current legislative committees is specifically charged with overseeing the financial activities and programmes of the ministries and assess whether they comply with their commitments. The financial committee of the GNC also appears to be capable of influencing and scrutinising the national budget through its main stages.<sup>204</sup> Secondly, according to the rules of procedure, there is a mechanism which allows the GNC to investigate appointments of executive positions and hold staff accountable for any wrongdoings. The rules of procedure also enable the legislature to monitor public contracting by the executive and requires the various ministers to submit reports of their activities to the relevant parliamentary committees, which are allowed to requesting further information and clarification.<sup>205</sup>

In a prominent case from March 2014, the GNC ousted former Prime Minister Ali Zeidan following a standoff between the central government and a powerful militia that was in control of a port in the eastern part of the country. The militia defied orders from the authorities and began to load oil onto a tanker that carried the North Korean flag and was docking without permission from the authorities. The government claimed that it had control of the situation; however, the tanker managed to escape with the oil. The event led to a vote of no confidence and resulted in Zeidan being ousted by the GNC.<sup>206</sup> Furthermore, in October 2012 the GNC ousted former Prime Minister Mustafa Abu-Shagour whom it had elected to serve as the first prime minister in post-revolution Libya a month earlier. However, Abu-Shagour was never actually sworn in and he was removed from office when it became clear that his cabinet would not reflect the power structures in parliament, which its various groups were demanding.<sup>207</sup>

The ability of the GNC to provide effective oversight of the executive is nonetheless challenged for several reasons. First, the rules of procedure are rather broad and without a specific stipulation regarding which information the executive is obligated to provide upon request. Secondly, the task is complicated by the legislators' lack of experience in this area, in combination with a shortage of staff.<sup>208</sup> Finally, the ability of the various committees to monitor the ministries efficiently is limited, since the executive in practice often ignores requests for information from the legislative committees.<sup>209</sup>

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<sup>203</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>204</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>205</sup> Rules of Procedure of the GNC, 2012, article 41.

<sup>206</sup> David D. Kirkpatrick and Clifford Krauss, "Libya's Prime Minister Ousted in Chaos Over Tanker", *New York Times*, 11 March 2014.

<sup>207</sup> <http://carnegieendowment.org/sada/2014/02/25/another-election-in-libya/h1q4> [accessed May 21 2014].

<sup>208</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

<sup>209</sup> Interview with anonymous source, employed in an international organisation that has supported the GNC.

# ROLE: LEGAL REFORMS

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To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?

Score: 50 / 100

The GNC has taken a few steps to pass legislation on anti-corruption and improving governance.

The current legal framework prohibits bribery locally in Libya and recent legislation has installed provisions that prohibit companies involved in certain illegalities from doing business in Libya. In 2012 the NTC passed law no. 36, which freezes the assets of 260 individuals and 78 companies that are suspected of committing fraud and being loyal to the former regime.<sup>210</sup> Law no. 36 2012 was amended by law no. 47 2012, which decreases the number of companies and individuals on the list to 6 and 234 respectively.<sup>211</sup>

The GNC began debating a new transparency and anti-corruption bill in 2013, which allegedly was passed later that year. The exact provisions of the law are however unclear.<sup>212</sup>

Additionally, in March 2014 the GNC established the National Anti-Corruption Commission in order to stem rising corruption and financial misuse in the public sector.<sup>213</sup> The commission, which is responsible for monitoring public funds and assess irregularities in the performance of the government as well as other public institutions, is located in Sebha in southern Libya and includes a president, a vice-president and five additional members.<sup>214</sup>

Common for the majority of the steps taken by the GNC to combat corruption has however been that they were completed without engaging various societal groups, such as CSOs and private businesses, and seeking their input and demands. The bills and initiatives have generally been based on lawmakers' own political or personal perceptions and not on common societal requirements in general.<sup>215</sup>

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<sup>210</sup> Law no. 36, 2012.

<sup>211</sup> Law no. 47, 2012.

<sup>212</sup> <https://blueprintforreespeech.net/document/libya-overview> [accessed 9 July 2014].

<sup>213</sup> [www.ansamed.info/ansamed/en/news/sections/politics/2014/03/26/Libya-Constituent-Assembly-session-on-144-PM-term-extended\\_bd8d521a-1fe8-43ba-9500-83758584a879.html](http://www.ansamed.info/ansamed/en/news/sections/politics/2014/03/26/Libya-Constituent-Assembly-session-on-144-PM-term-extended_bd8d521a-1fe8-43ba-9500-83758584a879.html) [accessed 21 May 2014].

<sup>214</sup> <http://archive.crossborderinformation.com/Article/Libyan+corruption+commission+to+investigate+oil+smuggling+allegations.aspx?date=20131011#> [accessed 15 April 2014].

<sup>215</sup> Interview with Medhat Ghdamsy, 2014.

**EXECUTIVE**  
**42 / 100**

# SUMMARY

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Significant improvements regarding the executive branch have been made compared to the previous regime. The current executive branch consists of the prime minister who is the head of government, his deputy prime minister and the cabinet. It is unclear whether the President of the GNC is part of the executive or the legislature. The financial activities of the executive are now publicly available and every ministry includes an office responsible for archiving relevant information.<sup>216</sup> The executive has taken several steps to combat corruption, including the introduction of a National Identification Number which assigns a unique number to each individual that aims at combating corruption by maximising the probability of transfers and payments going to the right persons. Former Prime Minister Zeidan took the initiative to create a transparency and anti-corruption bill intended to combat corruption and improve transparency in the public sector.<sup>217</sup> Moreover, contrary to the Gaddafi era, the executive has partaken in the establishment of several public entities, such as the GNC and the Audit Bureau, which has the legal tools to carry out effective oversight of the executive.<sup>218</sup>

Despite these positive signs, the executive branch in post-revolution Libya remains challenged by several factors. First of all, the Constitutional Declaration does not specify the role of the president vis-à-vis the prime minister, and this uncertainty has resulted in tensions between the various prime ministers and presidents since the revolution. Secondly, the human and technical resources that the executive has at its disposal are insufficient, as is the case with most of the public sector. Thirdly, current legislation largely favours the legislature vis-à-vis the executive and the Political and Administrative Isolation Law prohibits the executive from employing anyone that has any affiliation with the former regime. Additionally, armed attacks on members of the executive, including the prime minister, have undermined its independence. The severity of these attacks has increased since May 2014, and since August 2014 the government has had to relocate to the eastern part of the country, effectively losing control of government facilities in Tripoli.

This report is largely based on the period when the executive was still seated in Tripoli, as the recent developments occurred toward the end of this report's research period.

The table below presents the indicator scores that summarise the assessment of the executive in terms of its capacity, its internal governance and its role within the Libyan integrity system. The remainder of this section presents the qualitative assessment for each indicator.

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<sup>216</sup> Interview with Esam Garba, Head of International Cooperation Department at the Ministry of Planning, with Sherif Jenan, Tripoli, 20 July 2014 and interview with Fathi Mahdi Traiki, Management Consultant at the National Economic Development Board, with Sherif Jenan, Tripoli, 19 July 2014.

<sup>217</sup> Mohamed Eljarh, "Libya takes steps to fight corruption", *Foreign Policy*, May 2013.

<sup>218</sup> Zaptia, 2014; Libyan Audit Bureau, 2014.

| OVERALL PILLAR SCORE: 42 / 100 |                          |     |          |
|--------------------------------|--------------------------|-----|----------|
| Category                       | Index                    | Law | Practice |
| <i>Capacity</i><br>33 / 100    | Resources                | -   | 50       |
|                                | Independence             | 25  | 25       |
| <i>Governance</i><br>42 / 100  | Transparency             | 75  | 25       |
|                                | Accountability           | 75  | 25       |
|                                | Integrity                | 25  | 25       |
| <i>Role</i><br>50 / 100        | Public sector management | 50  |          |
|                                | Legal systems            | 50  |          |

## STRUCTURE & ORGANISATION

During and after the 2011 revolution, the NTC was Libya's de facto government. It ruled the country for 10 months before handing over power to the newly elected assembly in August 2012. Any member of the former NTC is prohibited from assuming any executive public office.<sup>219</sup> The GNC is responsible for electing the prime minister as well as approving the cabinet.<sup>220</sup>

The first government in post-revolution Libya was presented by former Prime Minister Ali Zeidan in October 2012. It was made up of 32 ministers, including two women, Ikram Abdulsalam, Minister of Tourism and Imam Kamila Khamis Al-Mazini, Minister of Social Affairs.<sup>221</sup> The current cabinet is comprised of 30 ministers.<sup>222</sup>

<sup>219</sup> Constitution, 2011, article 21.

<sup>220</sup> [www.cia.gov/library/publications/the-world-factbook/geos/ly.html](http://www.cia.gov/library/publications/the-world-factbook/geos/ly.html) [accessed 8 July 2014].

<sup>221</sup> *Libya Herald*, "Zeidan presents government to Congress", 30 October 2012.

<sup>222</sup> [www.cia.gov/library/publications/world-leaders-1/LY.html](http://www.cia.gov/library/publications/world-leaders-1/LY.html) [accessed 15 August 2014].

# CAPACITY: RESOURCES

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## PRACTICE

To what extent does the executive have adequate resources to effectively carry out its duties?

Score: 50 / 100

The executive has a sufficient amount of financial resources at its disposal and is able to employ a large quantity of staff.<sup>223</sup> It is however challenged by a harmful working environment, and few employees possess the required skills and qualifications to perform their tasks. Additionally, the executive lacks proper technical resources.<sup>224</sup>

Nonetheless, several ministries have on various occasions experienced a lack of access to their funds. For instance, at the beginning of 2014, several ministries struggled to pay their bills, as the GNC had not approved the 2014 budget due to fall in oil revenue. As a result, these ministries were put under a special budget that allowed them to continue spending but only one month at a time. The special budget gave each ministry a sum that corresponded to last year's average spending per month.<sup>225</sup>

A major challenge for the executive is its working culture, which is characterised as being fairly harmful, as there is a high degree of competition between the staff in the cabinet. This has resulted in a lack of progress and coordination between the ministries, which struggle to position themselves in order to maximise their resources and reputation.

In order to enhance the capacity of the executive, it has requested technical assistance from international actors in several areas, including programmes to combat money laundering and the financing of terrorism, customs and tax administration, and national accounts statistics.<sup>226</sup>

It is additionally relevant to stress that the executive is challenged by the frequent replacement of the prime minister as well as the cabinet. This has limited the executive's ability to plan long-term, as strategies made by one government are often misjudged and misunderstood by the next.<sup>227</sup> Another challenge has been the exercise of budget discipline while maintaining macroeconomic stability, along with managing the political transition, normalising the security environment and addressing constraints regarding institutional capacities.<sup>228</sup>

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<sup>223</sup> Interview with Esam Garba, 2014.

<sup>224</sup> Interview with Esam Garba, 2014 and interview with Fathi Mahdi Traiki, 2014.

<sup>225</sup> Feras Bosalum and Ulf Laessing, "Libya puts ministries under special budget rules after oil revenue slump", Reuters, 24 February 2014.

<sup>226</sup> [www.imf.org/external/np/ms/2013/030613.htm](http://www.imf.org/external/np/ms/2013/030613.htm) [accessed May 20 2014].

<sup>227</sup> Interview with Medhat Ghdamsy, 2014.

<sup>228</sup> [www.imf.org/external/np/sec/pr/2013/pr1369.htm](http://www.imf.org/external/np/sec/pr/2013/pr1369.htm) [accessed May 20 2014]



# CAPACITY: INDEPENDENCE

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## LAW

To what extent is the executive independent by law?

Score: 25 / 100

While the Constitutional Declaration from 2011 incorporates more separation of powers than during the previous regime, it does not clearly identify where the powers of the GNC end and where those of the executive branch begin, exemplified by the fact that it is not clear whether the President of the GNC belongs to the executive branch or the legislature. In addition, it does not clearly spell out separate roles for the legislature, the executive and the judiciary. Article 30 of the constitution requires that ministers must enjoy the confidence of the National Public Conference, i.e. the GNC, prior to assuming office.<sup>229</sup> Article 24 enables the GNC to dismiss any member of the executive branch by a two-third majority.<sup>230</sup> In terms of its ability to approve and dismiss ministers, the GNC's power has been viewed as a heavy-handed check on the power of the executive and a means to prevent that any prime minister along with his or her cabinet becomes too powerful. Thus, several political observers have questioned whether the Constitutional Declaration allows true independence for the executive.<sup>231</sup>

In November 2013, the GNC passed the Political and Administrative Isolation Law.<sup>232</sup> The scope of the law is very comprehensive and it has been criticised for being too restrictive, as well as for its potential to reduce the performance of the executive and its ability to function, as it will exclude much qualified personnel if implemented to its full extent. The Ministry of Foreign Affairs in particular stands to be severely weakened. Article 1, sub-article 6 is specifically devoted to the ministry and declares that employees of Libya's permanent delegations at any international or regional organisation are isolatable.<sup>233</sup> Thus, if this sub-article were applied to its full extent, it would result in an almost complete re-employment of the staff at the Libyan embassies, which could have far-reaching consequences for Libya's international relations.<sup>234</sup> Due to the size of the public sector prior to the revolution (60 to 70 per cent of the work force) combined with vague definitions in the law, it has far-reaching implications by significantly diminishing the number of people who can assume office in contemporary Libya.<sup>235</sup>

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<sup>229</sup> Constitution, 2011, article 30.

<sup>230</sup> Constitution, 2011, article 24.

<sup>231</sup> Toler, 2012.

<sup>232</sup> *Political and Administrative Isolation Law*, 2013, article 1.

<sup>233</sup> *Political and Administrative Isolation Law*, 2013, article 1, sub-article 6.

<sup>234</sup> Tarek Megerisi, "Analysis of Legislation No.13 2013: Impact on Libya's Political Sphere", *Sadeq Institute*, June 2013.

<sup>235</sup> Megerisi, 2013.

## PRACTICE

To what extent is the executive independent in practice?

Score: 25 / 100

In practice, the independence of the executive is challenged by several factors. The fact that the constitution does not provide a clear separation of powers between the three branches of government has on several occasions led to confusion and resulted in the fact that the GNC enjoys more power than the executive branch in practice.<sup>236</sup> This is exemplified by the GNC's ousting of former Prime Minister Mustafa Abu-Shagour in October 2012. Abu-Shagour was initially elected by the GNC to serve as the first prime minister in post-revolution Libya in September 2012, but he was removed from office when it became clear that his cabinet did not reflect the power structures in the GNC, which its various groups demanded.<sup>237</sup> Additionally, non-state actors have on numerous occasions challenged the independence of the executive. For instance, in April 2014 newly appointed Prime Minister Abdallah al-Thinni and his family were victims of an armed attack, which led to his resignation the following day.<sup>238</sup> The deputy industry minister was assassinated by unknown gunmen in January 2014 during a visit to his hometown of Sirte.<sup>239</sup> Furthermore, in October 2013 former Prime Minister Zeidan was seized from a hotel in Tripoli by unidentified men. The group behind the kidnapping, a former Libyan rebel group, claimed that they had "arrested" Zeidan under the Libyan penal code on the instruction of the public prosecutor, because the government had allowed the United States to capture an al-Qaeda suspect, Abu Anas al-Liby, in Tripoli the week before.<sup>240</sup> Zeidan, who was released unharmed after six hours of captivity, denounced the kidnapping as an attempted coup.<sup>241</sup> From May to August 2014 the fighting between various militias increased significantly and resulted in the fact that on 31 August of that year the executive lost control of most ministries as well as other government facilities in Tripoli.<sup>242</sup> In addition, the uncertainty regarding the role of the president has resulted in tensions between the various prime ministers and presidents since the revolution. For instance, the relationship between former President Mohamed Magariaf and former Prime Minister Ali Zeidan, who were historically allies and both founded the National Front for the Salvation of Libya in the early 1980s, worsened significantly during their time in office. This was mainly due to the fact that Magariaf exercised power outside the scope of his office, which included an incident where he reportedly pushed the GNC into declaring the southern border of Libya a military zone beholden to a general subject to his approval, an act that was considered controversial by political analysts.<sup>243</sup> Moreover, Magariaf declared himself head of state to the dismay of much of the political segment.<sup>244</sup>

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<sup>236</sup> Toler, 2012.

<sup>237</sup> <http://carnegieendowment.org/sada/2014/02/25/another-election-in-libya/h1q4> [accessed May 21 2014].

<sup>238</sup> Jomana Karadsheh, "After attack on family, Libyan Prime Minister Abdullah al-Thinni steps down", CNN, 13 April 2014.

<sup>239</sup> BBC, "Libyan cabinet minister Hassan al-Droui killed in Sirte", 12 January 2014.

<sup>240</sup> Al Jazeera, "Libyan prime minister seized by armed men", 10 October 2013.

<sup>241</sup> Chris Stephen, "Libyan PM Ali Zeidan says his kidnap was coup attempt", *The Guardian*, 11 October 2013.

<sup>242</sup> UNSMIL/OHCHR, *Overview of Violations of International Human Rights and Humanitarian Law During the Ongoing Violence in Libya*, 2014.

<sup>243</sup> [www.atlanticcouncil.org/blogs/menasource/libyas-fractious-new-politics](http://www.atlanticcouncil.org/blogs/menasource/libyas-fractious-new-politics) [accessed 22 August 2014].

<sup>244</sup> [www.atlanticcouncil.org/blogs/menasource/libyas-fractious-new-politics](http://www.atlanticcouncil.org/blogs/menasource/libyas-fractious-new-politics) [accessed 22 August 2014].

# GOVERNANCE: TRANSPARENCY

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## LAW

To what extent are there regulations in place to ensure transparency in relevant activities of the executive?

Score: 75 / 100

There is a lack of specific legislation for the executive to ensure transparency in its activities. Nevertheless, every executive department includes an office that is responsible for archiving relevant information, such as the minutes of meetings, resolutions and expenditures. The law further requires that the budget of the executive is made public and that the assets of the highest officials in the executive branch are disclosed. The Audit Bureau, which was established in 2012 to support financial transparency, has the legal power to enforce such disclosures.<sup>245</sup> The Anti-Corruption Commission that was established by the GNC in March 2013 in order to monitor public funds and irregularities in the performance of public institutions also has the legal capacity to enforce disclosures.<sup>246</sup>

## PRACTICE

To what extent is there transparency in relevant activities of the executive in practice?

Score: 25 / 100

While there have been significant improvements compared to the Gaddafi era, the executive is only to some degree capable of providing transparency in its activities. The system used to store information on the activities of the executive departments does not work well in practice and lack of coordination between various departments with integrated responsibilities sometimes results in redundant information being published. In addition, information on the activities of the executive, such as procedures and regulations, are not systematically published in plain language in order to make it comprehensible for common citizens.<sup>247</sup> Assets of the highest officials in the executive branch are disclosed to the relevant agencies. However, they are not made public.<sup>248</sup>

The government budget is however made public; nonetheless, detailed statements of the actual expenditures by the various departments in the executive are not publicly available.<sup>249</sup> In 2013, the executive came under heavy criticism for its opaque spending of the 2012 budget. Subsequently, the executive stated that the budget for 2013 would be open to public scrutiny,<sup>250</sup> which has been reiterated on several occasions.<sup>251</sup> The Zeidan administration attempted to increase the transparency of the government, for instance, by making formal cabinet meetings open to the press,

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<sup>245</sup> Interview with Esam Garba, 2014 and interview with Fathi Mahdi Traiki, 2014.

<sup>246</sup> Interview with Fathi Mahdi Traiki, 2014.

<sup>247</sup> Interview with Fathi Mahdi Traiki, 2014.

<sup>248</sup> Interview with Esam Garba, 2014.

<sup>249</sup> Interview with Esam Garba, 2014 and interview with Fathi Mahdi Traiki, 2014.

<sup>250</sup> [www.libyaintelligence.org/content/budget-2013-another-unaccounted-fraud](http://www.libyaintelligence.org/content/budget-2013-another-unaccounted-fraud) [accessed 26 May 2014].

<sup>251</sup> Libya Herald, "Government finances open, transparent and available for inspection", 16 July 2013.

the first of which was held in November 2012.<sup>252</sup> Also the minutes from cabinet meeting are made public online.<sup>253</sup> However, the publication of minutes from cabinet meetings are not consistently published and occasionally it can be rather difficult for the public to follow the activities of the executive.<sup>254</sup>

Within the past year, the executive has rejected a request for freedom of information on a number of occasions.<sup>255</sup> However, it should be noted that no freedom of information act exists in Libya and any request for information would therefore not find legal support.

## GOVERNANCE: ACCOUNTABILITY

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### LAW

To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?

Score: 75 / 100

There are several provisions in place to ensure executive oversight. Article 24 and 30 of the Constitutional Declaration gives the GNC the ability to approve and dismiss ministers in the cabinet and constitutes a heavy check on the executive.<sup>256</sup> It is moreover within the legal powers of the GNC to establish committees of inquiry that are able to summon ministers and bureaucrats for hearings. One committee is presently charged with overseeing the financial activities and programmes of the ministries and assess if they comply with their commitments. The Rules of Procedure of the GNC that regulate, but remain to be implemented, parliamentary activities allow the GNC to investigate appointments of executive positions and hold staff accountable for any wrongdoings.<sup>257</sup> The rules of procedure also oblige the ministries to submit reports of their activities to the relevant parliamentary committees, which can request additional information and clarification.<sup>258</sup> In addition, the Audit Bureau also provides an important oversight mechanism, as it conducts both financial management and accounting, as well as assessing the performance of the government and additional public agencies, as a part of its annual audit report.<sup>259</sup>

The law obligates members of the executive to outline the reasons for any given decision that they have reached.<sup>260</sup> On the contrary, the legal framework does not require that members of the

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<sup>252</sup> Libya Herald, "Government signals new era of transparency as first formal cabinet meeting opened to the press", 21 November 2012.

<sup>253</sup> *The Economist*, "Libya's recovery: Better than it sounds", 28 January 2012.

<sup>254</sup> Interview with Fathi Mahdi Traiki, 2014.

<sup>255</sup> Interview with Fathi Mahdi Traiki, 2014.

<sup>256</sup> Constitution, 2011, article 24 and 30.

<sup>257</sup> Democracy Reporting International/Sadeq Institute/H2O Team, 2013.

<sup>258</sup> Rules of Procedure of the GNC, 2012, article 41.

<sup>259</sup> Zaptia, 2014; Libyan Audit Bureau, 2014.

<sup>260</sup> Interview with Fathi Mahdi Traiki, 2014.

executive consult with the public or any groups such as CSOs.<sup>261</sup> In cases where members of the executive have violated their powers severely it is possible to lift their immunity.<sup>262</sup>

## PRACTICE

To what extent is there effective oversight of executive activities in practice?

Score: 25 / 100

The mechanisms to ensure oversight of the executive are somewhat effective in practice. The executive departments provide the necessary financial information to the Audit Bureau, which is allowed to complete its annual audit without undue interference and present the results to the GNC.<sup>263</sup> In its 2013 report, a 446-page report presented to the parliament in March 2014, the Audit Bureau accused both the Zeidan administration and the GNC of poor governance, lack of transparency, poor management and poor implementation across a wide range of sectors.<sup>264</sup> However, no member of the executive has so far been held accountable for vast overspending of his or her budget in previous years.<sup>265</sup>

In March 2014, the prime minister at the time, Ali Zeidan, was held accountable by the GNC, when a militia controlling an eastern port defied the authority of Tripoli in its attempt to sell oil. This event spurred a great deal of mistrust in Prime Minister Zeidan and he was subsequently ousted by the GNC. 121 members voted for the dismissal of Zeidan, which was barely enough, as the parliament at the time only consisted of 180 members due to a series of resignations and dismissals.<sup>266</sup> In June 2014, Zeidan claimed that he still considers himself as Libya's rightful leader and he characterised his dismissal as unconstitutional.<sup>267</sup>

Nevertheless, even though there are examples of the GNC holding members of the executive accountable, in practice this task is complicated by several factors, including the fact that legislators in general lack experience in this regard and a shortage of staff.<sup>268</sup>

The extent to which the executive files reports on its activities, including reports to the committees established by the GNC, is difficult to assess. On the one hand, an employee in the current executive and a management consultant with the National Economic Development Board both claim that the executive does in fact report on its activities to the GNC, as required by law.<sup>269</sup> On the other hand, this view is contested by staff in the legislature that finds that members of the executive often ignore requests for information from the parliamentary committees in the GNC.<sup>270</sup>

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<sup>261</sup> Interview with Esam Garba, 2014 and interview with Fathi Mahdi Traiki, 2014.

<sup>262</sup> Interview with Esam Garba, 2014 and interview with Fathi Mahdi Traiki, 2014.

<sup>263</sup> Interview with Esam Garba, 2014 and interview with Fathi Mahdi Traiki, 2014.

<sup>264</sup> Zaptia, 2014; Libyan Audit Bureau, 2014.

<sup>265</sup> Interview with Medhat Ghdamsy, 2014.

<sup>266</sup> Michael, 2014.

<sup>267</sup> [www.middleeasteye.net/news/former-prime-minister-zeidan-returns-libya-amid-rising-instability-828444301#sthash.rB1bxvHa.dpuf](http://www.middleeasteye.net/news/former-prime-minister-zeidan-returns-libya-amid-rising-instability-828444301#sthash.rB1bxvHa.dpuf) [accessed 22 August 2014].

<sup>268</sup> See pillar report regarding the legislature.

<sup>269</sup> Interview with Esam Garba, 2014 and interview with Fathi Mahdi Traiki, 2014.

<sup>270</sup> See pillar report regarding the legislature.

# GOVERNANCE: INTEGRITY

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## LAW

To what extent are there mechanisms in place to ensure the integrity of members of the executive?

Score: 25 / 100

There is at present no code of conduct to ensure the integrity of the members of the executive.<sup>271</sup> In addition, there is no legislation in place to prevent executive officials from moving back and forth between private businesses and positions in the executive. In addition, current legislation neither establishes any rules on post-ministerial employment nor provides comprehensive protection for whistleblowers.<sup>272</sup>

In April 2012, the NTC adopted regulation no. 26 2012, which established an Integrity Commission tasked with examining persons seeking high political offices. The Integrity Commission is responsible for investigating whether an applicant either has ties to the former regime or is involved in criminal activities.<sup>273</sup>

## PRACTICE

To what extent is the integrity of members of the executive ensured in practice?

Score: 25 / 100

Due to the fact that there is no code of conduct for the executive, there are few provisions to ensure its integrity in practice. For instance, the lack of legislation regarding members of the executive from moving back and forth between public positions and employments in private businesses has resulted in the fact that this has become a common practice and the executive is composed of several businessmen.<sup>274</sup>

When former Prime Minister Zeidan and his government were sworn in on 14 November 2013, eight of his proposed ministers were absent as a result of the work of the Integrity Commission, four having been debarred and another four being under investigation. The four debarred ministers included Interior Minister Ashour Suleiman Shuwail, Electricity Minister Ali Mohammed Muhairiq, Higher Education Minister Abdulasalm Bashir Duabi and Congressional Affairs Minister Muaz Fathi Al-Khoja. The debarring led to the commission being denounced by Human Rights Watch, which claimed that the processes under which the commission operates are too vague and broad. So far, the details of the Integrity Commission's ruling have not been made public.<sup>275</sup>

It has not been possible to find any examples of protection of whistleblowers in practice.

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<sup>271</sup> Interview with Esam Garba, 2014.

<sup>272</sup> Interview with Esam Garba, 2014 and interview with Fathi Mahdi Traiki, 2014 and <https://blueprintforfreespeech.net/document/libya-overview> [accessed 9 July 2014].

<sup>273</sup> George Grant, "Human Rights Watch denounces Integrity Commission following disbaring of Zeidan ministers", *Libya Herald*, 16 November 2012 (2012b).

<sup>274</sup> Interview with Fathi Mahdi Traiki, 2014.

<sup>275</sup> Grant, 2012b.

# ROLE: PUBLIC SECTOR MANAGEMENT (LAW AND PRACTICE)

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To what extent is the executive committed to and engaged in developing a well-governed public sector?

Score: 50 / 100

The executive is perceived to be committed to developing a well-governed public sector; however, it lacks the required human resources to succeed in this regard.<sup>276</sup>

The executive has partaken in the establishment of the Directorate of Law, which includes a Disciplinary Council that is responsible for conducting disciplinary procedures against high-level civil servants. The council is comprised of high-level officials and members of the judiciary, including a counsel of the Supreme Court, senior officers of the General Prosecution office, and senior officers of the Directorate of Law and appeals courts. The rulings of the Disciplinary Council can appeal to the administrative courts.<sup>277</sup> The supervision of staff is effective to some extent.<sup>278</sup> Additionally, in 2013 the executive, lead by former Prime Minister Zeidan, implemented a plan that increased the resources of the Audit Bureau in order to make it capable of reviewing all activities of the state and combat corruption.<sup>279</sup>

Furthermore, the executive initiated the local governance law, law no. 59 2012.<sup>280</sup> The need for more decentralisation became clear during the 2011 revolution where local councils arose across the country to handle various city affairs. The previous regime was to a large extent centralised in Tripoli and as a result citizens had to travel inordinate distances to have their case handled, including bureaucratic services, such as stamps and signatures, which could have been completed in their hometown. Law no. 59 2012 divides Libya into governorates (*muhafaza*) and districts (*balidiyat*) and as a result of its implementation 100 district councils are now handling these everyday needs.<sup>281</sup>

The executive has so far not provided incentives for the public sector to increase the level of transparency and accountability in the sector's activities.<sup>282</sup>

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<sup>276</sup> Interview with Fathi Mahdi Traiki, 2014.

<sup>277</sup> ILAC, 2013.

<sup>278</sup> Interview with Fathi Mahdi Traiki, 2014.

<sup>279</sup> *The Tripoli Post*, 'Libya takes Measures to Combat Corruption', 13 January 2013.

<sup>280</sup> Law no. 59, 2012.

<sup>281</sup> [www.atlanticcouncil.org/blogs/menasource/is-local-government-in-libya-the-solution](http://www.atlanticcouncil.org/blogs/menasource/is-local-government-in-libya-the-solution) [accessed 22 August 2014].

<sup>282</sup> Interview with Fathi Mahdi Traiki, 2014.



# ROLE: LEGAL SYSTEM

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To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?

Score: 50 / 100

In February 2013, the Libyan executive introduced the National Identification Numbers project, which includes assigning each individual a unique number similar to a social security number in order to maximise the probability of transfers and payments going to the right persons as well as minimise the possibility to manipulate the system. Thus, the National Identification Number is intended to combat corruption and consequently reduce the state budget and especially the payroll of the state, which increased between 2012 and 2013.<sup>283</sup> Reportedly, numerous employees have cashed salaries with multiple public agencies, which the National Identification Number is intended to eliminate. The responsible agency for monitoring and taking action against this practice is assigned to the Ministry of Finance.<sup>284</sup> So far 80 per cent of Libyans have been enrolled in the system.<sup>285</sup> Nevertheless, data compilation remains weak and the responsibilities are spread across various agencies. The collection of several key indicators was interrupted by the revolution and has yet to be restored.<sup>286</sup> Furthermore, in May 2013 former Prime Minister Zeidan took additional steps toward combating corruption and improving transparency following several reports on widespread corruption and financial waste in the public sector. A transparency and anti-corruption bill was introduced and debated by the GNC. These steps are to a large extent driven by public demand for immediate implementation of measures of anti-corruption and transparency.<sup>287</sup>

The assessment found no examples of members of the cabinet, the president or the prime minister making public announcements or speeches that focus on the impact of and fight against corruption.<sup>288</sup>

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<sup>283</sup> Mohamed Eljarh, "Libya Takes Steps to Fight Corruption", Foreign Policy, 28 May 2013.

<sup>284</sup> Interview with Medhat Ghdamsy, 2014.

<sup>285</sup> Eljarh, 2013.

<sup>286</sup> [www.imf.org/external/np/ms/2013/030613.htm](http://www.imf.org/external/np/ms/2013/030613.htm) [accessed May 20 2014]

<sup>287</sup> Eljarh, 2013.

<sup>288</sup> Interview with Fathi Mahdi Traiki, 2014.

**JUDICIARY**

**26 / 100**

# SUMMARY

There has been a low degree of public trust in the legal system since the revolution, mainly due to the new system being very similar to the former regime's system, apart from the abolishment of special courts. After the revolution, the authorities have been slow in removing even the most controversial judges that served during the former regime. Thus, the majority of judges currently active served in the Gaddafi era and are as a result perceived to be incapable of providing fair trials. Moreover, as a result of the insecure environment following the revolution, a parallel judicial system has emerged in which independent militias have assumed state functions, such as arresting and detaining individuals. This is being practiced without judicial oversight or accountability and has also significantly shaped the general perception of the legal system.<sup>289</sup> Lastly, the judiciary suffers from a lack of enforcement of its judgements and verdicts.<sup>290</sup> However, a new legislative framework is underway as a new draft law on the entire legal profession prepared by the Libyan Bar Association is nearly complete, and the High Judicial Council (HJC) has presented a bill that reforms parts of the judiciary and includes a vetting component.<sup>291</sup>

It should be noted that, during the research, it has been difficult to obtain the relevant laws and the primary sources for the legislation are therefore the interviewed persons and other secondary sources.

The table below presents the indicator scores, which summarise the assessment of the judiciary in terms of its capacity, its internal governance and its role within the Libyan integrity system. The remainder of this section presents the qualitative assessment for each indicator.

| OVERALL PILLAR SCORE: 26 / 100 |                        |     |          |
|--------------------------------|------------------------|-----|----------|
| Category                       | Index                  | Law | Practice |
| <i>Capacity</i><br>50 / 100    | Resources              | 50  | 50       |
|                                | Independence           | 50  | 50       |
| <i>Governance</i><br>29 / 100  | Transparency           | 25  | 25       |
|                                | Accountability         | 50  | 25       |
|                                | Integrity              | 25  | 25       |
| <i>Role</i><br>0 / 100         | Executive oversight    | 0   |          |
|                                | Corruption Prosecution | 0   |          |

<sup>289</sup> International Crisis Group, *Trial by Error: Justice in Post-Qadhafi Libya*, 2013.

<sup>290</sup> Advisory Group, First Meeting, 2014.

<sup>291</sup> ILAC, 2013.

# STRUCTURE & ORGANISATION

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The Libyan judiciary has a unitary, hierarchal system of courts with four tiers, the Supreme Court being the highest. The Supreme Court has a number of functions, which include completing challenges to the constitutionality of legislation, settling cases related to conflicts of jurisdiction, in particular between ordinary and special courts, deciding electoral appeals, as well as acting as a court of cassation. Any decision of the Supreme Court is final and binding to every judicial body and institution in Libya. There are seven courts of appeals, which are located in Zawiyah, Tripoli, Khoms, Misrata, Benghazi and Derna, and Kufra. Currently, 1,200 judges are serving in the Libyan judicial system.<sup>292</sup> Each of the courts of appeals covers several courts of first instance. These courts take appeals from the lowest level, which are the district courts.

The Libyan judicial system remains heavily burdened by the former regime, which was more or less in complete control of the judiciary.<sup>293</sup> Judges were often installed based on their political loyalties and not their legal merits.<sup>294</sup> Under law no. 6 2006, the judiciary was under the authority of the High Council of Judicial Bodies, which was in turn under the control of the Ministry of Justice. Law no. 4 2011, adopted by the NTC, amended law no. 6 2006 and replaced the High Council of Judicial Bodies with the current HJC,<sup>295</sup> which is composed exclusively of senior judicial officials, including the Chief Justice of the Supreme Court as president, the prosecutor general as deputy, and the heads of the seven regional courts of appeals. Thus, the Ministry of Justice, as well as a number of bodies associated with the ministry (including the Directorates of State Lawyers and the People's Lawyers and Law) have been removed completely from the HJC. The HJC's main responsibility is the supervision of the judiciary, including appointments, promotions, transfers and secondments.<sup>296</sup>

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<sup>292</sup> ILAC, 2013.

<sup>293</sup> ILAC, 2013.

<sup>294</sup> ILAC, 2013.

<sup>295</sup> The HJC can also be referred to as the Supreme Judicial Council.

<sup>296</sup> ILAC, 2013.

# CAPACITY: RESOURCES

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## LAW

To what extent are there laws seeking to ensure appropriate salaries and working conditions for the judiciary?

Score: 50 / 100

Law no. 4 2011 requires the Ministry of Justice to ensure appropriate salaries and working conditions for the judiciary, but the law does not provide minimum standards for salaries or conditions.

Law no. 4 2011, adopted by the NTC in November 2011, outlines the internal arrangement of the legal system. The budget for the judiciary and the wages for the judges are determined by the Ministry of Justice. Contrary to the lower courts, which are funded by the Ministry of Justice, the Supreme Court is funded directly by the GNC.<sup>297</sup> The HJC has the possibility to make recommendations and object to the budget of the judiciary. In September 2013, the government announced a raise in wages of judges and prosecutors following a 20 per cent wage increase for public sector employees.<sup>298</sup> This revision came into effect at the beginning of 2014.<sup>299</sup>

Judges' salaries are protected by law, but can be reduced following a judicial inspection, which assesses the performance of one or more judges.<sup>300</sup>

## PRACTICE

To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?

Score: 50 / 100

In practice the judiciary does not have adequate financial resources to operate effectively and the low salaries that judges receive are pushing them to supplement their wages in the private sector, thereby increasing the risk of conflicts of interest. Furthermore, in some regions the courts are not operating at all. On the other hand, the manpower and know-how of the staff of the judiciary is perceived to be sufficient.<sup>301</sup>

In practice, salaries in the judiciary are determined by a person's level of skills and seniority.<sup>302</sup> After the above-mentioned wage increase, monthly salaries paid to judges range from LYD 4,000 to 7,000

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<sup>297</sup> ILAC, 2013.

<sup>298</sup> Ashraf Abdul-Wahab, "Government Increases Salaries of Judges, Prosecutors and Court Officials", *Libya Herald*, 14 September 2013.

<sup>299</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary with Sherif Jenan, Tripoli, 17 June 2014.

<sup>300</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>301</sup> Interview with Medhat Ghdamsy, 2014.

<sup>302</sup> Interview with Kevin George, Country Director Libya, American Bar Association, with Sherif Jenan, Tripoli, 17 June 2014.

(US\$3,273 to 5,727).<sup>303</sup> The wages of the judiciary are generally quite low and unable to compete with salaries in the private sector, which has forced a large number of senior judges to engage in private practices, which heightens the risk of conflicts of interest. Especially at the beginning of the transition phase, the budget for criminal courts was insufficient when compared to the tasks they were expected to perform. In some areas in the eastern part of the country, such as the town of Derna and its surrounding region of Jebel Akhdar, courts did not function at all.<sup>304</sup>

Since the revolution, the inflow of financial resources to the judicial system in Libya from external actors has increased significantly. The UN is coordinating the international assistance with the aim of supporting the GNC's programme "Security, Justice and Rule of Law Priorities". Additionally, the UNDP has begun to implement a programme that supports rule of law, access to justice and transitional justice. Furthermore, numerous bilateral donors and international NGOs have become similarly engaged in building the Libyan judicial system.<sup>305</sup>

Public law faculties in Libya are inundated with students, which has resulted in the quantity of staff available to the judiciary being quite large. Since 1993, law graduates who aspire to become judges are required to take a mandatory training course at the High Judicial Institute. Prior to the revolution, the institute received between 3,000 and 4,000 applications per year for the course, which takes approximately two years to complete. The nature of the course is primarily practical and carried out in groups of four to six students using a moot court methodology.<sup>306</sup> The course reportedly covers all legal disciplines, including criminal law, civil law, arbitration and various areas of procedural law, human rights, international law, English computer skills, and codes of conduct. While the skills of the graduates are perceived to be sufficient, there is very limited training and education offered to staff during their employment.<sup>307</sup> Nonetheless, the skills and qualifications of the judicial staff are perceived to be sufficient on a general basis.<sup>308</sup> In 2012, the institute was forced to close due to the fragile security situation. It was said to reopen and resume its activities as soon as May 2013, but it is unclear if this has happened.<sup>309</sup>

Support and administrative resources in the judiciary, such as clerks, library resources and advanced computer technology, are currently lacking.<sup>310</sup>

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<sup>303</sup> Interview with Kevin George, 2014.

<sup>304</sup> International Crisis Group, 2013.

<sup>305</sup> ILAC, 2013.

<sup>306</sup> A moot court differs from a mock trial by using a simulated appellate court or arbitral case. Mock trials usually involve a simulated jury trial or bench trial. A moot court does not include actual testimony by witnesses or presentation of evidence. For more information see: [www.law.georgetown.edu/campus-life/activities-organizations/barristers-council/faqs.cfm](http://www.law.georgetown.edu/campus-life/activities-organizations/barristers-council/faqs.cfm) [accessed 25 August 2014].

<sup>307</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>308</sup> Interview with Medhat Ghdamsy, 2014.

<sup>309</sup> ILAC, 2013.

<sup>310</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

# CAPACITY: INDEPENDENCE

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## LAW

To what extent is the judiciary independent by law?

Score: 50 / 100

While reforms have been introduced to heighten judicial independence, such as removing the Ministry of Justice from the HJC, the judiciary's independence is still threatened due to its financial dependence on the ministry, lack of separate provisions in the constitution for the Supreme Court and the possible infringement from the legislature, as witnessed by the passing of the Political and Administrative Isolation Law. However, the various bills and laws currently being proposed show that there is political will to reform the judiciary.

Article 32 of the interim constitution declares the judiciary to be independent and judges to be subject only to the law and their conscience.<sup>311</sup> Amendments of the interim constitution, including new provisions with respect to the legal system, require a majority of two-thirds of the parliament.<sup>312</sup> The highest court (the Supreme Court) is not anchored separately in the interim constitution as it only refers to the courts as a whole. The Supreme Court was established by law no. 6 1982.<sup>313</sup> It is financially independent and funded by the GNC, unlike the lower courts, which are all funded by the Ministry of Justice.<sup>314</sup> There is currently no constitutional court in Libya, but a constitutional chamber within the Supreme Court exists.<sup>315</sup>

Law no. 6 2006 placed the judiciary under the control of the High Council of Judicial Bodies, which was headed by the Minister of Justice and thus completely under the control of the Ministry of Justice.<sup>316</sup> Law no. 4 2011 amended this and transformed the High Council of Judicial Bodies into the HJC which is composed only of senior judicial officials. Thus, the law removed the Ministry of Justice, as well as a number of other entities associated with the ministry including the Directorates of State Lawyers and People's Lawyers and Law, completely from participating in the HJC, which has enhanced judicial independence significantly.<sup>317</sup> Under the current legislation, the chief of the Supreme Court heads the HJC and its members include the prosecutor general and the heads of the seven appellate courts in Libya. The council is however still financially dependent on the Ministry of Justice and both the chief of the Supreme Court and the prosecutor general are appointed by the legislature. Thus, it has been claimed that the law fails to provide the HJC with complete judicial.<sup>318</sup> The HJC is primarily responsible for supervising the judiciary, which includes appointments, promotions, secondments and transfers of personnel.<sup>319</sup>

Generally, judicial officials begin their career as prosecutors and, once they attain a degree of seniority, they are eligible to be promoted to judgeships. Officials that seek promotion and qualify are required to submit to and pass a performance review by the Judicial Inspectorate. The HJC is

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<sup>311</sup> Constitution, 2011, article 32.

<sup>312</sup> Constitution, 2011, article 36.

<sup>313</sup> Law no. 6, 1982.

<sup>314</sup> ILAC, 2013.

<sup>315</sup> Advisory Group, 2014.

<sup>316</sup> ILAC, 2013.

<sup>317</sup> ILAC, 2013.

<sup>318</sup> International Crisis Group, 2013.

<sup>319</sup> ILAC, 2013.

ultimately responsible for the appointment of judges among the applicants.<sup>320</sup> It does not appear that the current system provides tenure in order to safeguard judges from having their employment terminated for arbitrary reasons.<sup>321</sup> In law no. 14 2013, which amends the laws governing the judiciary, article 1 establishes a commission to supervise judicial appointments with the power to hold disciplinary hearings.<sup>322</sup> The HJC can dismiss a judge upon an inspection completed by this commission.<sup>323</sup>

According to judges throughout Libya, the Political and Administrative Isolation Law adopted in 2013 threatens the newly found independence of the judiciary.<sup>324</sup> The law bans anyone affiliated with the former regime from serving in the public sector. Article 1 of the law outlines 14 different categories of former employees including ministers, ambassadors, and personnel from the military, which are excluded.<sup>325</sup> Several judges have gone on strike and more than 60 judges and lawyers have filed an appeal against the law to the Supreme Court. They argue that the law threatens the independence of the judiciary by violating the principle of the separation of powers among the three branches of government (legislative, executive, and judiciary). According to the judges, reform of the legal system needs to come from within based on dialogue with the legislature and the executive and not be imposed by one or the other.<sup>326</sup> A committee has been established to implement the Political and Administrative Isolation Law, however the extent to which the law will actually be implemented remains to be seen.<sup>327</sup>

Further legislation regarding the judiciary is currently in process. The Committee for the Promotion of the Judiciary, composed of 17 judges, prosecutors, lawyers and academics, was created in May 2012 by the NTC in order to study how to make the judiciary more effective.<sup>328</sup> The committee issued its final report in January 2013 with a set of recommendations for reorganisation of the judiciary. It acknowledged the urgent need to restore public trust in the legal system and recommended a reform of the judiciary in order to guarantee its independence, integrity, and impartiality. The report stresses that the purpose of reform should be to “build, not destroy; reform and not damage”.<sup>329</sup> In addition, the Minister of Justice has forwarded three bills to the GNC on transitional justice. The first includes an amended and significantly expanded version of law no. 4 2011 by giving a clear mandate to the Fact-Finding and Reconciliation Commission, established by law no. 4 2011 and tasked mainly with victims’ reparations, to investigate systematic violations against all individuals committed by any actor in relation to the July 2012 parliamentary elections. The second bill on criminalisation of torture, enforced disappearance, and discrimination confirms that amnesty cannot be granted when it comes to severe violations committed during and after the 2011 uprisings. The final bill prohibits military trials of civilians who are not subject to the military code.<sup>330</sup> Moreover, the Libyan Bar Association have nearly completed a draft law which is intended to regulate the entire legal profession,<sup>331</sup> and the HJC has presented a bill that reforms parts of the judiciary and includes a vetting component. The bill suggests that all judges are to be dismissed and that a committee is established with the responsibility to readmit judges and prosecutors that meet certain skills and qualifications.<sup>332</sup> While it is unclear whether the adoption of these draft bills can restore public confidence in the judiciary, there appears to be political will to provide transitional justice and to reform the judiciary.

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<sup>320</sup> ILAC, 2013.

<sup>321</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>322</sup> Lawyers for Justice in Libya, *Destoori Report and Recommendations*, 2014.

<sup>323</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>324</sup> Mohamed Eljarh, “Libya’s Judges Confront the Past”, *Foreign Policy*, 21 June 2013 (2013a).

<sup>325</sup> Political and Administrative Isolation Law, 2013, article 1.

<sup>326</sup> Eljarh, 2013a.

<sup>327</sup> [www.academia.edu/5257004/Libyas\\_Political\\_Isolation\\_Law\\_-\\_Politics\\_Justice\\_or\\_the\\_Politics\\_of\\_Justice](http://www.academia.edu/5257004/Libyas_Political_Isolation_Law_-_Politics_Justice_or_the_Politics_of_Justice) [accessed 25 August 2014].

<sup>328</sup> The Committee for the Promotion of the Judiciary can also be referred to as the Committee of 17.

<sup>329</sup> International Crisis Group, 2013.

<sup>330</sup> ILAC, 2013.

<sup>331</sup> ILAC, 2013.

<sup>332</sup> International Crisis Group, 2013.



## PRACTICE

To what extent does the judiciary operate without interference from the government or other actors?

Score: 50 / 100

Since the revolution, the legal foundation for the Supreme Court has been rather stable and the judiciary in general has gained independence in the sense that it is freer to operate and complete rulings without political interference compared to the situation in the Gaddafi era. Recently, several promising cases have enhanced independence in practice. For instance, in December 2012 the Supreme Court gave a ruling that declared certain procedures in law no. 37 2012 used in trials against officials that served the Gaddafi regime unconstitutional. Subsequently, judges began to rectify these procedures.<sup>333</sup> Moreover, in June 2014 the Supreme Court declared the GNC's election of Ahmed Maetig as Libya's prime minister unconstitutional, which was subsequently accepted by Maetig.<sup>334</sup> The removal of the Ministry of Justice from the workings of the HJC additionally seems to have enhanced the independence of the judiciary in practice, as judges and private lawyers now appear – to some extent – to have a shared commitment to establish the rule of law in post-Gaddafi Libya.<sup>335</sup> Thus, the Supreme Court is able to operate rather independently in practice. However, this ability does not extend to the lower courts, which do not function as independently due to, for example, security threats.<sup>336</sup>

Despite these improvements the independence of the judiciary is still challenged by several factors. First, the judicial system, like many other public entities in contemporary Libya, suffers from a long history of political interference and corruption. Today, the judiciary is still exposed to interference from the GNC, which decreases its independence and legitimacy in practice.<sup>337</sup> For instance, on 10 June 2014 the GNC dismissed Attorney General Abdulqader Radwan, which, according to Radwan, was a reaction to the ruling on the illegality of Maetig's election as prime minister. The Libyan Judges Organisation has formally condemned Radwan's dismissal and urged the GNC to cancel it.<sup>338</sup>

Secondly, the security environment in Libya is also a significant threat to the institution. Since the end of the revolution, assassinations of and attacks and threats against judges, lawyers and other staff from the legal system have increased drastically. In March 2013, unidentified gunmen stormed the Ministry of Justice and forced the Minister Salah al-Marghani and his staff out of the ministry. Apparently, this was a reaction to an interview in which al-Marghani expressed concerns regarding illegal detentions and prisons run by the militias.<sup>339</sup> In November 2013, following a series of assassinations of judges and lawyers, al-Marghani appealed for aid claiming that the fragile security situation strongly affects the performance of the judiciary. The situation escalated even further in February 2014, when numerous judges across Libya suspended their work until their safety could be ensured;<sup>340</sup> and during the summer of 2014 the courts in Tripoli effectively stopped functioning due to an escalation of fighting between various militias.<sup>341</sup> So far, the authorities have failed to enforce the regulations that are intended to protect judges and additional judiciary staff from external influence.<sup>342</sup>

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<sup>333</sup> International Crisis Group, 2013.

<sup>334</sup> Ashraf Abdul Wahab, "Supreme Court Rules Maetig's GNC Election 'unconstitutional'", *Libya Herald*, 9 June 2014.

<sup>335</sup> International Crisis Group, 2013.

<sup>336</sup> Interview with Medhat Ghdamsy, 2014.

<sup>337</sup> Eljarh, 2013a.

<sup>338</sup> Moutaz Ali "Attorney General Demands the GNC Stop Interfering in the Judiciary", *Libya Herald*, 14 June 2014.

<sup>339</sup> Mohamed Eljarh, "Libya's Fight for the Rule of Law", *Foreign Policy*, 4 April 2013 (2013b).

<sup>340</sup> Ahmed Elumami, "Judges Suspend Work over Assassinations and Intimidation", *Libya Herald*, 22 February 2014.

<sup>341</sup> UNSMIL/OHCHR, 2014.

<sup>342</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

In June 2013, the first ruling regarding prosecution of officials from the former regime was completed. A court in Tripoli acquitted two former Gaddafi officials — ex-Foreign Minister Abdul Ati al-Obeidi and Mohamed al-Zwai, the former head of Gaddafi's legislature — of charges accusing the officials of wasting public finances.<sup>343</sup> Subsequently, prominent Facebook pages and groups supporting militias and the Political and Administrative Isolation Law called for a cleansing of the judiciary. They claim that the revolution has yet to happen within the legal system and that the current judicial establishment is likely to find Saif al-Islam, the second son of Gaddafi, and Abdullah al-Senussi, the former chief of intelligence and brother-in-law to Gaddafi, innocent, thus hampering the implementation of the Political and Administrative Isolation Law.<sup>344</sup>

The extent of politicisation of appointments and whether the appointment of judges is based solely on clear professional criteria is unclear. It appears that the main professional criterion that applies in relation to the appointment of judges is the requirement of having graduated from the High Judicial Institute.<sup>345</sup>

## GOVERNANCE: TRANSPARENCY

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### LAW

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

Score: 25 / 100

The judiciary is not obliged to publish relevant information like judgements, transcripts of court hearings and general statistics.<sup>346</sup> However, article 273 of the Libyan Code of Civil and Commercial Procedures ensures that anyone, including individuals who have not been a party in the case, can obtain a copy of the original judgement for a fee.<sup>347</sup> Article 276 specifies which information must be stated in such a judgement, including the date, the court and its location, names of involved judges and prosecutors, names of the parties of the case and their attorneys, as well as the general facts of the case upon which the judgement is made.<sup>348</sup>

It does not appear that judges are required to disclose their assets to the HJC before being appointed.<sup>349</sup> Considering the fact that there is no limitation on judges supplementing their salary with work in the private sector there is a high risk of conflict of interest in the judiciary. Nevertheless, judicial proceedings are open to the general public.<sup>350</sup>

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<sup>343</sup> Eljarh, 2013c.

<sup>344</sup> Eljarh, 2013a.

<sup>345</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>346</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>347</sup> Libyan Code of Civil and Commercial Procedures, article 273.

<sup>348</sup> Libyan Code of Civil and Commercial Procedures, article 276.

<sup>349</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>350</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

## PRACTICE

To what extent does the public have access to judicial information and activities in practice?

Score: 25 / 100

The transparency of the judiciary can broadly be categorised into two main sections: the Supreme Court and the lower courts, where the former is fairly transparent and the latter is not.

When the Supreme Court completed the case against former Prime Minister Maetig and declared his election unconstitutional, most of the case was televised, including opening debates and the court's final conclusions. Moreover, it is possible for citizens and organisations to obtain information regarding the activities and decisions of the Supreme Court; however, this information is not automatically published. Rather, interested parties have to approach the court and request the disclosure of such information, which is then done manually. On the other hand, the transparency of the lower courts is much lower.<sup>351</sup> Due to the lack of a legal framework and poor communication, in practice it is very difficult for the public to access legal information, such as rulings and other decisions made by the lower courts.<sup>352</sup> Citizens can approach the courts and request such information, but the courts do not disclose it to the same extent as the Supreme Court does.<sup>353</sup>

Common for the entire judiciary is that it does not publish reports on a regular basis with information on its activities, expenditures, internal rules and new appointments; nor does it have a comprehensive website.<sup>354</sup> The Supreme Court has a Facebook-page; however, it has not been updated since October 2013.<sup>355</sup> As mentioned before, there is no automated system which can facilitate the publication of information.<sup>356</sup> Furthermore, the judiciary has to a large extent failed to develop outreach and public communication strategies since the end of the revolution.<sup>357</sup>

Thus, one part of the judiciary, the Supreme Court, is somewhat transparent, while the rest of the courts are fairly non-transparent. Seeing that the Supreme Court only represents a small fraction of the judicial system, the institution as a whole is assessed as being somewhat lacking in transparency.

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<sup>351</sup> Interview with Medhat Ghdamsy, 2014.

<sup>352</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>353</sup> Interview with Medhat Ghdamsy, 2014.

<sup>354</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>355</sup> <https://ar-ar.facebook.com/SupremeCourtOfLibya> [accessed 25 September 2014].

<sup>356</sup> Advisory Group, 2014.

<sup>357</sup> ILAC, 2013.

# GOVERNANCE: ACCOUNTABILITY

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## LAW

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

Score: 50 / 100

As described above, article 276 of the Libyan Code of Civil and Commercial Procedures requires that judges include the facts of a given case upon which their judgement is based.<sup>358</sup> The Judicial Inspectorate, an internal peer review system, deals with cases of alleged corruption, unprofessional conduct, and abuse of office among members of the judiciary. Upon receipt of a complaint against a judge or a prosecutor, a consultant is appointed to inspect the provided evidence. If it appears that the accused has violated his or her powers an administrative inspection will be opened. If the inspectorate finds the complaint to have merit it is referred to the HJC for disciplinary proceedings, where the accused is entitled to legal representation. Should the HJC determine that a crime has been committed, a committee of judges from the Supreme Court and the relevant appeals court will rule whether to lift immunity from the defendant and refer the case to the prosecutor general.<sup>359</sup> The Judicial Inspectorate additionally deals with inspections and performance assessments of the members of the judiciary. These are conducted annually, and in some cases randomly, for purposes of promotion.<sup>360</sup>

## PRACTICE

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

Score: 25 / 100

While it is unknown how many cases the Judicial Inspectorate has carried out against judges due to corruption allegations, the option of lifting a judge's immunity has reportedly only been used three to four times in the last 20 years.<sup>361</sup>

Numerous victims of unjust rulings during the Gaddafi era demand justice for past crimes and that perpetrators are removed from office.<sup>362</sup> In general, the public's confidence in the ability of the judicial system to provide justice for ordinary citizens is largely affected by the past and is thus quite low.<sup>363</sup>

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<sup>358</sup> Libyan Code of Civil and Commercial Procedures, article 276.

<sup>359</sup> ILAC, 2013.

<sup>360</sup> ILAC, 2013.

<sup>361</sup> ILAC, 2013.

<sup>362</sup> International Crisis Group, 2013.

<sup>363</sup> International Crisis Group, 2013.

Most judges give reasons for their rulings in practice, even though there does not seem to be a legal requirement in this regard. However, the reasons are generally only given verbally and thus not completed in writing.<sup>364</sup>

Since disciplinary procedures are not made public, it is not possible to assess their effectiveness.<sup>365</sup>

## GOVERNANCE: INTEGRITY

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### LAW

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

Score: 25 / 100

While steps have been taken to develop a sector-wide code of conduct/ethics, there are, as of now, no mechanisms in place to ensure the integrity of the members of the judiciary.

A code of ethics for judges was developed during the Gaddafi era, but observers generally find it to be neither up to date nor consistently applied. The Libyan Bar Association, formed in 1962, held a post-revolution conference in Misrata on 12–13 December 2012 with more than 300 participants, including the presidents of the GNC and the HJC. Besides endorsing the above-mentioned draft law on the legal profession, the conference also initiated the development of a professional code of ethics, as well as a communication strategy for the judiciary.<sup>366</sup>

There is no legislation that regulates gifts and hospitality for the judiciary.<sup>367</sup> Additionally, there are no restrictions that apply to judges seeking employment as a civil servant or in the private sector after leaving the judiciary.<sup>368</sup>

It is unclear whether citizens can specifically challenge the impartiality of a judge who fails to step down from a case; however, it is possible for citizens to complain to the Judicial Inspectorate and accuse a judge of corruption and abuse of office.<sup>369</sup>

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<sup>364</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>365</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>366</sup> ILAC, 2013.

<sup>367</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>368</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>369</sup> ILAC, 2013.

## PRACTICE

To what extent is the integrity of members of the judiciary ensured in practice?

Score: 25 / 100

In the post-revolution era the public continues to distrust the judiciary, as the integrity of the sector is extremely limited in practice. This distrust is rooted in the perceived prevalence of corruption in the sector along with its inability to provide fair trials.<sup>370</sup> In total, 35 per cent of the Libyan population perceive the judiciary to be either corrupt or extremely corrupt and 20 per cent have reportedly paid a bribe to someone in the judiciary in the last year.<sup>371</sup>

In practice, judges do not disclose their assets<sup>372</sup> and, according to a recent study, Libyans generally state a preference for the judiciary to be monitored more closely in order to prevent and combat corruption in the sector.<sup>373</sup>

## ROLE: EXECUTIVE OVERSIGHT

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To what extent does the judiciary provide effective oversight of the executive?

Score: 0 / 100

Article 33 of the interim constitution gives the legal system the ability to conduct oversight of the executive as it declares that no law shall prohibit the judiciary from controlling any administrative decree.<sup>374</sup> However, in April 2013, prior to adopting the above-mentioned Political and Administrative Isolation Law, the GNC made several amendments to the interim constitution, including article 6, which declares that all Libyans shall be equal before the law and shall enjoy equal civil and political rights, without discrimination due to religion, doctrine, language, wealth, race, kinship, political opinions, social status, tribal or familial loyalty.<sup>375</sup> Article 6 was amended to include a provision that removes judicial review of the constitutionality of a law, which isolates certain individuals from taking positions in government. Thus, this provision deprives the judiciary of its right to challenge the Political and Administrative Isolation Law along with its implementation. In practice, rulings that overturn decisions made by the executive are followed even though the judiciary is neither effective nor consistent in its reviews of the executive branch.<sup>376</sup>

Approximately 90 per cent of Libyans believe that in a new constitution the Supreme Court or a separate constitutional court should be given the power to overturn legislation that is in violation of human rights.<sup>377</sup>

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<sup>370</sup> ILAC, 2013.

<sup>371</sup> [www.transparency.org/gcb2013/country/?country=libya](http://www.transparency.org/gcb2013/country/?country=libya) [accessed 10 May].

<sup>372</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>373</sup> Lawyers for Justice in Libya, 2014.

<sup>374</sup> Constitution, 2011, article 33.

<sup>375</sup> [www.libyanjustice.org/news/news/post/74-lawyers-for-justice-in-libya-condemns-the-gncs-amendments-to-libyas-constitutional-declaration](http://www.libyanjustice.org/news/news/post/74-lawyers-for-justice-in-libya-condemns-the-gncs-amendments-to-libyas-constitutional-declaration) [accessed 25 August 2014].

<sup>376</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

<sup>377</sup> Lawyers for Justice in Libya, 2014.

# ROLE: CORRUPTION PROSECUTION

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To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

Score: 0 / 100

The judiciary is neither committed to sanctioning corruption nor does it disclose separate statistics on prosecutions of cases concerning corruption charges. This is to a large extent due to the fact that such cases start at the lowest level of the courts, which are the least independent and have the lowest level of human and financial resources available.<sup>378</sup> Moreover, there are no indications of the judiciary playing any role in terms of suggesting anti-corruption initiatives to the government or the GNC based on its experience with such cases.<sup>379</sup>

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<sup>378</sup> Interview with Medhat Ghdamsy, 2014.

<sup>379</sup> Interview with anonymous source, employed in an organisation that has supported the Libyan judiciary, 2014.

**PUBLIC SECTOR**  
**38 / 100**



# SUMMARY

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The public sector plays an important role in Libyan society, and as the main employer in the labour market, it constitutes a major component of the Libyan economy. Even though the public sector to a large extent has a sufficient amount of financial assets at its disposal, resources are generally spent inefficiently, often going to permanent staff who do not have the necessary skills and who do not work regularly. This inefficient resource allocation has resulted in low public salaries, and thus a low ability to attract workers with the required qualifications and a tendency for skilled employees to apply for employment in the private sector, which offers significantly higher wages. Thus, the public sector is severely challenged by a lack of human resources. The inefficient allocation of resources has also impeded the development of the necessary management and administrative systems, which also lowers the quality of public service delivery. The public sector is furthermore challenged by a lack of enforcement of the rules and regulations that apply to the sector. Even though a legislative framework to some extent appears to be in place, it is in practice only enforced to a very limited degree. Thus, it is extremely difficult for Libyan citizens to access information on the public sector and very few are aware of their opportunities to complain about the actions of a civil servant. Thus employees in the public sector are only very rarely held accountable and prosecuted for any wrongdoings.

Nevertheless, there are also some positive developments. For instance, public agencies are starting their own initiatives to collaborate with domestic CSOs and private businesses on various operational procedures. Furthermore, the Audit Bureau and the Ministry of Finance have initiated cooperation with several international organisations such as the UN, the IMF and the World Bank, in order to develop public procurement legislation and to strengthen institutional oversight mechanisms and evaluations.

It should be noted that as part of the research it has been difficult to obtain the relevant laws and the primary sources for the legislation are therefore the interviewed persons and other secondary sources.

The table below presents the indicator scores that summarise the assessment of the public sector in terms of its capacity, its internal governance and its role within the Libyan integrity system. The remainder of this section presents the qualitative assessment for each indicator.

| OVERALL PILLAR SCORE: 38 / 100 |  |     |          |
|--------------------------------|--|-----|----------|
| Category                       | Index  | Law | Practice |
| Capacity<br>42 / 100           | Resources  | -   | 25       |
|                                | Independence   | 75  | 25       |
| Governance<br>38 / 100         | Transparency   | 50  | 25       |
|                                | Accountability   | 50  | 25       |
|                                | Integrity  | 50  | 25       |
| Role<br>33 / 100               | Public education   | 0   |          |
|                                | Cooperation with public institutions, CSOs and agencies in preventing corruption | 75  |          |
|                                | Reduce Corruption Risks by Safeguarding Integrity in Public Procurement          | 50  |          |

## STRUCTURE & ORGANISATION

Libya's public sector constitutes a major component of the Libyan economy. The public sector in Libya employs more than 85 per cent of the workforce.<sup>380</sup> Although the Libyan economy has undergone some attempts at privatisation, the government still owns numerous enterprises in the following sectors: electricity, transportation, communication, agriculture, construction, financial services, manufacturing, mining, gas and water.<sup>381</sup> Furthermore, the high degree of subsidisation of basic commodities, such as food and fuel, that has traditionally characterised the Libyan economy, enhances the role and dependency of the government and the public system.<sup>382</sup>

<sup>380</sup> [www.imf.org/external/np/ms/2013/030613.htm](http://www.imf.org/external/np/ms/2013/030613.htm) [accessed 3 April 2014].

<sup>381</sup> International Stabilisation Response Team, Libya, *Libya 20 May – 30 June 2011*, 2011.

<sup>382</sup> The Governance Network/Mercy Corps, *Beyond Gaddafi: Libya's Governance Context*, 2011.

# CAPACITY: RESOURCES

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## PRACTICE

To what extent does the public sector have adequate resources to effectively carry out its duties?

Score: 25 / 100

While the Libyan public sector is perceived to have a sufficient amount of financial resources at its disposal, it is unable to attract sufficiently qualified labour, which contributes to a poor quality of public services.<sup>383</sup> There is a general lack of qualified human resources in Libya from which both the private and public sector suffer. Since the private sector offers better wages, the majority of well-qualified workers choose to work in private corporations to the disadvantage of the public sector, even though it employs the vast majority of the Libyan work force. Most workers employed in the public sector are under-qualified and de facto many permanent employees do not work because there are not enough tasks to be performed; however, they continue to be on the payroll.<sup>384</sup> Employment in the public sector gives access to social security, pensions, as well as less burdensome work hours, which are attractive factors for potential employees; however, these benefits do not make up for the low wages in the sector.<sup>385</sup> Public wages were increased by 20 per cent in 2013 in order to attract better-qualified staff.<sup>386</sup> Nevertheless, salaries and financial benefits are still lagging behind those in the private sector, and as a result, the latter is able to attract the most qualified employees.<sup>387</sup>

The public sector operates with 16 levels of qualifications and corresponding wage levels. Wages paid to workers employed under the first seven levels are not perceived as sufficient in order to sustain an appropriate standard of living according to a public administration consultant who took part in this study.<sup>388</sup> Furthermore, there are significant differences in wages paid to employees with the same set of skills across different agencies. For instance, a level 12 civil servant working in the Ministry of Labour receives LYD 950 (US\$776) a month, whereas the same type of employee in the executive branch receives LYD 4,500 (US\$3,675).<sup>389</sup> Salaries represented the largest public expenditure in 2013, amounting to approximately 31 per cent of the total public budget, which according to official figures amounts to LYD 66.9 billion (US\$53.5 billion).<sup>390</sup>

Even though the budget of the public sector is perceived to be sufficient, the services delivered are perceived as being quite poor by Libyans with education being the only public service which a majority finds to be of good quality.<sup>391</sup> The lack of administrative skills and proper management systems in particular are hampering the public sector's ability to adequately allocate and deliver services satisfactorily.<sup>392</sup> As the majority of financial resources are used to pay salaries, the development of administration systems and human resource departments is to a large extent

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<sup>383</sup> Interview with Omar Titish, Ministry of Labour, with Sherif Jenan, Tripoli, 11 June 2014 and interview with Dr Bashir Ghariani, 2014.

<sup>384</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>385</sup> World Bank, 2012.

<sup>386</sup> Ahmed Elumami, "Government Increases Public Sector Wages by 20 Percent", *Libya Herald*, 4 September 2013.

<sup>387</sup> GIZ, *Libya – Building the Future with Youth*, 2013.

<sup>388</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>389</sup> Interview with Omar Titish, 2014.

<sup>390</sup> Mohamed Eljarh, "Libya Takes Steps to Fight Corruption", *Foreign Policy*, 28 May 2013.

<sup>391</sup> JMW Consulting and NDI, *Committed to Democracy and Unity*, 2014.

<sup>392</sup> Interview with Omar Titish, 2014 and interview with Dr Bashir Ghariani, 2014.

neglected, which also contributes to the poor quality of workers.<sup>393</sup> Furthermore, the quality of the public sector is hampered by the uncertainty in regards to what rules and regulations apply, leaving a great deal of inconsistency in dealing with issues like business registrations, building permits, CSO registrations, etc. This inconsistency is exacerbated by the fact that there is a lack of internal coordination between ministries, public agencies and within these institutions as well.

## CAPACITY: INDEPENDENCE

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### LAW

To what extent is the independence of the public sector safeguarded by law?

Score: 75 / 100

There is a legal framework in place that ensures the independence of the public sector in appointments and promotions. Employees can challenge arbitrary dismissals, but there is no comprehensive legal framework ensuring the impartiality of public sector employees.

The current legislation includes guidelines on how appointments and promotions of public sector employees are to be handled in order to avoid political interference.<sup>394</sup> According to the law on civil work, vacancies are required to be published and recruitment should be based solely on the applicant's qualifications. The law further stipulates that all promotions should be handled internally without external interference.<sup>395</sup> After being hired, employees in the public sector are to a large degree protected by provisions in the law, which makes it difficult to dismiss them.<sup>396</sup>

The Ministry of Labour has a department dedicated to the handling and investigation of civil servant complaints regarding arbitrary dismissals.<sup>397</sup> It is unclear if similar institutions exist in other public institutions to safeguard employees against external interference or arbitrary dismissals. Employees are, in any case, protected by the law and can challenge a dismissal and have their case tried in the legal system.<sup>398</sup>

There are no specific regulations to ensure the impartiality of employees in the public sector.<sup>399</sup> However, article 12 of the Labour Relations Act of 2010 prohibits workers in the public sector from conducting any political activities.<sup>400</sup> In addition, the Political and Administrative Isolation Law adopted by the GNC in November 2013 bans anyone affiliated with the former regime from serving in the public sector.<sup>401</sup> Article 1 of the law outlines 14 different categories of former employees including ministers, ambassadors and personnel from the military that are excluded from taking office and serving in the public sector.<sup>402</sup> These restrictions have been debated extensively. On the

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<sup>393</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>394</sup> Interview with Omar Titish, 2014 and interview with Dr Bashir Ghariani, 2014.

<sup>395</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>396</sup> Interview with Medhat Ghdamsy, 2014.

<sup>397</sup> Interview with Omar Titish, 2014.

<sup>398</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>399</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>400</sup> Labour Relations Act 2010, article 12.

<sup>401</sup> Sami Zaptia, "Political Isolation Law Passed Overwhelmingly", *Libya Herald*, 5 May 2013 (2013a).

<sup>402</sup> Political and Administrative Isolation Law 2013, article 1.

one hand, their purpose is to safeguard, among other, the public sector from undue interference from former regime supporters. On the other, some of the restrictions have been accused of being too far-reaching and could potentially have the negative effect of removing qualified and experienced personnel from the public sector. One of the most excessive consequences of the law is the possibility to replace most of the staff in Libya's embassies, if it is implemented to its full extent.<sup>403</sup>

It is unclear whether the legal framework covers parliamentary lobbying for the inclusion/exclusion of publicly procured projects, as the researchers have not been able to get access to this particular legislation and neither interviewee in the study offered any insight on this matter.

## PRACTICE

To what extent is the public sector free from external interference in its activities?

Score: 25 / 100

Even though there are relatively strong legal provisions with regard to the independence of the public sector, rules are only rarely enforced efficiently and as a result external interference, especially in relation to appointments and promotions of civil servants, often takes place. External interference is exerted by politicians and by various militias and concerns both the workings of the public sector, as well as recruitments and promotions.<sup>404</sup>

Public employees are not systematically replaced after a change in government. However, employees with connections to the new government have taken advantage of the situation by requesting more favourable positions in the public sector. This was possible after the election in 2012 due to political interference,<sup>405</sup> but the issue is rather difficult to assess since only two competitive elections have been held since the revolution.

Even though the law outlines clear rules regarding the appointment of new staff, these are not followed systematically in practice. Reportedly, the occurrence of recruitment based on political networks or tribal interest is not uncommon. Recruitment based on qualifications is mainly completed for employments that require specific technical skills and not for managing positions.<sup>406</sup>

Heads of public departments appear to have only limited discretion in practice when it comes to the appointment of staff, given that most public agencies receive a list of possible candidates from the Ministry of Labour from which they must choose.<sup>407</sup> However, it appears that the Ministry of Labour does not play the same role when it comes to dismissals. Contrary to recruitments and appointments, rules regarding dismissals are generally followed in practice. Nevertheless, due to fear of forceful retaliation, dismissals only happen seldom.<sup>408</sup>

Even though the law prohibits civil servants from conducting any political activities, in practice these restrictions only apply in cases where a clear conflict of interest exists.<sup>409</sup>

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<sup>403</sup> Tarek Megerisi, "Analysis of Legislation No.13 2013: Impact on Libya's Political Sphere", *Sadeq Institute*, June 2013.

<sup>404</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>405</sup> Interview with Omar Titish, 2014 and interview with Dr Bashir Ghariani, 2014.

<sup>406</sup> Interview with Medhat Ghdamsy, 2014.

<sup>407</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>408</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>409</sup> Interview with Omar Titish, 2014.

# GOVERNANCE: TRANSPARENCY

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## LAW

To what extent are there provisions in place to ensure transparency in financial, human resource and information management in the public sector?

Score: 50 / 100

There is no access to information laws in Libya,<sup>410</sup> but there are other laws in place that do ensure some level of transparency in certain areas of the public sector.

There are laws regulating transparency in appointments and disclosure of personal assets of public servants, as well as laws requiring financial records and contracts related to procurement to be made public. There are no regulations on how records are managed and made public, given that there are no access to information laws.

Vacancies are required by law to be made public. Article 132 of the Labour Relations Act outlines the rules regarding the appointment of staff. With regard to a given employment, priority is firstly given to the applicant with the highest grades. If grades are equal, the one with the highest educational level is prioritised, and thereafter the date of graduation and lastly the age of the candidate, where priority is given to the oldest one.<sup>411</sup>

The legal framework requires that all employees in the public sector must disclose all personal assets before taking office and again after a number of years. Employees can furthermore be requested at random to disclose updated information.<sup>412</sup> Disclosures are however not required to be made public.

There are specific requirements in the current legal framework that obligate the public sector to make financial records regarding procurement and contracts available to the general public.<sup>413</sup> The winner of any public bidding process must also be announced publicly.<sup>414</sup>

It has not been possible to gather information neither from existing legislation nor from the conducted interviews to clarify whether there are regulations on how records in the public sector are managed and whether regulations pertaining to public information management exist.

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<sup>410</sup> Freedom of Information Advocates Network, *Global Right to Information Update*, 2013.

<sup>411</sup> Labour Relations Act 2010, article 132.

<sup>412</sup> Interview with Omar Titish, 2014 and interview with Dr Bashir Ghariani, 2014.

<sup>413</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>414</sup> Interview with Dr Bashir Ghariani, 2014.

## PRACTICE

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

Score: 25 / 100

In general, citizens only have very limited access to information on the activities of the public sector and regulations on transparency are generally not applied or enforced. Since 2007 there have been attempts at reforming the public sector in Libya to increase transparency with the assistance of external experts, but little improvement has been made so far.<sup>415</sup> The reform processes have continued after the revolution, but have been hampered by the poor state of security in the country.<sup>416</sup>

Even though public departments are obliged to notify the general public of any vacancies in order to ensure open competition for employment opportunities, this is rarely practiced. It is reported that public agencies instead engage in dialogue with the Ministry of Labour on potential candidates among their registered list of unemployed persons.<sup>417</sup>

Similarly, the rules regarding the disclosure of employees' financial records are rarely enforced in practice.<sup>418</sup> Civil servants generally disclose a financial record during their time of employment; however, disclosures are not verified consistently and rarely result in any repercussions.<sup>419</sup>

Information on public procurement is in practice neither timely nor comprehensive. Most information is not made public and, even within public agencies, information on procurement is generally not accessible to the agencies' own employees.<sup>420</sup>

In general, citizens only have very limited access to information on the activities of the public sector, except for information on the sector's budget, which is published yearly and monitored by the Audit Bureau as well as the Ministry of Finance.<sup>421</sup> As part of doing the research for this report, scheduling interviews with public officials has proven very difficult, which is a testimony to the low levels of access to and transparency in the Libyan public sector.

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<sup>415</sup> Bertelsmann Stiftung, 2012.

<sup>416</sup> Bertelsmann Stiftung, 2014.

<sup>417</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>418</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>419</sup> Interview with Omar Titish, 2014 and interview with Dr Bashir Ghariani, 2014.

<sup>420</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>421</sup> Interview with Omar Titish, 2014.

# GOVERNANCE: ACCOUNTABILITY

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## LAW

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

Score: 50 / 100

There are no specific provisions in place regarding whistleblowing in the public sector and there are no plans to introduce such provisions in the near future.<sup>422</sup> Employees are able to submit a complaint of alleged misconduct to an internal office within each department that is tasked with investigating and handling such matters.<sup>423</sup> These offices also manage complaints from citizens; however, the majority of the population is unaware of this possibility.<sup>424</sup>

There are rules in place that enable the prosecution of civil servants who are suspected of being involved in bribery, corruption and/or abuse of privileged information with the possible penalty of imprisonment.<sup>425</sup>

Citizens are able to complain to both the administrative oversight department and the Audit Bureau about decisions made by civil servants.<sup>426</sup> In addition, public agencies are required to file financial reports with the relevant ministry on a yearly basis, which enables a given ministry to conduct some level of financial oversight on public agencies' spending. The ministries are in turn responsible for disclosing the information to the legislature, which is then able to conduct some level of oversight of the spending of the ministries.<sup>427</sup>

## PRACTICE

To what extent do public sector employees have to report and be answerable for their actions in practice?

Score: 25 / 100

In practice public sector employees are rarely held accountable for wrongdoings and the oversight mechanisms do not function well.

The current complaint system is not managed consistently across departments and complaints are handled in different manners and often solved without going through the appropriate channels. Only in rare cases does a complaint reach a court.<sup>428</sup> As most citizens are unaware of their opportunities to file a complaint directly with a public agency, with the administrative oversight department, or with

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<sup>422</sup> <https://blueprintforfreespeech.net/document/libya-overview> [accessed 3 April 2014].

<sup>423</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>424</sup> Interview with Omar Titish, 2014.

<sup>425</sup> Interview with Omar Titish, 2014 and interview with Dr Bashir Ghariani, 2014.

<sup>426</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>427</sup> Interview with Omar Titish, 2014 and interview with Dr Bashir Ghariani, 2014.

<sup>428</sup> Interview with Dr Bashir Ghariani, 2014.



the Audit Bureau, few complaints are submitted.<sup>429</sup> Furthermore, these oversight mechanisms are perceived by a public administration consultant in this study as ineffective, mostly because they are understaffed with employees lacking proper qualifications. In addition, financial controllers in the public sector are themselves occasionally involved in corruption cases, which often results in attempts to blur their own activities when dealing with the administrative oversight department and the Audit Bureau.<sup>430</sup>

Even though there are provisions in place that allow for the legal prosecution of civil servants involved in misconduct, there are extremely few cases of employees being convicted of, charged with, or even reported on regarding wrongdoings.<sup>431</sup>

When it comes to large procurement contracts in the public sector, there is a process of approval, initially by the relevant ministry that subsequently relays it to the legislature. However, smaller procurements are usually approved by a given ministry without involving the GNC.<sup>432</sup>

## GOVERNANCE: INTEGRITY

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### LAW

To what extent are there provisions in place to ensure the integrity of public sector employees?

Score: 50 / 100

Even though there are provisions in place to ensure the integrity of the public sector employees these are insufficient and leave room for interpretation and thus do not fully ensure civil servants' integrity. There is no overall code of conduct, but issues related to gifts, hospitality and conflicts of interest are partly regulated in the law.

Labour code no. 58 1970 outlines provisions concerning both gifts and hospitality among civil servants.<sup>433</sup> Article 31 declares that the wages can be made up of cash and/or in kind contributions and that any supplement to the regular wage due to honesty, loyalty, efficiency or the like, is considered a part of the general payment to the employee and not a gift. The only situation where gifts and tips are not considered part of the general salary is if they are supplied in accordance with an established practice regulated by certain rules. Article 31 further declares that living costs and family allowances can also be regarded as an integrated part of a worker's pay.<sup>434</sup> Thus, the provisions in the labour code primarily only ensure that employees cannot receive gifts without declaring them as a part of their general wage. It does not address whether public sector employees are allowed to accept gifts or the like from private corporations or citizens. It is nonetheless doubtful whether these codes remain in effect today.<sup>435</sup>

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<sup>429</sup> Interview with Omar Titish, 2014 and interview with Dr Bashir Ghariani, 2014.

<sup>430</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>431</sup> Interview with Omar Titish, 2014.

<sup>432</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>433</sup> Labour Code no. 58 1970.

<sup>434</sup> Labour Code no. 58 1970, article 31.

<sup>435</sup> Interview with Dr Bashir Ghariani, 2014.

Additionally, law no. 12 2010 on labour relations outlines several provisions related to upholding the integrity of Libyan employees toward citizens. Section 12 stipulates that employees are not allowed to accept gifts in any form for their services, that no worker may use his or her position whether directly or indirectly for his or her own benefit or that of others, or for any acts of favouritism or nepotism, and that no work tools or equipment may be used by the worker for his or her personal benefit.<sup>436</sup> Additional legislation also specifies bribery of or by a civil servant as a felony, which is punishable by imprisonment.<sup>437</sup> In addition procurement contracts often contain an anti-corruption clause.<sup>438</sup> There are however no rules regarding post-employment.<sup>439</sup>

Regulation no. 26 2012 adopted by the NTC established the High Commission for the Implementation of the Integrity and Patriotism Standard.<sup>440</sup> The commission is responsible for examining a wide range of individuals who seek public employment, including senior security officials, ambassadors, heads of government institutions and companies, candidates for elections, heads of universities and unions, as well as members of the GNC and the executive. Applicants are required to submit a filled-out questionnaire, curriculum vitae and a financial disclosure statement to the commission, which is allowed to conduct further investigations of the applicant. Subsequently the commission determines whether the applicant has ties to the former regime or is involved in criminal activities. Applicants who are rejected by the commission are able to appeal the decision at an appeals court within 10 days and a judge is required to issue a final ruling within 21 days of receiving the appeal.<sup>441</sup> It is unclear whether the vetting applies retroactively to employees holding positions in the public sector or if it only applies to individuals seeking employment. Human Rights Watch have characterised the criteria by which applicants are evaluated as being far too broad and vague, and additionally criticised the lack of hard facts used in the process and stated that it allows for political manipulation.<sup>442</sup>

## PRACTICE

To what extent is the integrity of public sector employees ensured in practice?

Score: 25 / 100

The High Commission for the Implementation of the Integrity and Patriotism Standard is not entirely effective in practice,<sup>443</sup> and corruption appears to be widespread in the public sector. According to an opinion poll, the public sector is the most corrupt institution in Libya along with the police. Of the respondents in the 2013 Global Corruption Barometer, 48 per cent perceived public officials and civil servants to be either corrupt or extremely corrupt.<sup>444</sup> Furthermore, another study found that 12 per cent of Libyans believe that officials receive kickbacks for construction permits and 13 per cent found that in order to get a job in the government it is necessary to pay a bribe. In addition, 19 per cent of the surveyed found it necessary to use *wasta* (nepotism) to obtain a construction permit and 26 per cent believed that *wasta* was needed in order to get a government job.<sup>445</sup>

In order to combat corruption the public sector does provide anti-corruption training programmes for employees; however, these are neither sufficient nor comprehensive enough to have an impact.

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<sup>436</sup> Law no. 12 2010, section 12.

<sup>437</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>438</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>439</sup> Interview with Omar Titish, 2014.

<sup>440</sup> Regulation no. 26, 2012.

<sup>441</sup> Grant, 2012b.

<sup>442</sup> [www.hrw.org/news/2012/04/28/libya-amend-vetting-regulations-candidates-officials](http://www.hrw.org/news/2012/04/28/libya-amend-vetting-regulations-candidates-officials) [accessed 9 June 2014].

<sup>443</sup> Interview with Omar Titish, 2014.

<sup>444</sup> [www.transparency.org/gcb2013/country/?country=libya](http://www.transparency.org/gcb2013/country/?country=libya) [accessed 12 May 2014].

<sup>445</sup> Unpublished public opinion survey September 2013 – conducted in collaboration between JMW Consulting and NDI.

Thus, there are few programmes that are successful in terms of educating civil servants on issues related to corruption.<sup>446</sup>

There does not appear to be any communication strategy for disseminating the public sector's core values to employees or citizens. The sector's core values and ideals are furthermore only to a very limited degree included in employment contracts and most civil servants are unaware of such a set of values.<sup>447</sup> It has not been possible to gain an insight into how well formulated these values are as no official documents have been accessible and neither of the interviewees in the study offered any information in this regard.

According to a public administration consultant, even though public procurement contracts often include an anti-corruption clause, these clauses are rarely enforced in practice.<sup>448</sup>

## ROLE: PUBLIC EDUCATION

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To what extent does the public sector inform and educate the public on its role in fighting corruption?

Score: 0 / 100

The Libyan public sector remains affected by the difficult legacy of the Gaddafi regime, where corruption was widespread at all levels of the public sector and in the government, especially at the highest levels, where officials systematically buried all comments and reports of any wrongdoings.<sup>449</sup> The regime did in fact monitor corruption and, on a yearly basis, the Ministry for Inspection and Popular Control produced and presented a report on this issue to the previous legislature, the People's Congress, but the reports were never published. Following the revolution, the 2010 report, entitled "The Annual Report by the Control Board for 2010", was made available to the international news agency Reuters. The report contains accounts of shoddy dealings, especially in the oil industry, inadequate financial reporting, false dates on contracts and undervalued assets, as well as financial resources gone missing in the public sector.<sup>450</sup>

The present public sector has yet to overcome this burden and does not play a large role in terms of public education. There are no programmes run by the sector aimed at educating citizens on corruption and the means to fight it. As a result, the average citizen is currently neither aware of how nor where to file a complaint regarding alleged corruption practices by civil servants.<sup>451</sup>

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<sup>446</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>447</sup> Interview with Omar Titish, 2014.

<sup>448</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>449</sup> Jessica Donati and Marie-Louise Gumuchian, "Special Report: The Gaddafi Oil Papers", Reuters, 23 December 2011.

<sup>450</sup> Donati and Gumuchian, 2011.

<sup>451</sup> Interview with Omar Titish, 2014.

# ROLE: COOPERATE WITH PUBLIC INSTITUTIONS, CSOs AND BUSINESS IN PREVENTING/ ADDRESSING CORRUPTION

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To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

Score: 75 / 100

The Office of the Auditor General is currently working with the United Nations Office on Drugs and Crimes, as well as the UNDP to strengthen institutional oversight mechanisms, internal financial controls and monitoring and evaluations.<sup>452</sup> Additionally, the Ministry of Finance is collaborating with the IMF and the World Bank on public procurement legislation and policy, public controlling and national account statistics.<sup>453</sup> The Libyan state is additionally cooperating with the EU in order to build a more sustainable public sector. The EU has allocated EUR 4.5 million – corresponding to LYD 7,526,445 (US\$6,083,129) – to a programme entitled EU Public Administration Facility for Libya which focuses on state-building and supporting the public administration.<sup>454</sup> The initial success of these programmes is however perceived to be rather limited.<sup>455</sup> In general, international organisations that have sought to complete training and institution-building in Libya have been challenged by the fact that they have had difficulties identifying the suitable national entities to cooperate with and influence, and thus they have often lacked the necessary counterpart to complete the process of training and institutional build-up resulting in a limited outcome.<sup>456</sup>

According to the public administration consultant in this study, there are examples of public agencies that collaborate with domestic CSOs and private businesses at the request of the public agencies.<sup>457</sup> The scope and nature of this cooperation is however unclear, as the informant did not provide any additional information. Moreover, these collaborations are mainly focused on general operational procedures and not on programmes or measures related to anti-corruption.<sup>458</sup> The success of these projects remains to be seen, but initial reforms have been hampered by the poor state of security in the country.<sup>459</sup>

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<sup>452</sup> <http://unsmil.unmissions.org/Default.aspx?tabid=5110&language=en-US> [accessed 2 April 2014].

<sup>453</sup> <http://unsmil.unmissions.org/Default.aspx?tabid=5110&language=en-US> [accessed 2 April 2014].

<sup>454</sup> [www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/133396.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/133396.pdf) [accessed 3 April 2014].

<sup>455</sup> Interview with Medhat Ghdamsy, 2014.

<sup>456</sup> Interview with Medhat Ghdamsy, 2014.

<sup>457</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>458</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>459</sup> Bertelsmann Stiftung, 2014.

# ROLE: REDUCE CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT

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To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

Score: 50 / 100

There is a legal framework in place to ensure the integrity in public procurement processes; however, it remains inefficient due to a lack of enforcement.<sup>460</sup> For instance, the law only requires open bidding on contracts that exceed LYD 500,000 (US\$408,323). This is a rather high threshold in the first place and secondly it is rarely done in practice. The department supplying the contract will typically contact up to seven contractors requesting an offer and subsequently conduct the bidding process with the offers received by those companies according to the public administration consultant taking part in this study.<sup>461</sup> It is required by law that clarifications and amendments during the actual bidding process are shared among bidders; however, these provisions also remain largely unenforced.<sup>462</sup>

The law outlines several requirements in order to ensure objectivity in the process of selecting a contractor. Bidders are obliged to provide relevant information including statements of their capabilities, letters of recommendations from previous clients and financial statements. However, according to the public administration consultant most of these requirements are ignored in reality, except for the disclosure of the company's financial records, which have to be submitted to guarantee that the contractor will be able to finish a given project without going bankrupt.<sup>463</sup>

The law also provides for the use of a standard bidding document, which contrary to many of the other rules, appears to be enforced, according to both interviewees in this study.<sup>464</sup>

Each public department has its own internal office, which is responsible for the control of activities related to current and future contracts. As these offices are embedded within each department, they are neither independent by law nor in practice.<sup>465</sup> There are standard procedures regarding the supervision of contract implementation, which is required to be implemented by either a civil servant or a third party employed by the public department. However, the procedures are not enforced systematically in practice. Mainly, construction contracts are completed under the supervision of

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<sup>460</sup> Interview with Omar Titish, 2014.

<sup>461</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>462</sup> Interview with Omar Titish, 2014 and interview with Dr Bashir Ghariani, 2014.

<sup>463</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>464</sup> Interview with Omar Titish, 2014 and interview with Dr Bashir Ghariani, 2014.

<sup>465</sup> Interview with Dr Bashir Ghariani, 2014.

engineers to ensure that the project follows the legal procedures and is in accordance with safety requirements.<sup>466</sup>

There is no data on the existence of a central procurement agency within the public sector. However, there is a procurement agency within the cabinet, which provides recommendations to the various ministries regarding public procurement.<sup>467</sup>

The law outlines what type of qualifications are required by those involved in the different stages of public contracting, but these rules are not widely enforced in practice.<sup>468</sup> The same applies to the maintenance of registers and statistics on contracts, which are not systematically updated even though this is required by law.<sup>469</sup>

The law offers no provisions to ensure that the staff in charge of conducting the bidding process and selecting the final candidate cannot be involved in evaluating the same projects, and as a result employees are often involved in both processes.<sup>470</sup>

Procurement award decisions are in practice made public.<sup>471</sup> Decisions are however only rarely investigated and evaluated. Such investigations are primarily initiated when the government receives a complaint or if there is a general suspicion of corruption.<sup>472</sup> But there are no standard procedures as to how to request an investigation into a procurement decision.

Currently, there are no sanctions in place regarding criminal offences committed by staff in relation to public procurement.<sup>473</sup>

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<sup>466</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>467</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>468</sup> Interview with Omar Titish, 2014 and interview with Dr Bashir Ghariani, 2014.

<sup>469</sup> Interview with Omar Titish, 2014.

<sup>470</sup> Interview with Omar Titish, 2014.

<sup>471</sup> Interview with Omar Titish, 2014.

<sup>472</sup> Interview with Dr Bashir Ghariani, 2014.

<sup>473</sup> Interview with Dr Bashir Ghariani, 2014.

**LAW ENFORCEMENT AGENCIES**  
**28 / 100**

# SUMMARY

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Libyan law enforcement agencies have not functioned sufficiently since the revolution in 2011 and they face several significant challenges and evoke low levels of trust in the population.<sup>474</sup> The law enforcement agencies are severely burdened by the difficult legacy of the former regime during which its internal structures were extremely dysfunctional. During the 2011 revolution the security sector more or less fell apart, and as a result various agencies subsequently had to start from scratch.<sup>475</sup> Since the revolution, Libyan law enforcement agencies have neither been able to ensure the rule of law nor control the numerous armed groups in the country.<sup>476</sup>

From mid-May to the end of August 2014, the general security situation worsened significantly as fighting between various armed groups increased drastically. From 13 July 2014 Tripoli, for instance, witnessed six consecutive weeks of fighting as an alliance of militias from Misrata, al-Zawiya Gheryan and Tripoli launched “Operation Dawn” (*‘Amaliyat al-Fajr*) against the Zintan-affiliated *al-Qa’qa’* and *al-Sawai’q* armed groups allied with fighters from the region of Warshafana, west of Tripoli.<sup>477</sup> Law enforcement agencies proved incapable of putting the fighting to an end and the conflicts resulted in long-lasting power cuts, as well as a shortage of basic commodities such as water and petrol.

The agencies have limited resources at their disposal and the police force is only to a limited degree capable of keeping public order. As a result several militias formed during the revolution continue to play a significant role and some have even adopted government-like behaviour, such as conducting border controls and running prisons.<sup>478</sup> Separating the militias from the police and law enforcement agencies is further complicated by the fact that hybrid-security arrangements have emerged, such as the State Security Committees, which are government sanctioned groups trying to incorporate militiamen. Furthermore, a lack of transparency in resource allocation has resulted in a situation where several individuals collect payments from different agencies at the same time. Public prosecutors are rarely held accountable for their actions, and following the revolution approximately 8,000 individuals remain in detention without charges or due process rights.<sup>479</sup>

Nevertheless, Libya has begun to cooperate with a variety of international organisations and other countries in order to strengthen its capacities and build a sustainable and modern police force.<sup>480</sup> Moreover, attempts to dissolve the various militias in the country appear to be having an effect as numerous militiamen are beginning to sign up to join the police. There are however fears that militiamen are joining the police in order to infiltrate and control these agencies.<sup>481</sup>

It should be noted that as part of the research it has been difficult to obtain the relevant laws, and the primary sources for the legislation are therefore the interviewed persons and other secondary sources.

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<sup>474</sup> [www.transparency.org/gcb2013/country/?country=libya](http://www.transparency.org/gcb2013/country/?country=libya) [accessed 12 May 2014].

<sup>475</sup> EUISS, *Libya: The Struggle for Security*, 2013.

<sup>476</sup> <http://carnegieendowment.org/2013/08/06/building-libya-s-security-sector#> [accessed 21 May 2014].

<sup>477</sup> UNSMIL/OHCHR, 2014.

<sup>478</sup> EUISS, 2013.

<sup>479</sup> Human Rights Watch, *World Report 2013 – Libya*, 2013.

<sup>480</sup> [http://eeas.europa.eu/csdp/missions-and-operations/eubam-libya/pdf/factsheet\\_eubam\\_libya\\_en.pdf](http://eeas.europa.eu/csdp/missions-and-operations/eubam-libya/pdf/factsheet_eubam_libya_en.pdf) [accessed 12 May 2014]; UNSMIL/OHCHR, *Torture and Deaths in Detention in Libya*, 2013.

<sup>481</sup> [www.ssrresourcecentre.org/2014/05/21/reforming-libyas-post-revolution-security-sector-the-militia-problem/](http://www.ssrresourcecentre.org/2014/05/21/reforming-libyas-post-revolution-security-sector-the-militia-problem/) [accessed 23 January 2015].



The table below presents the indicator scores, which summarise the assessment of the law enforcement agencies in terms of their capacity, their internal governance and their role within the Libyan integrity system. The remainder of this section presents the qualitative assessment for each indicator.

| OVERALL PILLAR SCORE: 28 / 100 |                        |     |          |
|--------------------------------|------------------------|-----|----------|
| Category                       | Index                  | Law | Practice |
| <i>Capacity</i><br>25 / 100    | Resources              | -   | 25       |
|                                | Independence           | 50  | 0        |
| <i>Governance</i><br>33 / 100  | Transparency           | 50  | 25       |
|                                | Accountability         | 50  | 0        |
|                                | Integrity              | 75  | 0        |
| <i>Role</i><br>25 / 100        | Corruption prosecution | 25  |          |

## STRUCTURE & ORGANISATION

During the 2011 revolution the security sector more or less fell apart, and as a result various agencies subsequently had to start from scratch.<sup>482</sup> Since the revolution Libyan law enforcement agencies have neither been able to ensure the rule of law nor control the numerous armed groups in the country.<sup>483</sup> Against this backdrop the NTC created several hybrid-security entities, the two most important being the Supreme Security Committee, established by order no. 20 2011, and the Libya Shield Force. Both units consist of militiamen and were intended to augment the army and the regular police force and help fill the security vacuum that emerged following the collapse of the Gaddafi regime. Nonetheless, both ended up with better equipment than the regular police force, a high degree of autonomy, as well as unclear lines of authority.<sup>484</sup> The two units are yet to be replaced by permanent entities and attempts are now being made to transfer personnel from these units to the regular police, including the launch of an admissions programme. At the beginning of 2013, nearly 10 per cent of the personnel in the Supreme Security Committee, approximately 6,000 militiamen, had signed up to join the police force.<sup>485</sup> In late April 2013, UNSMIL reported that around 37,000 people in total had registered to join the police.<sup>486</sup> Accordingly, 37 police training committees

<sup>482</sup> EUISS, 2013.

<sup>483</sup> <http://carnegieendowment.org/2013/08/06/building-libya-s-security-sector#> [accessed 21 May 2014].

<sup>484</sup> <http://carnegieendowment.org/2013/08/06/building-libya-s-security-sector#> [accessed 21 May 2014].

<sup>485</sup> Hadeel Al Shalchi and Ali Shuaib, "Thousands of Libyan Gunmen Sign up for Police Training", Reuters, 6 January 2013.

<sup>486</sup> [www.libyaintelligence.org/content/difficulties-posed-development-national-police-force-libya](http://www.libyaintelligence.org/content/difficulties-posed-development-national-police-force-libya) [accessed 31 July 2014].

under the authority of the Ministry of the Interior have been established in order to handle the new recruits.<sup>487</sup>

The following analysis primarily focuses on the Libyan police force, the public prosecutors, and to some extent on the military and the most important militias. Even though the militias play a significant role in terms of law enforcement in post-revolution Libya, it is not possible to complete a thorough examination of their internal structures.

## CAPACITY: RESOURCES

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### PRACTICE

To what extent do law enforcement agencies have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?

Score: 25 / 100

Libyan law enforcement agencies have traditionally been understaffed, underpaid and under-equipped, and since the revolution the agencies have continued to lack proper financial resources as well as the necessary computer equipment.<sup>488</sup> However, since the end of the revolution in 2011, the police force has begun to receive a substantial amount of external technical training and support to enhance its ability to operate effectively in practice. Even though some of the programmes appear to be making progress, the fact that they were only recently established makes it difficult to assess this sufficiently.

Complaints regarding the budget as well as budget cuts are frequent, but there are no indications of agencies seeking funding from elsewhere. The salaries are generally inadequate, and as a result many police officers have second jobs, for instance, working as taxi drivers.<sup>489</sup> Low wages are also a major complaint among Libyan prosecutors who are beginning to move to private practices due to high rates of attrition.<sup>490</sup> As a result of the lack of financial and human resources, since the revolution law enforcement agencies have only to a very limited extent been able to keep the public order and numerous militias have supplanted the police force in maintaining internal security. This is a result of the lack of both financial and human resources in the law enforcement agencies, which has been exacerbated by the Political Isolation Law which banned most of the former police force, as well as the fact that the various militias are well equipped in terms of weaponry.

The militias operate checkpoints within and between major cities, and have in turn been bolstered by the Political Isolation Law, which has pushed former security personnel into employment with the militias.<sup>491</sup> There are reports of some militias beginning to adopt government-like behaviour. For instance, the Zintan militia, which is currently controlling the Tripoli International Airport, has begun conducting border control exercises, as well as running the prison where Seif al-Islam al-Gaddafi is being detained. Some militias have also begun to seize government property and act as an

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<sup>487</sup> Al Shalchi and Shuaib, 2013.

<sup>488</sup> EUISS, 2013; Interview with Ken Taylor, Police Adviser at the British Embassy in Libya, with Sherif Jenan, Tripoli, 20 July 2014.

<sup>489</sup> Interview with Ken Taylor, 2014.

<sup>490</sup> ILAC, 2013.

<sup>491</sup> <http://travel.state.gov/content/passports/english/country/libya.html> [accessed 19 March 2014].

independent security agency, instead of a spontaneously formed militia. While some of the militias have in fact contributed to restoring security since the end of the revolution, several have also been a source of insecurity as they have attempted to use their power to obtain political influence, which is the reason why the authorities are making efforts to integrate militia personnel into the regular police force.<sup>492</sup>

As mentioned above, from mid-May to the end of August 2014, the general security situation worsened significantly as fighting between various armed groups increased drastically. Furthermore, the courts stopped functioning and the government lost control of most ministries as well as other government facilities in Tripoli. In Derna, the Shura Council of Islamic Youth, an armed group, reportedly carried out public executions of two men, and on 13 August, unknown gunmen assassinated Tripoli's Chief of Police, Col. Muhammad Sweissi.<sup>493</sup> On other occasions, the law enforcement agencies have also proven incapable of matching the power of the militias, with an example being the case of 'Anoud al-Senussi, the daughter of the military intelligence chief under al-Gaddafi, Abdallah al-Senussi, who was abducted by assailants while being escorted by police from prison to Tripoli airport.<sup>494</sup>

Similar to the police force, the national military also lacks the resources needed to defend Libya's territorial integrity. The few dozen men guarding the southern borders with Niger and Chad are unable to protect their own base and there are even reports of soldiers having to pay for petrol out of their own pockets.<sup>495</sup>

Since the revolution, Libya has begun cooperating with several international organisations and countries regarding the training of its police force. In May 2013, the Council of the European Union authorised the EU Integrated Border Assistance Mission in Libya (EUBAM Libya) which is a civilian mission that is intended to support the Libyan authorities in relation to improving and developing the security of the country's external borders. EUBAM Libya has an initial mandate of two years; its headquarters are in Tripoli, and the annual budget is approximately EUR 30 million, which corresponds to LYD 49,822,049 (US\$40,202,901). The mission consists of just over 110 staff members when operating at full capacity.<sup>496</sup> UNSMIL additionally provides strategic advice and technical assistance to the Ministry of the Interior on issues related to the police, which includes strengthening the operational capacity of police departments and assistance with the integration of militia personnel into the police force, as well as support in the development of transparency and accountability in the police force.<sup>497</sup> UNSMIL is assisted by the UN Standing Police Capacity in developing a police reform strategy. According to the UN Standing Police Capacity, the mission has made significant progress when it comes to supporting the Libyan authorities in strategic decision-making as well as establishing fundamental norms and values in the police.<sup>498</sup> Moreover, in 2012 Turkey began to provide training for 817 Libyan police academy students in order to help establish security and promote a peaceful democratic transition in the country. The police students spent just over seven months in Istanbul, where they were trained at the Adile Sadullah Mermerci Police Centre. Turkey has additionally supplied Libya with 30 police vehicles as well as 6,000 uniforms as a part of the programme.<sup>499</sup> The United Kingdom has also launched a programme that provides training for approximately 4,000 Libyan police officers in order to promote stability, accountability and democratisation.<sup>500</sup> When circumstances permit it, the US Federal Bureau of Investigation is to provide cutting-edge technology and training to criminal investigators in Libya. The training is part of

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<sup>492</sup> EUISS, 2013.

<sup>493</sup> UNSMIL/OHCHR, 2014.

<sup>494</sup> [www.amnesty.org/en/news/libya-latest-abduction-highlights-dysfunctional-justice-system-2013-09-03](http://www.amnesty.org/en/news/libya-latest-abduction-highlights-dysfunctional-justice-system-2013-09-03) [accessed 29 October 2014].

<sup>495</sup> Borzou Daragahi, "Libya's Border Security Struggles against People Smugglers", *The Financial Times*, 28 November 2013.

<sup>496</sup> [http://eeas.europa.eu/csdp/missions-and-operations/eubam-libya/pdf/factsheet\\_eubam\\_libya\\_en.pdf](http://eeas.europa.eu/csdp/missions-and-operations/eubam-libya/pdf/factsheet_eubam_libya_en.pdf) [accessed 12 May 2014].

<sup>497</sup> UNSMIL/OHCHR, 2013.

<sup>498</sup> [www.un.org/en/peacekeeping/sites/police/documents/spcnews/spc\\_news\\_february13.pdf](http://www.un.org/en/peacekeeping/sites/police/documents/spcnews/spc_news_february13.pdf) [accessed 30 July 2014].

<sup>499</sup> [www.libya-businessnews.com/2012/07/28/turkey-boosts-role-in-libya-by-training-police/](http://www.libya-businessnews.com/2012/07/28/turkey-boosts-role-in-libya-by-training-police/) [accessed 31 July 2014].

<sup>500</sup> [www.worldtribune.com/2013/05/02/britain-to-train-4000-libyan-police/](http://www.worldtribune.com/2013/05/02/britain-to-train-4000-libyan-police/) [accessed 31 July 2014].

a broader collaboration between Libya and the United States with the aim of combating terrorism and international crime.<sup>501</sup>

At present, there is no special police unit assign with investigating cases related to corruption offences.<sup>502</sup>

## CAPACITY: INDEPENDENCE

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### LAW

To what extent are law enforcement agencies independent by law?

Score: 50 / 100

The independence of the police is protected by the police procedural legislation, which governs the activities of the agency and is under the control of the Ministry of the Interior. The legislation is characterised as being rather unclear, besides the fact that the police have an obligation to the prosecutors.<sup>503</sup>

Libyan prosecutors are headed by the prosecutor general, who also serves as the deputy to the president of the HJC. After the revolution, controversy arose regarding whether the GNC or the General Assembly of the Supreme Court should have the legal powers to appoint the prosecutor general. The issue was resolved in favour of the GNC.<sup>504</sup> The current process for promotion of prosecutors was set in place by the establishment of a Committee for the Promotion of the Judiciary, the so-called “Committee of 17” by the NTC in May 2012. Law graduates who aspire to become prosecutors are initially required to take a mandatory training course at the High Judicial Institute, similar to graduates who wish to become judges. The course lasts approximately two years, and before the revolution, the institute received between 3,000 and 4,000 applications per year. The course is mainly practical in nature and it is completed in groups of four to six students, adopting a moot court methodology. Allegedly, the course covers all legal disciplines, including criminal law, civil law, arbitration and various areas of procedural law, human rights, international law, English computer skills, and codes of conduct. Once appointed, prosecutors are required to attend between three to four workshops per year at the High Judicial Institute. Compliance with this requirement is an important factor when prosecutors apply for promotion.

A striking aspect regarding Libyan prosecutors is that even though a substantial majority of law students are women, the proportion of female prosecutors is far smaller. For instance, in 2013 there was only one female prosecutor within the jurisdiction of the Misrata Court of Appeals and six female prosecutors out of 40 in total within the jurisdiction of the Zawiya Court of Appeals.<sup>505</sup>

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<sup>501</sup> *Libya Herald*, “FBI to Train Libyan Investigators”, 5 December 2013.

<sup>502</sup> Interview with Ken Taylor, 2014.

<sup>503</sup> Interview with Ken Taylor, 2014.

<sup>504</sup> See pillar report on the judiciary for a more detailed description of the HJC.

<sup>505</sup> ILAC, 2013.

The High Judicial Institute was forced to close in 2012 as a result of the fragile security situation. It was said to reopen and resume its activities in May 2013; however, it is uncertain whether this has happened.<sup>506</sup>

According to the criminal procedure code, all power regarding criminal cases is vested in the prosecutor general who is responsible for assigning prosecutors to the various courts.<sup>507</sup> However, it is unclear whether there is a law that gives another public agency the authority to instruct the prosecutor general not to pursue prosecution in specific cases.

Lastly, it is worth emphasising that the authorities recently issued a decree, which established an anti-drug unit and tasked a former war militia with running the unit and completing operations in this regard. Prior to the adoption of the decree, this task fell to the Ministry of the Interior and thus the police, but due to the fact that the police force lacks proper equipment and resources, this responsibility was given to a militia.<sup>508</sup>

## PRACTICE

To what extent are law enforcement agencies independent in practice?

Score: 0 / 100

In practice, appointments of employees in law enforcement agencies are not made on the basis of professional criteria.<sup>509</sup> Traditionally, personnel in Libya's security forces and military has been appointed and promoted on the basis of non-meritocratic principles, such as political loyalties rather than professional criteria.<sup>510</sup> It is additionally uncertain if any traditional appointments in the police are completed currently, as police departments are generally over-flooded with staff from the various militias that have defected and wish to join the police.<sup>511</sup> The independence of the police force is furthermore questioned by the fact that there are fears that militiamen have mainly joined the police in order to infiltrate and control these, while remaining loyal to the militias with which they have been affiliated.<sup>512</sup>

The prosecutors in Libya are similarly to other public agencies suffering from the lack of security in the country. Especially when it comes to cases of conflict-related detainees, prosecutors face serious security threats from the armed militias. These threats have resulted in processing delays due to a lack of prosecutors who are willing to review such cases in order to either release the detainees or press charges.<sup>513</sup> In April 2012, Ali Juma, who is a member of the general prosecution, was kidnapped from his home by the Bashir Saadaoui armed militia and beaten, allegedly in retaliation for an arrest order he issued on several of the militia's members in relation to a fraud case from 2010. Juma was released seven hours after his abduction and an investigation was opened; however, it is uncertain if anyone has been arrested and held accountable regarding the kidnapping and beating.<sup>514</sup> Additionally, the offices of the prosecutor general were hit by shells on 20 August

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<sup>506</sup> ILAC, 2013.

<sup>507</sup> ILAC, 2013.

<sup>508</sup> Interview with Medhat Ghdamsy, 2014.

<sup>509</sup> Interview with Ken Taylor, 2014.

<sup>510</sup> DCAF, *Arab Uprisings and Armed Forces: Between Openness and Resistance*, 2011.

<sup>511</sup> Interview with Ken Taylor, 2014.

<sup>512</sup> [www.ssrresourcecentre.org/2014/05/21/reforming-libyas-post-revolution-security-sector-the-militia-problem/](http://www.ssrresourcecentre.org/2014/05/21/reforming-libyas-post-revolution-security-sector-the-militia-problem/) [accessed 23 January 2015].

<sup>513</sup> ILAC, 2013.

<sup>514</sup> Amnesty International, 2012.

2014.<sup>515</sup> Even though prosecutors are often targeted by armed groups, threats and attacks are in general not adequately investigated and those responsible are seldom held accountable.<sup>516</sup>

## GOVERNANCE: TRANSPARENCY

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### LAW

To what extent are there provisions in place to ensure that the public can access relevant information on law enforcement agency activities?

Score: 50 / 100

It has not been possible to find any data on the existence of transparency provisions for law enforcement agencies apart from the general legislation covering the public sector. This legislation ensures transparency to some degree.

Vacancies in the public sector are required to be made public and article 132 of the Labour Relations Act 2010 outlines the rules with regard to the appointment of staff. In relation to a given employment, the rules dictate that priority is firstly given to the applicant with the highest grades. If grades are equal, the applicant with the highest educational level is prioritised, and thereafter the date of graduation and finally the age of the candidate, where priority is given to the older one.<sup>517</sup>

All employees in the public sector are required to disclose all personal assets before taking office and once more after a certain number of years. Employees can moreover be asked at random to disclose updated information on their assets. Nonetheless, disclosures are not required to be made public.<sup>518</sup>

### PRACTICE

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

Score: 25 / 100

Libyan law enforcement institutions have yet to develop transparency in their internal structures. For instance, lacking transparency in terms of resource allocation has led to a situation where militiamen are cross-registering with both the armed forces and the police.<sup>519</sup> This lack of transparency in resource allocation has furthermore led to the fact that the revolutionaries are beginning to suspect

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<sup>515</sup> UNSMIL/OHCHR, 2014.

<sup>516</sup> Interview with Ken Taylor, 2014.

<sup>517</sup> Labour Relations Act 2010, article 132.

<sup>518</sup> See pillar report on the public sector for a more detailed description of the legal framework regarding transparency in the sector.

<sup>519</sup> EUISS, 2013.

that the defence sector and the Ministry of Interior in reality continue to perpetuate the interests of those who served the Gaddafi regime.<sup>520</sup>

Most law enforcement agencies do, however, have a Facebook-page on which information and crime statistics are published.<sup>521</sup>

## GOVERNANCE: ACCOUNTABILITY

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### LAW

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

Score: 50 / 100

There are some provisions in place to ensure that law enforcement agencies are held responsible for their actions. The performance of prosecutors is supervised by an internal peer review system and citizens can file a complaint directly with a public prosecutor. However, there is no independent mechanism for citizens to complain about misconduct in police action.

The Judicial Inspectorate is an internal peer review system that applies criteria from the HJC in order to assess the performance of prosecutors. It deals with the promotion and demotion of staff, as well as cases of alleged corruption and abuse of office. Its Tripoli Court of Appeals department consists of 45 consultant judges. Upon receipt of a complaint against a prosecutor, a consultant judge is appointed to investigate the case. If it appears that the prosecutor has violated his/her responsibilities, an administrative inspection is opened. If it is determined that the suspect has committed a criminal act, a committee of consultant judges is to decide if the immunity of the accused is to be lifted in order to proceed with the prosecution. The Judicial Inspectorate is only responsible for investigating public prosecutors that may have violated their powers and not other staff from law enforcement agencies.<sup>522</sup> Law no. 10 2013 on the criminalisation of torture, forced disappearances and discrimination ensures that any perpetrators of such crimes are subject to prosecution and imprisonment and possibly the death penalty.<sup>523</sup> Article 5 states that the same penalty shall apply to any political, executive or administrative official and law enforcement officials are therefore not immune from criminal proceedings.<sup>524</sup>

Nonetheless, law no. 38 2012, passed by the NTC, declares that amnesty will be granted for any actions made necessary by the 2011 revolution.<sup>525</sup> The law has been strongly condemned by the Lawyers for Justice in Libya who argue that the law is in violation of fundamental human rights and freedoms and thus it represents a major obstacle in terms of establishing the rule of law, democracy and a nation built on respect for human rights. The Lawyers for Justice in Libya further argue that

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<sup>520</sup> <http://carnegieendowment.org/2013/08/06/building-libya-s-security-sector#> [accessed 21 May 2014].

<sup>521</sup> Interview with Ken Taylor, 2014.

<sup>522</sup> ILAC, 2013.

<sup>523</sup> Law no. 10 2013, article 3.

<sup>524</sup> Law no. 10 2013, article 5.

<sup>525</sup> Law no. 38, 2012.



the law breaches Libya's international commitments, including the International Convention on Civil and Political Rights, which Libya has signed.<sup>526</sup>

Citizens who have been victims of a crime are able to file a complaint directly with a public prosecutor who decides whether to open the case or not. When a case is investigated, the prosecutor is obligated by the existing law to supervise a law enforcement officer who can be delegated to carry out the investigation, except for possible interrogation. The prosecutors appear to have resources to complete cases based on complaints from citizens. According to a source in the Tripoli courts, approximately 10 per cent of all cases begin as complaints filed by citizens. The remaining 90 per cent of the cases begin when a police officer contacts a prosecutor.<sup>527</sup>

## PRACTICE

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

Score: 0 / 100

Public prosecutors only appear to be held accountable for their actions on a limited scale, as the described procedure regarding the investigation and possible prosecution of public prosecutors have allegedly only been used in practice three to four times in the last two decades.<sup>528</sup> Moreover, the current security environment has led to the fact that law enforcement agents, such as police officers, are to a larger extent held accountable by the communities in which they operate than by public entities such as the GNC or a ministry. The reason is that many communities are ruled by militias that are generally better armed than the police, and as a result, the police needs to gain the trust of the community before they can carry out various activities in the area.<sup>529</sup>

Libyan citizens do not appear to be able to complain about the actions of a law enforcement officer in practice. According to one of the interviewees in this study, complaints filed by citizens are merely recorded but not given a response.<sup>530</sup>

Prosecution of suspects captured during the revolution has generally been slow and inadequate according to international standards. As of October 2013, approximately 8,000 individuals were still in detention, the majority of which have been held for more than 12 months without charges or due process rights, such as judicial review and access to a lawyer. The Ministry of Justice holds roughly 3,000 detained while the Ministry of Defence and the Supreme Security Committee holds an additional 2,000.<sup>531</sup> This is in conflict with existing Libyan law that dictates that detention of suspects can only be extended to last 30 days by a single judge. Thereafter, extensions of up to 90 days must be authorised by a panel of three judges.<sup>532</sup>

Even though law no. 10 2013 on the criminalisation of torture, forced disappearances and discrimination clearly criminalises mistreatment, torture and ill-treatment are widespread practices in Libya's detention centres, used mainly upon arrest and initial interrogations, and resulting in 27 deaths from 2011 to 2013.<sup>533</sup> As of October 2013, UNSMIL was not able to identify any completed

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<sup>526</sup> [www.libyanjustice.org/news/news/post/23-Ifjl-strongly-condemns-new-laws-breaching-human-rights-and-undermining-the-rule-of-law](http://www.libyanjustice.org/news/news/post/23-Ifjl-strongly-condemns-new-laws-breaching-human-rights-and-undermining-the-rule-of-law) [accessed 7 July 2014].

<sup>527</sup> ILAC, 2013.

<sup>528</sup> ILAC, 2013.

<sup>529</sup> Interview with Ken Taylor, 2014.

<sup>530</sup> Interview with Ken Taylor, 2014.

<sup>531</sup> Human Rights Watch, 2013.

<sup>532</sup> The Code of Criminal Procedure, article 176.

<sup>533</sup> UNSMIL/OHCHR, *Torture and Deaths in Detention in Libya*, 2013.



investigations into the use of torture in these detention centres,<sup>534</sup> thus, it appears that officials are not held responsible for these practices.

## GOVERNANCE: INTEGRITY

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### LAW

To what extent is the integrity of law enforcement agencies ensured by law?

Score: 75/ 100

The Libyan Code of Criminal Procedure defines detailed rights of criminal defendants as well as the role of prosecutors and police officers. The code prohibits arbitrary arrests and detentions and has remained largely unchanged since Libya's independence. It establishes four phases of criminal proceedings, which include investigation, accusation, trial and appeal. The police are allowed to complete initial investigations, but cannot formally open an investigation. This must be done by presenting the suspect along with all the evidence to a prosecutor.<sup>535</sup> A police officer is not allowed to complete any interrogations without the involvement of a prosecutor, nor is a an officer allowed to undertake any search once a case has been officially opened, unless it is based on a written warrant issued by a prosecutor. Should a police officer exceed his/her authorities, all evidence against the suspect becomes inadmissible and the case can only continue if additional and non-tainted evidence can be found. Both codes underwent minor revisions at the beginning of the Gaddafi era and again in the early 2000s. Even though they have been subject to heavy criticism, commentators have generally labelled them as meeting international standards, arguing that the main issue was the lack of implementation.<sup>536</sup>

### PRACTICE

To what extent is the integrity of members of law enforcement agencies ensured in practice?

Score: 0 / 100

There is little evidence that the existing Libyan Code of Criminal Procedure is followed in practice by public prosecutors.<sup>537</sup> The fact that many police officers work second jobs points to the conclusion that rules on conflicts of interest are not enforced in practice regarding the police.<sup>538</sup>

According to an investigation completed by the International Legal Assistance Consortium in 2013, the incumbent prosecutors, who are virtually all from the old system, generally downplay the extent of corruption and integrity issues as they claim that neither during the Gaddafi era nor at present do prosecutors give in to external pressure. This view is however contested by private lawyers who

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<sup>534</sup> UNSMIL/OHCHR, 2013.

<sup>535</sup> ILAC, 2013.

<sup>536</sup> ILAC, 2013.

<sup>537</sup> ILAC, 2013.

<sup>538</sup> Interview with Ken Taylor, 2014.

claim that corruption in prosecution remains a significant problem in the country.<sup>539</sup> In terms of the police force the 2013 Global Corruption Barometer found that 48 per cent of Libyans classify police officers to be either corrupt or extremely corrupt which makes it the institution perceived as most corrupt in contemporary Libya along with civil servants.. Additionally, 42 per cent of the population have reportedly paid a bribe to the police in the last 12 months.<sup>540</sup>

## ROLE: CORRUPTION PROSECUTION

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To what extent do law enforcement agencies detect and investigate corruption cases in the country?

Score: 25 / 100

There are several factors that hamper the ability of law enforcement agencies to detect and investigate corruption cases. Firstly, police officers in general neither possess the qualifications nor the sufficient technical equipment to complete such investigations. Secondly, the legal framework does not outline how investigations are to be carried out specifically. Thirdly, prosecutors and the judicial system are not able to complete prosecutions in an adequate and timely manner. As a result of these factors, law enforcement agencies have only to a very limited degree been engaged in investigating possible corruption cases.<sup>541</sup>

The only high-profile case of corruption has been the charge against the former Prime Minister Ali Zeidan. In March 2014, the now former Prime Minister Ali Zeidan lost a no confidence vote in the GNC due to his possible involvement in a case concerning unauthorised payments made to an armed group that had been besieging several of the country's oil fields. The case is now being investigated by Libya's Prosecutor General Ridwan Jumua Abdul Qadir who banned Zeidan from travelling abroad. However, on 12 March 2014 Zeidan reportedly left Libya heading toward Europe.<sup>542</sup>

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<sup>539</sup> ILAC, 2013.

<sup>540</sup> [www.transparency.org/gcb2013/country/?country=libya](http://www.transparency.org/gcb2013/country/?country=libya) [accessed 12 May 2014].

<sup>541</sup> Interview with Medhat Ghdamsy, 2014.

<sup>542</sup> BBC, "Libya Ex-PM Zeidan 'Leaves Country despite Travel Ban", 12 March 2014.

**ELECTORAL MANAGEMENT  
BODY  
61 / 100**

# SUMMARY

The HNEC constitutes the electoral management entity in post-revolution Libya. It was established as a permanent body in 2013 and is responsible for all electoral processes. There is a rather well-developed legal framework, which ensures the commission's independence, outlines its prerogatives, regulates its activities and specifies the tasks it is required to perform. In practice, the HNEC has enjoyed a large degree of independence and has not yet, contrary to many other public agencies, experienced undue interference from the various militias. As a result, the HNEC has been commended for its performance, especially in the most recent elections.

Nonetheless, the HNEC has experienced challenges in terms of recruiting staff that has the required qualifications as well as retaining staff on a permanent basis. Moreover, provisions to ensure transparency in the work of the Commission are still to some extent missing. For instance, the HNEC is neither obligated to publish the minutes of its meetings, nor to conduct public consultations.

The table below presents the indicator scores that summarise the assessment of the Electoral Management Body in terms of its capacity, its internal governance and its role within the Libyan integrity system. The remainder of this section presents the qualitative assessment for each indicator.

| OVERALL PILLAR SCORE: 61 / 100 |                         |     |          |
|--------------------------------|-------------------------|-----|----------|
| Category                       | Index                   | Law | Practice |
| <i>Capacity</i><br>67 / 100    | Resources               | -   | 75       |
|                                | Independence            | 50  | 75       |
| <i>Governance</i><br>67 / 100  | Transparency            | 50  | 50       |
|                                | Accountability          | 50  | 50       |
|                                | Integrity               | 100 | 100      |
| <i>Role</i><br>50 / 100        | Campaign regulation     | 50  |          |
|                                | Election Administration | 50  |          |

# STRUCTURE & ORGANISATION

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Law no. 3 2012 passed by the NTC established the HNEC and gave it sole responsibility for the preparation and implementation of the GNC elections, for the supervision of the elections and for the declaration of the results.<sup>543</sup> In the context of the 2013 election for the Constitutional Drafting Assembly (CDA), law no. 8 2013 established the HNEC as a permanent body and it was given responsibility for all electoral processes in Libya, including organising, managing and supervising the electoral process.<sup>544</sup>

The HNEC is quite hierarchical in its internal organisation.<sup>545</sup> Article 7 of law no. 3 2012 specifies the overall structure of the body which consists of three parts: 1) The Board of Commissioners, whose role is to issue all executive instructions, internal regulations and policies required to administer the elections. The board also certifies and announces the results of the elections. 2) The Central Administration Office, which is responsible for the overall operational implementation of the elections as well as the supervision of the sub-administration offices. 3) The sub-administrations offices, which are responsible for the operational implementation of the elections down to the level of the polling stations. Non-permanent staff is appointed temporarily for the voter registration, polling and counting processes before, during and after elections.<sup>546</sup>

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<sup>543</sup> Law No. 3 2012 – On the Establishment of the High National Elections Commission, article 3.

<sup>544</sup> Law no. 8 2013 – On the Establishment of the High Elections Commission, 2013, article 2.

<sup>545</sup> Interview with Niklas Kabel Pedersen, former Election Operations Advisor imbedded in HNEC for IFES Libya, with Alexander Kjærum, Copenhagen, 27 May 2014.

<sup>546</sup> Law No. 3 2012, article 7.

# CAPACITY: RESOURCES

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## PRACTICE

To what extent does the electoral management body have adequate resources to achieve its goals in practice?

Score: 75 / 100

The HNEC has had adequate financial resources at their disposal and a sufficient quantity of human resources to be able to implement three well-organised elections in a short period of time but has encountered challenges related to weak institutional memory, lacking skilled human resources and disloyalty of staff.

The HNEC was originally comprised of a board of 17 commissioners – 15 of which were appointed on 7 February 2012. Originally, the 17 members included:

- A chairman and his deputy
- Three judicial advisors from the courts of appeal
- Two lawyers
- Two professors from universities and/or higher institutions
- Four members (two men women and two women) from CSOs
- An expert in administrative affairs
- A member from the youth
- A member from the Libyan diaspora community

The chairman and his deputy are appointed directly by the GNC. Additional members are nominated by the relevant authority and subsequently appointed by the GNC.<sup>547</sup> In practice, the representation of different groups in HNEC has not been as diverse as stipulated by the law. The adoption of law no. 44 2012 by the NTC reduced the commission to 11 members,<sup>548</sup> and decision no. 44 2012 by the GNC reduced it even further to seven members.<sup>549</sup> In April 2012, the first appointed chairman, Uthman Gajiji, was replaced with the commission's spokesperson, Nuri Elabbar, by the NTC. No reason was given by the NTC for the replacement; however, there had been growing accusations of the commission moving too slowly regarding the preparation of the 2012 GNC elections.<sup>550</sup> At the same time, four board members chose to resign, partly because of internal disagreements on the policy decisions of the HNEC, which resulted in the board losing its only two female members.<sup>551</sup> The change of chairman led to internal problems, as much of the secretariat staff was hired directly by the former chairman and remained loyal to him. However, as the GNC election was to be held two months after the dismissal of the chairman, it was not possible to replace the staff in a timely manner, which resulted in a lack of perceived loyalty to the new chairman before and during the election. Afterwards, the HNEC began to replace the employees that were seen as disloyal, which resulted in an institutional memory loss in the commission.<sup>552</sup> The HNEC has been able to

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<sup>547</sup> Law No. 3 2012, article 8.

<sup>548</sup> Law No. 44 2012 amending Law No. 3 2012.

<sup>549</sup> IFES, *Elections in Libya July 7 General National Congress Elections*, 2012.

<sup>550</sup> *Libya Herald*, "Election Commission Chairman Replaced", 25 April 2012.

<sup>551</sup> EU, 2012.

<sup>552</sup> Interview with Niklas Kabel Pedersen, 2014.

subsequently maintain the majority of its commissioners and its most vital staff, which is a major reason why the institution has been able to perform well in recent elections.<sup>553</sup>

The commission is supported by a secretariat. The required skills and qualifications of the staff as well as the representation of different groups in the HNEC are also specified in law no. 3 2012. The actual budget of the HNEC has not been made public, but the financial resources of the commission are perceived to be sufficient,<sup>554</sup> primarily due to the fact that members of the NTC worked intensely on ensuring that the HNEC had adequate financial resources when it was established.<sup>555</sup> In accordance with the law, the HNEC suggests its budget, which is subsequently approved by the GNC.<sup>556</sup> Nevertheless, the HNEC has experienced challenges in terms of recruiting staff with the required skills, as the well-educated often apply for employment in the private sector.<sup>557</sup> Prior to the 2012 elections, there were 102 HNEC staff members, including 76 men and 26 women at the headquarters, as well as more than 600 staff members in the 13 sub-administration offices. During the election an additional 38,000 temporary staff members were hired to assist during the actual election process across 6,629 polling stations.<sup>558</sup> While the budget was perceived as sufficient to carry out the election, bureaucratic problems resulted in the HNEC not having the necessary liquidity. Being the first election after the revolution, many citizens were eager to participate and it was rather easy for the HNEC to recruit the required staff. Subsequently, it has proved challenging for the Commission to retain employees on a more permanent basis.<sup>559</sup> According to the United Nations Development Programme Libya Electoral Assistance Project (UNDP LEAP), the HNEC is missing a systematised archive and institutional memory which appears to have resulted in confusion and miscommunication within the commission. It is noted that within certain departments of the HNEC, assignments are mostly given verbally to staff and no record is available once the task has been assigned, which limits the ability of new appointees of advisors to provide comprehensive assistance in particular areas.<sup>560</sup>

The 2012 GNC elections was financially supported by the UNDP which spent LYD 10,600,495 (US\$8,390,000) on strengthening the capacities of the HNEC, as well as LYD 14,490,807 (US\$11,469,075) on other activities related to the elections, such as civic voter education.<sup>561</sup> Additionally Australia, Denmark, Japan, Holland, Spain, Switzerland, Sweden and the UK also provided financial support to strengthen the HNEC's operational capacities in areas like voter registration, ballot boxes and papers, ink, and stationery kits.<sup>562</sup>

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<sup>553</sup> Interview with Medhat Ghdamsy, 2014.

<sup>554</sup> Interview with Niklas Kabel Pedersen, 2014.

<sup>555</sup> Interview with Medhat Ghdamsy, 2014.

<sup>556</sup> Law No. 3 2012, article 17 & 18.

<sup>557</sup> Interview with Niklas Kabel Pedersen, 2014.

<sup>558</sup> IFES, 2012.

<sup>559</sup> Interview with Niklas Kabel Pedersen, 2014.

<sup>560</sup> UNDP, *Libya Electoral Assistance Project (LEAP) - Third Quarterly Project Progress Report 2012*, 2012.

<sup>561</sup> UNDP, 2012.

<sup>562</sup> UNDP, 2012.

# CAPACITY: INDEPENDENCE

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## LAW

To what extent is the electoral management body independent by law?

Score: 50 / 100

The HNEC is not enshrined in the 2011 interim constitution, as the commission was not established until 2012. Nevertheless, the legal provisions regarding the independence of the HNEC are quite strong. The independence of the HNEC is protected by article 2 of law no. 3 2012, which declares the HNEC to be an independent body and legal entity with financial independence.<sup>563</sup> Article 21 further allows the commission to do whatever it deems necessary in the performance of its duties.<sup>564</sup> This is confirmed by law no. 8 2013 which declares that: “The Commission shall exercise all the tasks, competences and authorities stipulated in this law with utmost independence and impartiality. The decisions delivered by the Commission shall be made public and no one shall interfere in its functions and competences or limit its powers.”<sup>565</sup> The law further stipulates that the HNEC is the only institution responsible for implementing the electoral process, including the announcement of election results.<sup>566</sup>

Despite the fact that the legal framework provides an acceptable basis for the administration and completion of elections, it falls short in some areas in relation to the completion of democratic elections. These areas include the lack of equal suffrage due to large differences in population size across electoral districts, limitations regarding candidacy rights, as well as the voters’ right to appeal.<sup>567</sup>

Also, a rather vague provision regarding the criteria by which the full-time members of the commission are chosen by the GNC could potentially have some effect on its independence. Current legislation only mentions rather broad criteria that members are required to meet before being appointed by the GNC. Law no. 8 2013 declares that the GNC must deliver a decision regarding the appointment of the chairman of the commission and its six additional members, provided that they are highly regarded and characterised by impartiality, non-affiliation with political organisations and that they meet the criteria outlined in regulation no. 26 2012 on the establishment of the High Commission for the Implementation of the Integrity and Patriotism Standard.<sup>568</sup> The latter is a public entity responsible for examining a wide range of individuals who seek public employment and determine whether they have ties to the previous regime or are involved in criminal activities. Thus, the current legal framework does not outline specific professional criteria that the chairman must meet and potential members are only required to come from a particular profession or background. It has also been argued that, on a global scale, the current legal framework is somewhat vague in terms of ensuring that the HNEC works in a neutral manner.<sup>569</sup> The law also fails to specify the period which board members are intended to serve and the procedure for the dismissal of members and the chairman, which has resulted in a de facto high level of influence of

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<sup>563</sup> Law no. 3 2012, article 2.

<sup>564</sup> Law no. 3 2012, article 21.

<sup>565</sup> Law no. 8 2013, article 2.

<sup>566</sup> Law no. 8 2013, article 3.

<sup>567</sup> The Carter Center, *The 2014 Constitution-Drafting Assembly Elections in Libya*, 2014.

<sup>568</sup> Regulation no. 26, 2012.

<sup>569</sup> Democracy Reporting International/Sadeq Institute, *Constituent Assembly Elections in Libya - Assessment of the Legal Framework*, 2013.



the chairman.<sup>570</sup> According to article 10 of law no. 8 2013, a board member's employment can be terminated for one of the following four reasons: resignation of the member, mental disability based on a medical examination, death or a judicial verdict that declares the member guilty of a crime related to moral turpitude.<sup>571</sup>

Democracy Reporting International has questioned whether the legal framework of the HNEC is sufficient in its present form with respect to preparation for and monitoring of future CDA elections.<sup>572</sup> Democracy Reporting International claims that areas like the electoral system are left with significant gaps and that if the current legal framework is not amended, the HNEC will have to adopt regulations in order to fill these gaps.<sup>573</sup>

## PRACTICE

To what extent does the electoral management body function independently in practice?

Score: 75 / 100

In practice, the HNEC has experienced a high degree of independence and has for instance not experienced undue interference from militias.<sup>574</sup> In relation to the 2012 GNC election, there seems to be agreement among external observers that the public showed a high degree of confidence in the performance of the HNEC.<sup>575</sup> However, the cause of this positive attitude appears unclear. According to the EU Election Assessment Team it was due to the performance of the HNEC, which, according to them, demonstrated transparency, professionalism and dedication in terms of completing the election at the different stages of the process.<sup>576</sup> UNDP LEAP argues that the positive attitude mainly spurred from the fact that this was Libya's "honeymoon election", benefitting from both the solidarity of Libyans in the aftermath of the revolution and from the lack of time for political communities to unite and take aim at one another.<sup>577</sup>

In February 2014, Libya held elections for the CDA, which was plagued by political tensions, security challenges in several regions and boycotts to the extent that only 47 out of the 60 members were elected.<sup>578</sup> The HNEC was further challenged by the fact that the GNC only announced the election on 30 January 2014, leaving less than three weeks for the commission to complete the final arrangements. The HNEC was however able to complete the required technical preparations within the necessary timeframe and in an impartial manner.<sup>579</sup> Nevertheless, following the election the head of HNEC, Nuri Elabbar, along with two other senior officials in the commission, chose to resign.<sup>580</sup> While Elabbar refused to give an explanation for his resignation, according to an HNEC official, Elabbar was frustrated with the lack of security provided by the authorities during the CDA elections. The HNEC had reportedly made several requests for additional security measures during the preparation for the elections, but the authorities had failed to meet these requests. Following

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<sup>570</sup> Interview with Niklas Kabel Pedersen, 2014.

<sup>571</sup> Law no. 8 2013, article 10.

<sup>572</sup> Democracy Reporting International is a non-partisan, independent, not-for-profit organisation registered in Berlin.

<sup>573</sup> Democracy Reporting International/Sadeq Institute, 2013.

<sup>574</sup> Interview with Niklas Kabel Pedersen, 2014.

<sup>575</sup> UNDP, 2012.

<sup>576</sup> EU, 2012.

<sup>577</sup> UNDP, 2012.

<sup>578</sup> James Adel, "HNEC head Nuri Elabbar resigns", *Libya Herald*, 2 March 2014 (2014d).

<sup>579</sup> The Carter Center, 2014.

<sup>580</sup> Adel, 2014d.

Elabbar's resignation, the GNC appointed his deputy, Emad Al-Shadi Al-Saih, as the commission's new chairman.<sup>581</sup>

# GOVERNANCE: TRANSPARENCY

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## LAW

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the electoral monitoring body?

Score: 50 / 100

In order to increase transparency of the HNEC's work, the commission is required by law to publish all electoral decisions and regulations in the media as well as on its website, to hold meetings and consultations with all relevant electoral stakeholders, and to conduct seminars and workshops which contribute to the dissemination of the culture of elections.<sup>582</sup>

Law no. 4 2012, regarding the election of the GNC, also requires the commission to prepare, announce and publish the final election results in one of the official media outlets within a period of no more than 10 days from the announcement of the preliminary result.<sup>583</sup>

It is, however, unclear in the legal framework how often the HNEC is required to report its decisions and activities to the relevant authorities and the public and it is uncertain how discrepancies within HNEC are handled. Moreover, there are no provisions in place that require the HNEC to hold open meetings, to publish minutes of its meetings or to conduct public consultations.<sup>584</sup>

## PRACTICE

To what extent are reports and decisions of the electoral management body made public in practice?

Score: 50 / 100

The HNEC set up a Media Centre prior to the 2012 GNC election in order to inform the public of its decisions, as well as other relevant information. The Media Centre, which was open from 3 to 15 July 2012, was designed to be the focal point of communication between the HNEC, journalists and the public regarding the election. However, the centre was not accessible for the general public but only for accredited media.<sup>585</sup>

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<sup>581</sup> Muttaz Ali, "Congress Appoints New Head of HNEC", *Libya Herald*, 15 April 2014.

<sup>582</sup> Law no. 8 2013, article 20.

<sup>583</sup> Law no. 4 2012 – On the Election of the GNC, article 33.

<sup>584</sup> Democracy Reporting International/Sadeq Institute, 2013.

<sup>585</sup> IFES, 2012.

The public is able to access information on the HNEC website, which provides general information with respect to the work and activities of the HNEC.<sup>586</sup> Even though HNEC meetings are closed, all decisions are published and the commission reportedly welcomes and responds to inquires from the general public.<sup>587</sup> Nonetheless, the transparency of the HNEC could be further improved by issuing and publishing regulations in a timely manner and by making the minutes of the sessions of its board accessible to the public.<sup>588</sup>

Furthermore, there has been criticism raised by CSOs regarding the lack of transparency in the appointment of the board members, as well as the alleged slow appointment of replacements by both the NTC and the GNC. Various CSOs have additionally expressed frustration in relation to the 2012 GNC elections, in which they were reportedly unable to participate in the election preparations, as they were side-lined by political organisations. As a result, they have accused both the HNEC and the NTC of a lack of transparency in their decision-making.<sup>589</sup>

## GOVERNANCE: ACCOUNTABILITY

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### LAW

To what extent are there provisions in place to ensure that the electoral monitoring body has to report and be answerable for its actions?

Score: 50 / 100

While the legal framework regarding the HNEC covers several basic provisions, it is rather vague in terms of the commission's relationship with external stakeholders, such as the Anti-Corruption Commission. Law no. 8 2013 only mentions external stakeholders as a whole and for instance does not specify which institution is responsible for conducting reviews of decisions made by the HNEC. Nonetheless, article 18 requires the commission to submit its financial accounting on a yearly basis to the National Audit Chamber, which is responsible for auditing and verifying that the accounting is in accordance with the law.<sup>590</sup>

Following the 2012 GNC elections, the HNEC adopted regulation no. 91 2012 as a result of the fact that legal provisions regarding the submission of complaints to the HNEC, challenging its decisions, actions or omissions, were absent.<sup>591</sup> The regulation was subsequently updated by regulation 93 2012 which outlines the process for submitting complaints, how the HNEC is required to handle complaints and the possible sanctions that may result from violations.<sup>592</sup> An HNEC committee was established in each of the district offices; it is composed of three members that are tasked with reviewing complaints and reaching a decision.<sup>593</sup> Complaints must be submitted in writing to a HNEC sub-administration office within 48 hours of the violation or the HNEC decision that is

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<sup>586</sup> [www.hnec.ly](http://www.hnec.ly) [accessed 27 May 2014].

<sup>587</sup> Interview with Niklas Kabel Pedersen, 2014.

<sup>588</sup> The Carter Center, 2014.

<sup>589</sup> EU, 2012.

<sup>590</sup> Law no. 8 2013, article 18.

<sup>591</sup> EU, 2012.

<sup>592</sup> HNEC Regulation No. 93 2012.

<sup>593</sup> IFES, 2012.

challenged. The HNEC may reject any complaint that does not comply with the HNEC Regulation on Election Complaints, Disputes and Adjudications. The HNEC is obliged to process the complaint within three days.<sup>594</sup> A ruling by the HNEC regarding an administrative complaint can be appealed in a local court. The ruling of a local court can subsequently be appealed in a primary court, the decision of which is final.<sup>595</sup>

## PRACTICE

To what extent does the electoral monitoring body have to report and be answerable for its actions in practice?

Score: 50 / 100

Internal reporting and communication are allegedly the biggest challenges of the HNEC. HNEC decisions are generally published but often not in a timely manner.<sup>596</sup> HNEC rulings can be appealed in a district court, but the extent to which the verdicts are consistent across different regions due to the courts being rather decentralised is unclear.<sup>597</sup>

After the 2012 GNC elections, the HNEC received approximately 90 complaints, the majority of which were minor in nature. The complaints were filed by voters, national observers, political parties and individual candidates.<sup>598</sup> Some complaints were rejected as they were filed after the deadline, while others were archived due to a lack of substantial evidence at the time. Five complaints were submitted by voters who had not been allowed to cast their ballot even though they were in possession of the required identification. Only a small number of serious allegations were referred to the public prosecutor. These included campaign advertisement within polling centres, breaches of campaign silence on TV, armed assaults, and destruction or theft of election material. In total 37 complaints challenged the preliminary results; all were rejected for either being filed after the legal deadline or for not being related to the election result. When handling the various complaints, the commission did not meet the legal time limit in all cases and a number of complaints had not been settled by the HNEC or referred to another public entity 10 days after the polling.<sup>599</sup>

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<sup>594</sup> Interview with Niklas Kabel Pedersen, 2014.

<sup>595</sup> IFES, *Elections in Libya – June 25 Council of Representatives Elections*, 2014 (2014a).

<sup>596</sup> Interview with Niklas Kabel Pedersen, 2014.

<sup>597</sup> Interview with Niklas Kabel Pedersen, 2014.

<sup>598</sup> EU, 2012.

<sup>599</sup> EU, 2012.

# GOVERNANCE: INTEGRITY

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## LAW

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

Score: 100 / 100

The HNEC has adopted a code of conduct that all agents and observers affiliated with the HNEC are required to follow. The code, which is based on internationally recognised standards and best practices, contains 11 responsibilities. It obliges agents and observers to adhere to all regulations and decisions issued by HNEC, to behave in a neutral and non-political manner, to report any violations that could potentially undermine the electoral process and to abstain from any electoral campaigning.<sup>600</sup> Media representatives that wish to report from an election are also required to sign the code of conduct. The HNEC reserves the right to revoke the accreditation of an observer who violates the code,<sup>601</sup> and the HNEC can furthermore impose sanctions against any staff who violate any provision of the code.<sup>602</sup>

Article 5 of law no. 8 2013 ensures political non-partisanship by prohibiting any member of the commission from running in an election, from being affiliated with any political entity and from supporting any political campaign.<sup>603</sup> Article 6 outlines an oath that members are required to swear before the GNC, which reads as follows: "I swear by the Almighty God to adhere to the provisions of the Interim Constitutional Declaration and the law, perform my duties faithfully, honestly, sincerely, impartially and without fear from or favour to any person and live up to the principles of independence and transparency in the course of my work and God is my witness."<sup>604</sup>

## PRACTICE

To what extent is the integrity of the electoral management body ensured in practice?

Score: 100 / 100

In practice HNEC staff members sign the code of conduct,<sup>605</sup> which is reportedly followed in practice.<sup>606</sup> During the 2012 GNC elections, the HNEC staff contributed to transparency, integrity and credibility of the process by their presence in the polling centres, as assessed by the EU Election Assessment Team.<sup>607</sup> The various sub-administration offices were sufficiently staffed to execute the different stages of the process, even in electoral districts in the south, which proved

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<sup>600</sup> <http://h nec.ly/assets/uploads/2014/02/CoC.pdf> [accessed 8 July 2014].

<sup>601</sup> IFES, 2012

<sup>602</sup> EU Election Assessment Team, 2012

<sup>603</sup> Law no. 8 2013, article 5.

<sup>604</sup> Law no. 8 2013, article 5.

<sup>605</sup> EU, 2012.

<sup>606</sup> Interview with Niklas Kabel Pedersen, 2014.

<sup>607</sup> EU, 2012.

challenging due to large territorial areas, difficult terrain, as well as a small and dispersed population. Additionally, in relation to the CDA election in February 2014, HNEC staff was able, despite political tensions and security challenges, to complete technical preparations within the necessary timeframe and to do so in an impartial manner.<sup>608</sup>

## ROLE: CAMPAIGN REGULATION

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*Does the electoral management body effectively regulate candidate and political party finance?*

Score: 50 / 100

There are strong provisions in place in terms of transparency in party funding. Article 17 of the 2013 Electoral Law regarding the CDA electoral process requires candidates to make public the sources of funding of their campaign and enables the HNEC to determine a spending limit for political parties.<sup>609</sup> HNEC regulation no. 85 2012 sets the spending limit for campaign activities of individual candidates as well as political parties based on the population of the electoral district in which they campaign. The spending limits range from LYD 90,000 to 400,000 (US\$71,751-318,892) for parties and from LYD 25,000 to 150,000 (US\$19,931-119,580) for individual candidates. Article 25 of HNEC regulation no. 85 2012 declares that within 15 days of the final election results, a detailed expenditure statement, including sources of funding and total revenue during and outside the campaign must be submitted by both individual candidates and parties to the HNEC.<sup>610</sup> This prerequisite is to a large extent in accordance with international standards and good practices.<sup>611</sup> Candidates are further required to deposit all campaign-related donations in a bank account and on a regular basis inform the HNEC on the usage of these donations to the HNEC. Public funds may not be used for electoral campaigns. Violation of these provisions may lead to imprisonment of up to one month or a fine not exceeding LYD 300 (US\$239).<sup>612</sup> Furthermore, article 16 of the Electoral Law regarding the CDA election makes it illegal for a campaign to use foreign or “suspicious” funds; however, the article does not provide a specific definition of this wording.

Nevertheless, due to a lack of internal capacity, it proved rather difficult for the HNEC to monitor and analyse the finances of the candidates in the 2012 GNC election and violations were mostly detected via complaints. Thus, the commission lacks the ability to enforce these provisions effectively.<sup>613</sup> Additionally, in the pre-election period leading up to the 2013 CDA elections, the security situation deeply affected the media and thus candidates’ ability to campaign on air, which in turn made airtime and print space very important in order to reach voters. However, neither the legislation law nor any HNEC regulation explained specifically how free airtime and print space were to be allocated to candidates, and as a result they were unevenly distributed between candidates. Furthermore, even though the HNEC made efforts prior to the 2013 CDA elections to inform candidates of their obligations to submit a report on their campaign activities and expenditures, several candidates who violated these requirements have yet to be sanctioned.<sup>614</sup>

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<sup>608</sup> The Carter Center, 2014.

<sup>609</sup> The Electoral Law – law no. 17, 2013.

<sup>610</sup> HNEC Regulation no. 85, 2012, article 25.

<sup>611</sup> Democracy Reporting International/Sadeq Institute, 2013.

<sup>612</sup> AFA/FRIDE/HIVOS, *Civil Society and Foreign Donors in Libya*, 2013.

<sup>613</sup> Advisory Group, First Meeting, 2014.

<sup>614</sup> The Carter Center, 2014.

# ROLE: ELECTION ADMINISTRATION

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Does the electoral monitoring body ensure the integrity of the electoral process?

Score: 50 / 100

Law no. 26 2012 requires that the HNEC, prior to publishing an official election list, has the approval of the High Commission on the Application of Standards of Integrity and Patriotism regarding all candidates' eligibility based on past involvement in the Gaddafi regime.<sup>615</sup> As stipulated in the 2013 Electoral Law, the HNEC is subsequently responsible for investigating and potentially excluding candidates that do not abide by the current campaigning rules, such as making sources of funding public or not campaigning inside a mosque.<sup>616</sup> However, there is no specific description of what burden of proof the HNEC needs to provide in order to exclude a candidate and there are no provisions in place for challenging or appealing a decision regarding exclusion.<sup>617</sup>

In the 2012 GNC elections, the HNEC did not play a big enough role in terms of voter information and education, as these processes were initiated too close to the election day. In the CDA election completed in February 2014, the HNEC managed to play a slightly larger role in this regard.<sup>618</sup> This election required for the first time in Libyan history that voters who wanted to register needed to have a National Identification Number. To accommodate this, the HNEC used SMS technology that enabled voters to send an SMS containing their personal National Identification Number and preferred polling centre. The HNEC subsequently checked the number with the civil registry, and if the information was confirmed, the voter was added to the polling centre and received an SMS that confirmed that his/her request had been met. When the first SMS registration period closed at the end of December 2013, a total of 1,001,910 voters had registered using this approach.<sup>619</sup> Furthermore, after the election, the HNEC was commended for focusing on as well as addressing the needs of internally displaced people, voters with disabilities and oil-field workers.<sup>620</sup> Prior to the GNC election on 25 June 2014, national and international observers could apply for accreditation between 1 and 22 June at the HNEC offices in Libya, as well as in one of the 13 countries in which absentee voting was performed.<sup>621</sup> By 17 June 2014, 3,027 national and international observers, of which nearly 11 per cent were women, had been accredited to monitor the election.<sup>622</sup>

According to UNDP LEAP, the HNEC faces several challenges in terms of protecting the integrity of the electoral process. These challenges include limited capacities at the HNEC headquarters and in the field, fragile internal procedures, a lack of public awareness, limited formal coordination mechanisms between the main actors, Libya's general security environment and a legal framework that changes too quickly. According to UNDP LEAP, contiguous improvements in these areas are required to ensure credible elections in the future. For instance, voter registration is expected to become technically more complex and the HNEC, along with other authorities, should expect increasing scrutiny from more savvy voters, CSOs, political parties and candidates.<sup>623</sup>

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<sup>615</sup> POMED, *POMED Backgrounder: Previewing Libya's Elections*, 2012.

<sup>616</sup> Democracy Reporting International/Sadeq Institute, 2013.

<sup>617</sup> Democracy Reporting International/Sadeq Institute, 2013.

<sup>618</sup> Interview with Niklas Kabel Pedersen, 2014.

<sup>619</sup> IFES, *Elections in Libya: The Constituent Assembly for the Drafting of the Constitution*, 2014 (2014b).

<sup>620</sup> The Carter Center, 2014.

<sup>621</sup> <http://h nec.ly/?p=4895> [accessed 8 July 2014].

<sup>622</sup> <http://h nec.ly/?p=5155> [accessed 8 July 2014].

<sup>623</sup> UNDP, 2012.

**SUPREME AUDIT INSTITUTION**

**38 / 100**



# SUMMARY

The Audit Bureau was established as an independent entity in 2011. The Audit Bureau has so far completed detailed audits of financial managements in public institutions as well as assessed their performance. The bureau has been able to provide a high degree of openness of their activities as it makes a variety of information publicly available, as well as inviting the public to make recommendations.

On the other hand, the independence of the Audit Bureau is challenged by several factors including attacks by armed groups and government interference.

The table below presents the indicator scores that summarise the assessment of the supreme audit institution in terms of its capacity, its internal governance and its role within the Libyan integrity system. The remainder of this section presents the qualitative assessment for each indicator.

| OVERALL PILLAR SCORE: 38 / 100 |  |     |          |
|--------------------------------|--|-----|----------|
| Category                       | Index                                  | Law | Practice |
| <i>Capacity</i><br>42 / 100    | Resources                              | -   | 25       |
|                                | Independence                           | 50  | 50       |
| <i>Governance</i><br>38 / 100  | Transparency                           | 50  | 50       |
|                                | Accountability                         | 25  | 25       |
|                                | Integrity                              | 50  | 25       |
| <i>Role</i><br>33 / 100        | Effective financial audit              | 50  |          |
|                                | Detecting and sanctioning misbehaviour | 25  |          |
|                                | Improving financial management         | 25  |          |

# STRUCTURE & ORGANISATION

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The Audit Bureau was established as an independent entity in 2011 by decision no. 119 2011 passed by the NTC.<sup>624</sup> The GNC adopted law no. 19 2013 and law no. 24 2013 which reorganised the bureau and gave it the authority to complete post-auditing rather than only pre-payment approvals.<sup>625</sup> The Audit Bureau constitutes the supreme audit institution in post-revolution Libya and its main objective is to support financial transparency in order to improve financial management regarding public expenditure. The Audit Bureau furthermore assesses the performance of public agencies, such as the GNC, as well as the executive.<sup>626</sup> In addition to the Audit Bureau, the GNC established the ACA in 2012, which is intended to provide support for the Audit Bureau. The ACA is granted the right to investigate suspected cases of administrative and financial misconduct.<sup>627</sup>

The following analysis primarily focuses on the Audit Bureau and only to a limited extent on the ACA.

## CAPACITY: RESOURCES

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### PRACTICE

To what extent does the audit institution have adequate resources to achieve its goals in practice?

Score: 25 / 100

Since it was established in 2012, politicians have emphasised the need to increase the resources of the Audit Bureau on a regular basis, which indicates that the bureau lacks the adequate resources to effectively carry out its duties.<sup>628</sup> In 2013 the financial funds of the Audit Bureau were increased as the government implemented a plan to combat corruption, which, besides the Audit Bureau, also focused on the role of the intelligence service in fighting corruption. The former Prime Minister Ali Zeidan announced that the bureau was to be provided with all necessary personnel and resources for it to perform its functions, such as reviewing the activities and financial spending of public entities.<sup>629</sup> It is however still contended that the budget is insufficient to carry out the mandate effectively.<sup>630</sup> Furthermore, the human resources of the bureau are for the most part insufficient as employees to a large extent lack the necessary skills to perform their duties effectively.<sup>631</sup> In

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<sup>624</sup> National Transitional Council decision no. 119 2011.

<sup>625</sup> Law no. 19 2013; law no. 24 2013.

<sup>626</sup> Zaptia, 2014a.

<sup>627</sup> Ahmed Elumami, "New ACA Head Appointed", Libya Herald, 5 September, 2013 (2013a).

<sup>628</sup> Advisory Group, First Meeting, 2014.

<sup>629</sup> *The Tripoli Post*, 2013.

<sup>630</sup> Interview with Aladdin Elmessallati, Deputy President and Yousef Kalefa, Director of Planning and Management at the National Audit Bureau, with Alexander Kjærøum, Copenhagen, 27 October 2014.

<sup>631</sup> Interview with Medhat Ghdamsy, 2014.

addition, the lack of financial resources means the bureau is unable to conduct thorough training to upgrade the skills of employees. Some minor programmes have been implemented with a focus on English language skills, computer science and audit programmes, and they have also received external capacity building from, among others, the World Bank.<sup>632</sup>

The Audit Bureau published a five-year plan in July 2014 in which it states that it intends to build its institutional capabilities by offering training to staff and by developing links with international auditing organisations, such as the International Organisation of Supreme Audit Institutions and the Arab Organisation of Supreme Audit Institutions.<sup>633</sup> To that end, the US–Libya Business Association has recommended that the Audit Bureau develop closer ties with international organisations such as the Organisation for Economic Cooperation and Development, the European Bank for Reconstruction and Development and the World Bank. It furthermore recommends that the Audit Bureau participate in the International Auditor Fellowship Program run by the United States Government Accountability Office, and that it seek consultation from international accounting firms in order to develop sufficient operating models and organisational structures.<sup>634</sup>

## CAPACITY: INDEPENDENCE

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### LAW

To what extent is there formal operational independence of the audit institution?

Score: 50 / 100

The Libyan supreme audit institution is not established in the interim constitution but solely in subsequent laws. Decision no. 119 2011, passed by the NTC, separated the Audit Bureau from the Surveillance Office with which it had previously been integrated.<sup>635</sup> The bureau falls under the purview of the legislature,<sup>636</sup> which appoints its director, currently Khalid Shakshak.<sup>637</sup> The legal provisions generally provide for the independence of the Audit Bureau from external interference such as the executive.<sup>638</sup> In February 2013, former Prime Minister Ali Zeidan expressed that while the existing rules and regulations concerning the Audit Bureau might be acceptable in ordinary times, they were too restrictive during the transition phase, indicating that the powers and prerogatives of the bureau are rather extensive.<sup>639</sup> The director of the bureau is granted immunity due to legal provisions from the Gaddafi era that remain in effect today.<sup>640</sup>

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<sup>632</sup> Interview with Aladdin Elmessallati, 2014.

<sup>633</sup> [www.facebook.com/permalink.php?story\\_fbid=673694459372737&id=378224298919756](http://www.facebook.com/permalink.php?story_fbid=673694459372737&id=378224298919756) [accessed 10 September 2014].

<sup>634</sup> [www.us-lba.org/sites/default/files/pdf/Audit%20Bureau%20Strategic%20Plan%20Comments%20\(Website\)%20-%2007.14.14.pdf](http://www.us-lba.org/sites/default/files/pdf/Audit%20Bureau%20Strategic%20Plan%20Comments%20(Website)%20-%2007.14.14.pdf) [accessed 10 September 2014].

<sup>635</sup> Bokra Youth Organization/H2O Team, *Eye on the General National Congress – Eighteenth Report*, 2013.

<sup>636</sup> Sami Zaptia, “Audit Bureau Reform Subject to GNC Quorum – Zeidan”, *Libya Herald*, 29 August 2013 (2013a).

<sup>637</sup> Bokra Youth Organization/H2O Team, *Eye on the General National Congress – Third Report*, 2013.

<sup>638</sup> WASD, *Independence of Libyan Accounting Bureau in the Light of Lima and Mexico Declarations*, 2012.

<sup>639</sup> Zaptia, 2013a.

<sup>640</sup> EMHRN, *Reform of Judiciaries in the Wake of the Arab Spring*, 2012.

## PRACTICE

To what extent is the audit institution free from external interference in the performance of its work in practice?

Score: 50 / 100

The first and so far only appointment of the top management in the bureau was not based solely on professional criteria but mainly on political interests in the GNC. Nevertheless, the Audit Bureau has to a large extent been able to operate in a nonpartisan manner and has been largely independent from the judiciary and law enforcement agencies; however, political influencing still occurs to some extent, especially from the parliament.<sup>641</sup> Furthermore, the bureau has faced the criticism of being politicised and selective in their investigations. The Audit Bureau's 2013 report, published in March 2014, nonetheless criticises several public institutions for poor spending of public funds, poor management and lack of transparency. The majority of earlier reports released by the Audit Bureau have mainly been cosmetic in the sense that they primarily have stated that the budget has been exceeded but did not address why there was overspending or who in particular violated the budget. This is, however, not perceived as a reflection of lacking independence from government control, as the bureau has had a positive dialogue with the government, but is to a large extent due to the lack of knowledge and qualifications among the employees in the bureau.<sup>642</sup> The decisions of the Audit Bureau are, however, rarely enforced because there is only limited rule of law due to the fact that the judiciary and law enforcement agencies are not working sufficiently.<sup>643</sup>

Members of the Audit Bureau have on several occasions been subject to attacks from unknown armed groups. For instance, a series of attacks and assaults occurred against employees of the Audit Bureau based in Benghazi in late 2012.<sup>644</sup> The independence and ability to operate is furthermore hampered by the insecurity, which has an impact on the bureau staff's ability to visit and conduct interviews with government agencies.<sup>645</sup>

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<sup>641</sup> Interview with Aladdin Elmessallati, 2014.

<sup>642</sup> Interview with Aladdin Elmessallati, 2014.

<sup>643</sup> Interview with Medhat Ghdamsy, 2014.

<sup>644</sup> [www.libyamonitor.com/news/economy/new-attack-audit-bureau](http://www.libyamonitor.com/news/economy/new-attack-audit-bureau) [accessed 25 July 2014].

<sup>645</sup> Interview with Aladdin Elmessallati, 2014.

# GOVERNANCE: TRANSPARENCY

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## LAW

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

Score: 50 / 100

It has not been possible to find any data on the existence of transparency provisions for the Audit Bureau apart from the general legislation covering the public sector, which ensures transparency to some degree.

Vacancies must be made public and article 132 of the Labour Relations Act 2010 outlines the rules with regard to the appointment of staff. In relation to a given employment, the rules dictate that priority is firstly given to the applicant with the highest grades. If grades are equal, the applicant with the highest educational level is prioritised, and thereafter the date of graduation and finally the age of the candidate, where priority is given to the older one.<sup>646</sup>

All employees in the public sector are required to disclose all personal assets before taking office and once again after a certain number of years. Moreover, employees can be requested at random to disclose updated information of their assets. However, disclosures are not required to be made public.<sup>647</sup>

## PRACTICE

To what extent is there transparency in the activities and decisions of the audit institution in practice?

Score: 50 / 100

The Audit Bureau has a website, which is frequently updated and reasonably up to date. The general public can easily seek out information on the bureau's activities and staff, as well as access all of its yearly reports from 2011 to 2013.<sup>648</sup> However, reports that are smaller in scale and completed during the fiscal year are not published on its website. The bureau additionally has a Facebook-page<sup>649</sup> and a Twitter account<sup>650</sup> where the public can make contact and inquire about the bureau's activities. The Audit Bureau also has a Google Plus site but it has not been updated since 2011. The statements made by the bureau include official statements and information on legislation,

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<sup>646</sup> Labour Relations Act 2010, article 132.

<sup>647</sup> See pillar report on the public sector for a more detailed description of the legal framework regarding transparency in the sector.

<sup>648</sup> [www.audit.gov.ly/](http://www.audit.gov.ly/) [accessed 10 September 2014].

<sup>649</sup> [www.facebook.com/permalink.php?story\\_fbid=673694459372737&id=378224298919756](https://www.facebook.com/permalink.php?story_fbid=673694459372737&id=378224298919756) [accessed 10 September 2014].

<sup>650</sup> <https://twitter.com/LibyaAb> [accessed 2 April 2014].

as well as general messages of greetings and encouragements. On 7 July 2014, the Audit Bureau published its five-year strategic plan from 2014 to 2019 on its Facebook-page and invited the public to comment on the plan and make suggestions.<sup>651</sup> The plan includes a description of its vision, mission and values, as well as a SWOT-analysis, which consists of the institution's strengths, weaknesses, opportunities and threats. The US–Libya Business Association, which represents the largest US investors and employers in Libya, has welcomed the publication of the five-year strategic plan and issued a press release which praised the Audit Bureau's commitment to transparency and openness.<sup>652</sup>

## GOVERNANCE: ACCOUNTABILITY

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### LAW

To what extent are there provisions in place to ensure that the supreme audit institution has to report and be answerable for its actions?

Score: 25 / 100

Public agencies are required to file a financial report to the relevant ministry once a year, which enables the executive to complete some level of financial oversight with the spending of public agencies. Subsequently, the ministries are obliged to submit the information to the GNC. There is additionally legislation that enables prosecution of public employees who are suspected of being involved in bribery, corruption and/or abuse of privileged information with the possible penalty of imprisonment.<sup>653</sup>

### PRACTICE

To what extent does the supreme audit institution have to report and be answerable for its actions in practice?

Score: 25 / 100

In practice, the Audit Bureau submit their financial reports to the ministries, which transfer them to a committee in parliament. The committee is then charged with following-up on reports. However, reporting seems to be limited to financial reports and the bureau does not seem to report on its work, activities and results.<sup>654</sup>

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<sup>651</sup> [www.facebook.com/permalink.php?story\\_fbid=673694459372737&id=378224298919756](http://www.facebook.com/permalink.php?story_fbid=673694459372737&id=378224298919756) [accessed 10 September 2014].

<sup>652</sup> [www.us-lba.org/sites/default/files/pdf/Audit%20Bureau%20Strategic%20Plan%20Comments%20\(Website\)%20-%207.14.14.pdf](http://www.us-lba.org/sites/default/files/pdf/Audit%20Bureau%20Strategic%20Plan%20Comments%20(Website)%20-%207.14.14.pdf) [accessed 10 September 2014].

<sup>653</sup> See pillar report on the public sector for a more detailed description of the legal framework regarding accountability in the sector.

<sup>654</sup> Interview with Aladdin Elmessallati, 2014.

# GOVERNANCE: INTEGRITY

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## LAW

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

Score: 50 / 100

The Audit Bureau has a code of conduct, which is called the internal regulations.<sup>655</sup> The code is parallel to the code for the public sector in general and outlines provisions in order to ensure the integrity of public servants; however, the rules are insufficient and leave room for interpretation. Law no. 12 2010 on labour relations dictates that civil servants are not allowed to accept gifts in any form for their work, that no employee may use his or her position whether directly or indirectly for his or her own benefit or that of others, or for any acts of favouritism or nepotism, and that no work tools or equipment can be used by the worker for his or her personal benefit.<sup>656</sup> Additional legislation also classifies bribery of or by a civil servant as a felony punishable by imprisonment. The Audit Bureau has an internal department to investigate violations against the code of conduct. Furthermore, the High Commission for the Implementation of the Integrity and Patriotism Standard is responsible for examining a wide range of individuals who apply for public employment and assess whether an applicant has ties to the former regime or is involved in criminal activities. It is unclear whether the vetting applies retroactively to civil servants who are employed in the public sector at present or if it only applies to applicants that seek employment. This uncertainty has led Human Rights Watch to characterise the criteria by which applicants are evaluated as too broad and vague. Additionally, they have criticised the lack of facts used in the process and declared that it allows for political manipulation.<sup>657</sup>

There are no rules regarding post-employment and no provisions in place that provide protection to whistleblowers.<sup>658</sup>

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<sup>655</sup> Interview with Aladdin Elmessallati, 2014.

<sup>656</sup> Law no. 12 2010, section 12.

<sup>657</sup> [www.hrw.org/news/2012/04/28/libya-amend-vetting-regulations-candidates-officials](http://www.hrw.org/news/2012/04/28/libya-amend-vetting-regulations-candidates-officials) [accessed 9 June 2014].

<sup>658</sup> See pillar report on the public sector for a more detailed description of the legal framework regarding integrity in the sector.

## PRACTICE

To what extent is the integrity of the audit institution ensured in practice?

Score: 25 / 100

In practice, the code of conduct is generally not followed or enforced strictly in the Audit Bureau. Instead, personal interactions among employees on a more ad hoc basis regulate the conduct of staff.<sup>659</sup> There has been one case of a member of Audit Bureau, who allegedly sought to have his son employed in a government agency he was auditing, who was suspended from work while investigations are ongoing. He was suspended from work, with investigations ongoing.<sup>660</sup>

## ROLE: EFFECTIVE FINANCIAL AUDIT

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To what extent does the audit institution provide effective audits of public expenditure?

Score: 50 / 100

The ability of the Audit Bureau to provide effective audits of public expenditure was increased significantly by article 24 of law no. 19 2013, which reoriented the bureau toward post-auditing.<sup>661</sup> The law further gives the Audit Bureau authority to control public procurement, construction contracts and other commitments of the government and its institutions. It tasks the bureau with verifying documents related to public contracts that exceed the amount of LYD 500,000 (US\$385,545).<sup>662</sup> Since 2011, the Audit Bureau has completed detailed yearly audits of public institutions, all of which are accessible on the bureau's website.<sup>663</sup> As mentioned before, the majority of the reports have been cosmic in nature due to a lack of proper skills among the staff. In its report from 2013, a 446-page report presented to the GNC in March 2014, the Audit Bureau nevertheless rebukes the Zeidan government, which it accuses of giving poor value for public funds. The report identified a deficit of LYD 10.8 billion (US\$8.3 billion) mainly because of an oil embargo.<sup>664</sup> Besides auditing the financial management and accounting within public agencies, the report also assesses the performance of the government, as well as public agencies. It accuses the GNC and the Zeidan government of poor governance, lack of transparency, poor management and poor implementation across a wide range of sectors. The 2013 report particularly reprimands the Ministry of Planning for failing to monitor a project and for lack of coordination, the tax department for failing to collect the required taxes, as well as the Central Bank and the Ministry of Finance. It furthermore rebukes the government as a whole for failing to enforce the National Identification Number, which was

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<sup>659</sup> Interview with Medhat Ghamsy, 2014.

<sup>660</sup> Interview with Aladdin Elmessallati, 2014.

<sup>661</sup> Law no. 19 2013, article 24.

<sup>662</sup> Law no. 19 2013.

<sup>663</sup> [www.audit.gov.ly/](http://www.audit.gov.ly/) [accessed 10 September 2014].

<sup>664</sup> Zaptia, 2014.



introduced in order to minimise duplications and to combat corruption.<sup>665</sup> While the Audit Bureau has conducted thorough auditing of, for example, the Zeidan government, it has faced criticism of being politicised and selective in their investigations.

## ROLE: DETECTING AND SANCTIONING MISBEHAVIOUR

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Does the audit institution detect and investigate misbehaviour of public officeholders?

Score: 25 / 100

The 2013 report released by the Audit Bureau also attempts to some degree to identify misbehaviour at a general level in addition to auditing public expenditure and assessing the performance of public agencies. It points out that the government ignored laws and procedures with respect to how the budget must be prepared and implemented, that LYD 16.6 billion (US\$13.4 billion) was spent without clear justification, and that the government failed to account for extraordinary expenditures of LYD 3 billion (US\$2.4 billion).<sup>666</sup> In the past, the bureau had a special court, but the bureau is no longer tasked with investigating and sanctioning misbehaviour. This power has been transferred to the ACA.<sup>667</sup>

The ACA, which was established in June 2012 by the GNC in order to support the Audit Bureau, is assigned with investigating suspected cases of administrative and financial misconduct in order to improve financial and administrative bureaucracy.<sup>668</sup> The ACA is led by Abdulsalam Mohamed Said Al-Hasi and reports directly to the GNC.<sup>669</sup> At present, it is not yet clear how exercisable its powers will be in practice without prior reference to the GNC.<sup>670</sup>

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<sup>665</sup> Zaptia, 2014.

<sup>666</sup> Zaptia, 2014.

<sup>667</sup> Interview with Aladdin Elmessallati, 2014.

<sup>668</sup> Elumami, 2013a.

<sup>669</sup> Frontier Horizons, *Country Report – Libya*, 2013.

<sup>670</sup> Ahmed Elumami, “GNC Agrees New Body to Shake up Bureaucracy”, *Libya Herald*, 24 June 2013 (2013b).

# ROLE: IMPROVING FINANCIAL MANAGEMENT

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To what extent is the supreme audit institution effective in improving the financial management of government?

Score: 25 / 100

It is among the main goals of the Audit Bureau to improve financial management. However, most reports have been cosmetic and the bureau has only made a few suggestions in terms of which improvements can be made in this regard. This is primarily due to the fact that the bureau lacks staff with the required qualifications to carry out this task.<sup>671</sup> Furthermore, while the bureau does attempt to follow up with the government and ministries on its recommendations, there is a lack of qualifications of financial staff in the government agencies, which hampers the effective implementation of the bureau's recommendations.<sup>672</sup>

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<sup>671</sup> Interview with Medhat Ghdamsy, 2014.

<sup>672</sup> Interview with Aladdin Elmessallati, 2014.

**ANTI-CORRUPTION AGENCY**  
**21 / 100**

# SUMMARY

The National Anti-Corruption Commission, which is the main ACA in post-revolution Libya, has its own individual budget and it is capable of making suggestions on the spending of the funds it receives.<sup>673</sup> However, the commission, which was established in March 2014, does not appear to operate in practice at the moment and it has so far proven to be extremely non-transparent. It is required to publish annual reports and statements, but it has neither published any information regarding its financial activities nor on any corruption investigations that it has conducted, which may be due to it not being fully operational yet. It additionally plays an insignificant role in terms of corruption prevention and education.<sup>674</sup>

In addition to the National Anti-Corruption Commission, there is an entity subsumed under the Ministry of Finance, which also works on anti-corruption. Similar to the commission, this entity is also very non-transparent; however, according to its head, this lack of published information is caused by the unstable security environment and the corresponding risk of retaliation in contemporary Libya.<sup>675</sup>

It should be noted that as part of the research it has been difficult to obtain the relevant laws and the primary sources for the legislation are therefore the interviewed persons and other secondary sources. The table below presents the indicator scores that summarise the assessment of the ACAs in terms of its capacity, its internal governance and its role within the Libyan integrity system. The remainder of this section presents the qualitative assessment for each indicator.

| OVERALL PILLAR SCORE: 21 / 100 |                |     |          |
|--------------------------------|----------------|-----|----------|
| Category                       | Index          | Law | Practice |
| <i>Capacity</i><br>50 / 100    | Resources      | 75  | 25       |
|                                | Independence   | 75  | 25       |
| <i>Governance</i><br>13 / 100  | Transparency   | 25  | 0        |
|                                | Accountability | 25  | 0        |
|                                | Integrity      | 25  | 0        |
| <i>Role</i><br>0 / 100         | Prevention     | 0   |          |
|                                | Education      | 0   |          |
|                                | Investigation  | 0   |          |

<sup>673</sup> Interview with Osama Mdalal, National Economic Board, with Sherif Jenan, Tripoli, 18 July 2014.

<sup>674</sup> Interview with Osama Mdalal, 2014.

<sup>675</sup> Borzou Daragahi, "Insider Takes on Fight against Corruption in Libya", *The Financial Times*, 22 December 2013 (2013a).

# STRUCTURE & ORGANISATION

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Libya signed the United Nations Convention against Corruption in 2003 and ratified it in 2005. One of the requirements of the convention is to establish a body responsible for preventing corruption, initiate corruption prevention reforms and increase knowledge of corruption prevention. The main ACA in post-revolution Libya is the National Anti-Corruption Commission, which was established by the GNC in March 2014.<sup>676</sup> It is responsible for monitoring public funds and irregularities in the government's performance, as well as other public institutions.<sup>677</sup> The commission is based in Sebha, in southern Libya, and its board includes a president, a vice-president and five additional members. The commission was established in order to control rising levels of corruption and financial misuse in the public sector.<sup>678</sup> The commission is not the first of its kind in Libya, and during the former regime, agencies for supporting financial transparency and limit corruption, such as the Board of the General People's control, did exist. However, their impact on the fight against corruption was limited.<sup>679</sup>

Additionally, there is an entity subsumed under the authority of the Ministry of Finance, which is also engaged in anti-corruption measures. It is currently headed by Tariq al Walid, a lawyer who served as an adviser to both the Gaddafi regime and the transitional government.<sup>680</sup> This entity has no formal connections with the National Anti-Corruption Commission.

It is furthermore relevant to note that, since the revolution, changing governments have established various committees focusing on the recovery of assets stolen by the previous regime. These committees, however, have no formal relationship with the National Anti-Corruption Commission. The committees include the Recovery Committee and the Tracing and Assets Recovery Support Bureau. A common feature of the committees has been that their work is wrapped in secrecy and very little information is available regarding their activities. The following analysis will however not focus on these committees, but primarily on the National Anti-Corruption Commission and to some extent on the entity within the Ministry of Finance.

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<sup>676</sup> Bokra Youth Organization/H2O Team, *Eye on the General National Congress – Thirty First Report*, 2014.

<sup>677</sup> <http://archive.crossborderinformation.com/Article/Libyan+corruption+commission+to+investigate+oil+smuggling+allegations.aspx?date=20131011#> [accessed 15 April 2014].

<sup>678</sup> [www.ansamed.info/ansamed/en/news/sections/politics/2014/03/26/Libya-Constituent-Assembly-session-on-144-PM-term-extended\\_bd8d521a-1fe8-43ba-9500-83758584a879.html](http://www.ansamed.info/ansamed/en/news/sections/politics/2014/03/26/Libya-Constituent-Assembly-session-on-144-PM-term-extended_bd8d521a-1fe8-43ba-9500-83758584a879.html) [accessed 15 April 2014].

<sup>679</sup> [www.revenuewatch.org/countries/middle-east-and-north-africa/libya/transparency-snapshot](http://www.revenuewatch.org/countries/middle-east-and-north-africa/libya/transparency-snapshot) [accessed 15 April 2014].

<sup>680</sup> Daragahi, 2013a.

# CAPACITY: RESOURCES

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## LAW

To what extent are there provisions in place that provide the ACA with adequate resources to effectively carry out its duties?

Score: 75 / 100

The National Anti-Corruption Commission has its own budget and is able to propose its budget to the GNC prior to the adoption of the yearly national budget. The commission can acquire additional funding by confiscating assets during its investigations; it has, however, not yet practiced this.<sup>681</sup> The law does not guarantee budgetary stability over time and an objective indicator for determining budget changes does not exist.

The law that stipulates the process for appointing the president of the commission is vague and unclear, but nevertheless requires that the president and the highest officials have to be assigned based on clear professional criteria.<sup>682</sup>

The National Anti-Corruption Commission has its own budget, which it receives from the Ministry of Finance.<sup>683</sup>

## PRACTICE

To what extent does the ACA have adequate resources to achieve its goals in practice?

Score: 25 / 100

The exact budget of the commission is unknown but perceived to be fairly sufficient by a member of the National Economic Board, even though the commission itself claims to have inadequate resources at its disposal.<sup>684</sup> There are various requirements that potential staff members must meet, depending on the position for which they apply. These include past experience with anti-corruption and academic degrees in finance, administration, law, etc. The requirements for sitting on the board of the commission include past experience with anti-corruption and preferably a law degree. However, since there is a shortage of individuals in Libya with experience in combating corruption, these requirements have not been followed in practice. It currently employs between 300 and 400 staff,<sup>685</sup> but suffers from a lack of required skills.<sup>686</sup> The current, and first, president and vice-president were politically appointed by the GNC and not recruited through open competition.<sup>687</sup> As with public sector employment, the recruitment process for the staff for the commission generally does not follow clear procedures and is thus prone to the occurrence of recruitment based on

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<sup>681</sup> Interview with Osama Mdalal, 2014.

<sup>682</sup> Interview with Osama Mdalal, 2014.

<sup>683</sup> [www.globallegalpost.com/big-stories/lawyer-leads-anti-corruption-drive-in-libya-80178374/](http://www.globallegalpost.com/big-stories/lawyer-leads-anti-corruption-drive-in-libya-80178374/) [accessed 15 April 2014].

<sup>684</sup> Interview with Osama Mdalal, 2014.

<sup>685</sup> Daragahi, 2013a.

<sup>686</sup> Interview with Medhat Ghdamsy, 2014.

<sup>687</sup> Interview with Osama Mdalal, 2014.

personal ties. This has contributed to the fact that the commission to a large extent lacks the necessary human resources.<sup>688</sup>

Staff members are not required to complete a training course before taking up positions in the commission. Employees have only rarely been offered training and the external informant assesses the few training courses offered so far as being inadequate and of poor quality.<sup>689</sup>

The entity subsumed under the Ministry of Finance has an annual budget of LYD 24,889,308 (US\$20 million).<sup>690</sup>

## CAPACITY: INDEPENDENCE

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### LAW

To what extent is the ACA independent by law?

Score: 75 / 100

The founding legislation for the National Anti-Corruption Commission declares it to be completely independent.<sup>691</sup> The appointment of the president of the commission, along with that of the highest officials, is required by law to be based on clear professional criteria. The president initially serves one four-year term and has the possibility to seek re-election for one additional term. There is currently a draft law that is being debated in the GNC, which lowers the term of the president to three years.<sup>692</sup> Employees are protected by law from being removed without relevant justification. Moreover, staff employed in the commission enjoys immunity from prosecution with the possibility of having it lifted in certain cases.<sup>693</sup>

On the other hand, the entity led by al Walid is not independent, as it is subsumed under the Ministry of Finance.<sup>694</sup>

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<sup>688</sup> Interview with Ibrahim Ali, chairman of the Libyan Transparency Association, with Alexander Kjærørum, Copenhagen, 29 September 2014.

<sup>689</sup> Interview with Osama Mdalal, 2014.

<sup>690</sup> Daragahi, 2013a.

<sup>691</sup> Interview with Osama Mdalal, 2014.

<sup>692</sup> Interview with Osama Mdalal, 2014.

<sup>693</sup> Interview with Osama Mdalal, 2014.

<sup>694</sup> Daragahi, 2013a.

## PRACTICE

To what extent is the ACA independent in practice?

Score: 25 / 100

There have been accusations of interference with the work of the parliamentary committee, which is responsible for supervising the National Anti-Corruption Commission,<sup>695</sup> however, it is not possible to sufficiently assess the extent to which the commission operates on a politically impartial basis and how independent its investigative powers are due to the fact that it is more or less not operating at all. Most of the staff does however come to the commission's office, but there are no signs of any ongoing investigations, indicating limited activity by the staff.<sup>696</sup>

# GOVERNANCE: TRANSPARENCY

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## LAW

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACA?

Score: 25 / 100

The National Anti-Corruption Commission is required by law to submit an annual report, including an account of its financial activities to both the GNC and the Audit Bureau.<sup>697</sup>

However, as no freedom of information act exists, the public cannot access the information if the Audit Bureau or GNC does not independently publish it.

## PRACTICE

To what extent is there transparency in the activities and decision-making processes of the ACA in practice?

Score: 0 / 100

The commission has so far not been able to show any degree of transparency in its work. Even though it is obliged to file an annual report, it has not published any information with regard to any activities or investigations that it is conducting. As such, its actual doings remain largely unknown. The commission created a website upon its establishment, but it has yet to become operational.<sup>698</sup> The lack of publications and information from the commission is most likely caused by the fact that it is not operating in practice.

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<sup>695</sup> Interview with Osama Mdalal, 2014.

<sup>696</sup> Interview with Osama Mdalal, 2014.

<sup>697</sup> Interview with Osama Mdalal, 2014.

<sup>698</sup> Interview with Osama Mdalal, 2014.



The entity at the Ministry of Finance working on anti-corruption has also failed to publish any information on its work. This is allegedly not because it is not engaged in any investigations but because of the current security environment in which complaints and reprimands of various actors cannot be filed without fear of retaliation. Al Walid, who is the head of the entity, has declared in an article in the *Financial Times* that he does not dare to publish complaints or accusations on behalf of his department at the moment. Instead, he uses unconventional channels in order to get reprimands published. Allegedly, al Walid does this behind the scenes through other organisations, which he provides with information of corrupt practices for them to publish. This allows al Walid to have a less noticeable role.<sup>699</sup> It is, however, unknown what types of organisations assist him and his department in this regard, nor is the impact of these publications evident.

This perspective is supported by other experts, who also perceive the current security environment as an impediment to conducting activities regarding anti-corruption. Threats and the fear of violent retaliation reportedly stops employees in the National Anti-Corruption Commission from conducting investigative work and opening cases against individuals and organisations allegedly involved in corrupt activities.<sup>700</sup>

## GOVERNANCE: ACCOUNTABILITY

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### LAW

To what extent are there provisions in place to ensure that the ACA has to report and be answerable for its actions?

Score: 25 / 100

The legal framework governing the National Anti-Corruption Commission is vague in terms of which specific public entities can hold the commission accountable, but it indicates that it must answer to the GNC, in particular to the parliamentary committee that deals with the control of authorities and anti-corruption.<sup>701</sup> The commission is required to submit annual reports to the legislature and must account for their investigations; however, the reports do not have to be made public. The public is able to raise complaints against the actions of the National Anti-Corruption Commission with the Audit Bureau, which is responsible for handling these. Nevertheless, no citizen oversight committees have been established.<sup>702</sup>

### PRACTICE

To what extent does the ACA have to report and be answerable for its actions in practice?

Score: 0 / 100

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<sup>699</sup> Daragahi, 2013a.

<sup>700</sup> Interview with Ibrahim Ali, 2014.

<sup>701</sup> Interview with Osama Mdalal, 2014.

<sup>702</sup> Interview with Osama Mdalal, 2014.

Neither the commission nor the entity subsumed under the Ministry of Finance has so far submitted any of the required reports.<sup>703</sup> The reason for this is unknown, but it could potentially be the uncertain security environment and the fear of retaliation that prevents the commission from submitting its reports.

In addition, it should be noted that the commission has only been operating for six months so reporting may be forthcoming. However, the fact that the commission reportedly does not operate does not point to this conclusion.

## GOVERNANCE: INTEGRITY

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### LAW

To what extent are there mechanisms in place to ensure the integrity of members of the ACA(s)?

Score: 25 / 100

There is no code of conduct in place for employees of the National Anti-Corruption Commission and only limited other provision in place to ensure the integrity of the anti-corruption committee's members.<sup>704</sup>

Presently, the integrity of the commission is only ensured by law no. 12 2010 on labour relations that stipulates provisions related to upholding the integrity of Libyan employees toward citizens. Section 12 declares that employees are not allowed to accept gifts for their services, that no employee may use his or her position, whether directly or indirectly, for their own personal benefit or that of others, or for any acts of favouritism or nepotism.<sup>705</sup> There are also legal requirements regarding integrity screenings during the recruitment of staff.<sup>706</sup>

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<sup>703</sup> Interview with Osama Mdalal, 2014.

<sup>704</sup> Interview with Osama Mdalal, 2014.

<sup>705</sup> Law no. 12 2010, section 12.

<sup>706</sup> Interview with Osama Mdalal, 2014.

## PRACTICE

To what extent is the integrity of members of the ACA(s) ensured in practice?

Score: 0 / 100

As there is no code of conduct, there is no practice related to this and there are no indications that the commission holds internal trainings on integrity issues.

In practice, the commission is perceived to be at risk of low integrity, including budget reportedly being allocated to purposes not directly linked to its work or mandate.<sup>707</sup>

## ROLE: PREVENTION

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To what extent does the ACA engage in preventive activities regarding fighting corruption?

Score: 0 / 100

The National Anti-Corruption Commission is not engaging in preventive activities regarding the fight against corruption and has few competences and prerogatives in this regard.<sup>708</sup> While the current legislation does allow the commission to make recommendations on legislative reforms that address anti-corruption measures to the GNC, it is uncertain how often it has made use of this possibility.<sup>709</sup> In addition, it is unclear whether the commission contains a specific unit dedicated solely to research on corruption; regardless of this, the commission currently lacks the necessary capacities to carry out this task.<sup>710</sup>

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<sup>707</sup> Interview with Ibrahim Ali, 2014.

<sup>708</sup> Interview with Osama Mdalal, 2014.

<sup>709</sup> Interview with Osama Mdalal, 2014.

<sup>710</sup> Interview with Osama Mdalal, 2014.

# ROLE: EDUCATION

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To what extent does the ACA engage in educational activities regarding fighting corruption?

Score: 0 / 100

The National Anti-Corruption Commission is not engaged in educating the public on how to combat corruption and has no competences in this regard. Moreover, the commission is neither engaged with any CSOs regarding the fight against corruption, nor does it supply employees in the public sector with any training opportunities regarding anti-corruption measures.<sup>711</sup>

# ROLE: INVESTIGATION

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To what extent does the ACA engage in investigations regarding alleged corruption?

Score: 0 / 100

There are no indications of the National Anti-Corruption Commission being engaged in any investigative activities with regard to alleged corruption practices.<sup>712</sup> On the other hand, the entity at the Ministry of Finance has reportedly completed work in this regard, though discretely, due to the fragile security environment and the corresponding risk of retaliation.<sup>713</sup> Al Walid has however revealed that he worked on a case regarding a large sum of money that was allocated to a Libyan embassy in Asia that went missing. Reportedly al Walid informed the embassy on how to locate and confiscate the funds.<sup>714</sup>

Nonetheless, neither the commission nor the entity at the Ministry of Finance have revealed any high-ranking officials who accepted or offered bribes or in other ways been engaged in corruption.

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<sup>711</sup> Interview with Osama Mdalal, 2014.

<sup>712</sup> Interview with Osama Mdalal, 2014.

<sup>713</sup> Daragahi, 2013a.

<sup>714</sup> Daragahi, 2013a.

**POLITICAL PARTIES**  
**45 / 100**

# SUMMARY

The organisation of individuals in political parties is a completely new concept in Libya, as it was outlawed during the Gaddafi era. The legal framework concerning political parties is quite permissive and enabling for the establishment of political parties, which has resulted in numerous parties evolving and playing a role in the political system. In practice, parties are however challenged by several factors. First there is hardly any public financial support for political parties and their financial resources are very limited. Secondly, rules that ensure the independence of political parties are not enforced strictly which has resulted in militias as well as the authorities attempting to influence their agenda. Thirdly, political parties struggle with their legitimacy as important actors in Libya's democratic transition, and Libyans are increasingly sceptical of the importance of political parties for Libya's democratic transition.

On the positive side, parties have developed close relationships with CSOs and the majority of the current parties collaborate closely with CSOs on specific topics.

The table below presents the indicator scores that summarise the assessment of the political parties in terms of their capacity, their internal governance and their role within the Libyan integrity system. The remainder of this section presents the qualitative assessment for each indicator.

| OVERALL PILLAR SCORE: 45/ 100 |   |     |          |
|-------------------------------|---|-----|----------|
| Category                      | Index                                   | Law | Practice |
| <i>Capacity</i><br>50 / 100   | Resources                               | 75  | 25       |
|                               | Independence                            | 75  | 25       |
| <i>Governance</i><br>46 / 100 | Transparency                            | 75  | 0        |
|                               | Accountability                          | 75  | 0        |
|                               | Integrity                               | 100 | 25       |
| <i>Role</i><br>38 / 100       | Interest aggregation and representation | 50  |          |
|                               | Anti-corruption commitment              | 25  |          |

# STRUCTURE & ORGANISATION

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Since the 2011 revolution, the political landscape in Libya has been completely transformed as political parties are now permitted to exist regardless of their viewpoints. During the Gaddafi era, no political parties were allowed to exist.<sup>715</sup>

After the revolution the restrictions that had previously prohibited political party formation were removed, and as a result a large number of political entities emerged. The newly established parties can generally be categorised as either broad-based, having local branches in more than one-third of Libya's 22 districts, or local parties, which are represented in less than five of the 22 districts. Broad-based and local parties vary significantly in terms of their organisational structure and resources. The broad-based parties are generally the most developed and have the most human resources at their disposal. In general, however, broad-based as well as local parties lack the necessary financial and human resources to exist as professional organisations.<sup>716</sup> Furthermore, only few broad-based parties exist in Libya with the majority being single-issue or single-person parties without a broad support base.

The armed militias that fought the Gaddafi regime have played a fairly large role for the subsequent formation and development of political parties. For instance, in Tripoli, as well as the eastern part of the country, some of the best-equipped armed militias have been associated with Islamist groups when they began to form political organisations.<sup>717</sup> Additionally, the National Forces Alliance, which is the largest party in the GNC, is supported by militias from Zintan.<sup>718</sup>

In the GNC that served from July 2012 to June 2014, 80 seats were reserved for political parties while the rest of the seats were reserved for individual candidates.<sup>719</sup> Prior to the election, 143 parties had registered, of which 125 submitted lists of candidates.<sup>720</sup> In the parliamentary election in June 2014 no seats were reserved for political parties, reducing their formal role. However, candidates from political parties were still allowed to run for the 200 individual seats. This significant change was likely due to – at least in part – the public's disillusionment with the parties' previous performance, or lack thereof, in the GNC.

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<sup>715</sup> St John, 2011.

<sup>716</sup> JMW Consulting and Lust, 2013.

<sup>717</sup> David D. Kirkpatrick, "In Libya, Fighting May Outlast the Revolution", *New York Times*, 1 November 2011.

<sup>718</sup> Abigail Hauslohner and Karen DeYoung, "U.S. Plan for New Libyan Force Faces Obstacles", *The Washington Post*, 1 December 2013.

<sup>719</sup> Law no. 4. 2012..

<sup>720</sup> EU, 2012.

# CAPACITY: RESOURCES

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## LAW

To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?

Score: 75 / 100

The role of political parties and freedom to establish parties is secured in the 2011 interim constitution. Article 4 stipulates that: "The State shall seek to establish a political democratic regime to be based upon the political multitude and multi party system in a view of achieving peaceful and democratic circulation of power."<sup>721</sup> Article 15 additionally declares that the freedom to form political parties and other civil societies shall be guaranteed by the state. Such organisations are nonetheless prohibited from being in violation of the public system and public morals, or from being in collusion with others that might be harmful to the state.<sup>722</sup> In addition, article 14 allows freedom of opinion for individuals and groups, as well as freedom of assembly.<sup>723</sup> Furthermore, in 2012 a draft law on associations was proposed. It has been amended several times and is currently being debated by the GNC.<sup>724</sup>

Since the revolution, the legal framework governing the establishment of political parties has been rather permissive.<sup>725</sup> Law no. 29 2012 on the organisations of political parties contains specific legal provisions regarding the establishment of political parties. Parties are equal before the law and in order to be established, applicants are required to submit a certified application that includes: 1) the signature of the party's president as well as of 50 members who must all be at least 21 years of age; 2) a list of the party's founding members, including their telephone numbers; 3) the party's political governance system; 4) the legal occupancy of the party; and 5) a sample of the slogan and/or symbol that the party intends to use.<sup>726</sup> Article 10 of the law establishes the Committee of Party Affairs, which is tasked with reviewing party registration requests and issuing legal permissions to parties that meet the requirements. The committee is required to reach a decision within five days from the submission of an application; otherwise, the party is allowed to engage in political activities as long as it does not violate any provisions in the law.<sup>727</sup>

Additional legal requirements with which political parties must comply include:

- Its principles, goals, programmes and means must not conflict with the principles of the interim constitution.
- It must have a minimum of 250 members (who must be at least 18 years old).
- It must make public its principles, goals, means and sources of finance.
- The party must not include any sub-branch or other organisational entity that is not Libyan.
- It must consist of a political framework and include a political programme.<sup>728</sup>

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<sup>721</sup> Constitution, 2011, article 4.

<sup>722</sup> Constitution, 2011, article 15.

<sup>723</sup> Constitution, 2011, article 14.

<sup>724</sup> AFA/FRIDE/HIVOS, 2013.

<sup>725</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

<sup>726</sup> Law no. 29 2012 – On the Organization of Political Parties, article 6.

<sup>727</sup> Law no. 29 2012, article 14.

<sup>728</sup> Law no. 29 2012, article 8.



In the 2012 GNC elections, political parties that had already registered were required by law to also register as a political entity. This establishment of political entities enabled groups with 100 members to nominate candidates for the election, even though they had not fulfilled the more restrictive requirements listed above. This provision resulted in a comparative disadvantage for the parties that had to register twice in order to take part in the election. In total, 142 political entities registered prior to the 2012 GNC elections, of which 125 submitted lists of candidates.<sup>729</sup>

Article 14 of law no. 29 2012 enables applicants who are rejected to establish a party to appeal against the decision within five days to a judicial body formed by the High Court. The judicial body must reach a verdict within 15 days.<sup>730</sup>

Law no. 29 2012 contains no restrictions regarding party ideology. The law prohibits parties from calling for political oppression and from publishing or circulating ideas contrary to Islamic law or anything that might spur violence or hatred. Furthermore, the law bans parties from forming military or quasi-military units or aiding them in their formation, and from using force or threats in general.<sup>731</sup>

Article 20 in law no. 29 2012 obligates the state to support legally registered parties financially in accordance with the following two principles: Firstly, 50 per cent of the state support must be distributed equally between political parties. Secondly, the remaining 50 per cent must be distributed in accordance with the percentage of votes received by the party with a minimum threshold of 3 per cent.<sup>732</sup> The law does not specify the amount of state support for parties or a percentage of the public budget that has to be allocated to party support. The Ministry of Culture is responsible for allocating financial resources to civil society activities such as political parties.<sup>733</sup>

Under law no. 4 2012, which was adopted by the NTC in order to provide a general framework for completing the 2012 GNC elections, political candidates were prohibited from accepting funding from international donors.<sup>734</sup> The electoral law passed in 2013 by the GNC reaffirms this provision in article 16. The law further prohibits political candidates from campaigning through international media with the exception of private websites owned by the candidate in question, from using mosques, public premises, and educational institutions for campaigning, as well as from conducting any activity related to campaigning 24 hours prior to and on election day. The penalty for any violation of these regulations is imprisonment or a fine not exceeding LYD 5,000 (US\$4,092) as well as political exclusion for five years.<sup>735</sup>

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<sup>729</sup> EU, 2012.

<sup>730</sup> Law no. 29 2012, article 14.

<sup>731</sup> Law no. 29 2012, article 9.

<sup>732</sup> Law no. 29 2012, article 20.

<sup>733</sup> AFA/FRIDE/HIVOS, 2013.

<sup>734</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

<sup>735</sup> Law no. 17 2013 – The Electoral Law, article 37.

## PRACTICE

To what extent do the financial resources available to political parties allow for effective political competition?

Score: 25 / 100

In general, political parties in post-revolution Libya have rather limited budgets. Due a dysfunctional organisation and opaque practices inherited from the former regime, the Ministry of Culture, which is responsible for distributing financial resources to political parties and other civil society activities, hardly distributes any funds in practice.<sup>736</sup> As public support is nearly non-existent and foreign support is prohibited, almost all financial resources come from private domestic donors, such as wealthy businessmen and the use of such funding is highly regulated.<sup>737</sup> Smaller parties are generally self-funded or are supported by a few businessmen and thus do not have access to the same amount of resources that larger parties do.<sup>738</sup> At present, only about a third of the Libyan parties have budgets that exceed LYD 125,434 (US\$100,000)<sup>739</sup> and only a single party, the Development Prosperity Party, has a budget above LYD 1,237,265 (US\$1,000,000).<sup>740</sup> The Development Prosperity Party is now called the National Party for Development and Welfare.

The main source of party funding is individual donations, including contributions from the founding members. Individual donations account for 77 per cent of broad-based parties' funding and 58 per cent of the funding of local parties. Membership fees, which are also an important source of income, cost on average LYD 19 (US\$15,14) and account for roughly 41 per cent of local parties' funding but only 7 per cent of the funding of broad-based parties.<sup>741</sup> Other sources, such as fundraising or corporate donations, do not currently play an important role in party financing.<sup>742</sup> Thus, the diversity of funding sources for political parties is quite limited.<sup>743</sup>

During campaigns, political parties appear to have equal access to airtime due to a TV programme established by the HNEC, which allows each party to give a brief statement. It is, however, uncertain to what extent the various parties explored this opportunity.<sup>744</sup>

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<sup>736</sup> AFA/FRIDE/HIVOS, 2013.

<sup>737</sup> AFA/FRIDE/HIVOS, 2013.

<sup>738</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

<sup>739</sup> JMW Consulting and Lust, 2013.

<sup>740</sup> Unpublished study of the Libyan political party landscape completed in March 2013 by JMW Consulting and Ellen Lust.

<sup>741</sup> JMW Consulting and Lust, 2013.

<sup>742</sup> JMW Consulting and Lust, 2013.

<sup>743</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

<sup>744</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

# CAPACITY: INDEPENDENCE

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## LAW

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

Score: 75 / 100

The legal framework largely protects political parties from external interference. In accordance with article 27 of law no. 29 2012, the authorities are prohibited from monitoring, conducting inspections or confiscating materials from party headquarters, unless this is based on a judicial order. In case a party office has been searched, the general prosecutor is required within 48 hours to notify the Committee of Party Affairs regarding what has been seized.<sup>745</sup> The law is silent on the extent to which the Committee of Party Affairs is independent from the government. If it is embedded in the government, there is a risk of political interference in the administration of the law, and thus in the workings of the parties.

Article 30 outlines the legal provisions for forced dissolution of a political party. No party can be dissolved or have its activities suspended, unless it is done on the basis of a legal warrant requested by the Chair of the Committee of Party Affairs.<sup>746</sup> Upon submission of such a request, the relevant court must review it and reach a decision within 30 days. The court can either rule to dissolve the party or to offer it the chance to correct its activities and internal organisation in accordance with the law. The latter option also includes a fine between LYD 10,000 and 50,000 (US\$7,972-39,861).<sup>747</sup> Law no. 29 2012 does not include any provisions regarding appealing such a decision.

Government oversight is generally well-designed and provides a very permissive legal environment in which political parties can navigate.<sup>748</sup>

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<sup>745</sup> Law no. 29 2012, article 27.

<sup>746</sup> Law no. 29 2012, article 30.

<sup>747</sup> Law no. 29 2012, article 32.

<sup>748</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

## PRACTICE

To what extent are political parties free from unwarranted external interference in their activities in practice?

Score: 25 / 100

Even though the legal framework provides sufficient safeguards in terms of preventing external and political interference in the work of political parties, these provisions are difficult to enforce in practice. This is mainly due to the security situations but there are also examples of authorities interfering without warrant in political parties' activities.<sup>749</sup>

Political parties experience external interference from both militias who attempt to influence their agenda and from the authorities.<sup>750</sup> For instance, the offices of the Libyan National Party were raided by a unit of the Supreme Security Committee and closed in November 2012 after the party had used a cartoon in a campaign poster for the 2012 GNC elections depicting the Prophet. Two party leaders were accused of spreading discord among Libyans, as well as incitement to hatred and of insulting the Prophet and Islam – offences that could lead to the death penalty. Nonetheless, the court dropped the main charges and the two men were fined for their crime.<sup>751</sup> Furthermore, several political party offices have repeatedly come under attack from armed non-state actors and the authorities seem unable to prevent these attacks. The attacks have been directed both at liberal-leaning as well as Islamist-leaning parties. In July 2013, both the headquarters of the liberal National Forces Alliance and the Islamist Justice and Construction Party, the political wing of the Muslim Brotherhood, were stormed and ransacked in Tripoli. Additionally, two buildings belonging to the Justice and Construction Party and the Muslim Brotherhood in Benghazi were set on fire by protesters.<sup>752</sup> Similar to its inability to prevent armed attacks, the state also lacks the necessary capacity to engage in proper investigations to follow up on such attacks. In general, political parties are treated equally by the authorities.<sup>753</sup>

Detention and arrest of members of political parties only happen occasionally, as illustrated by the two politicians from the Libyan National Party in the example above.<sup>754</sup>

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<sup>749</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

<sup>750</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

<sup>751</sup> Imad Cheklif, "Cartoon Trial Resumes Sunday: Amnesty International Calls for It to Be Dropped", *Libya Herald*, 15 June 2013.

<sup>752</sup> Ghaith Shennib and Marie-Louise Gumuchian, "Libyans Vent Anger at Islamists after Activist's Shooting", Reuters, 27 July 2013.

<sup>753</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

<sup>754</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

# GOVERNANCE: TRANSPARENCY

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## LAW

To what extent are there regulations in place that require parties to make their financial information publicly available?

Score: 75 / 100

Article 8 of law no. 29 2012 requires political parties to publish their means, as well as their sources of funding.<sup>755</sup> However, the article neither specifies how often such information needs to be disclosed nor how it should be made available to the public, for example, on the parties' website, in newsletters, etc. Article 17 specifies the possible sources for funding, which include support from members and the state, revenue from financial investments made in various fields except media and education, and donations.<sup>756</sup> In addition, article 18 prohibits all parties from accepting financial support from any non-Libyan entity, whether a government or an individual company, as well as anyone from the Libyan government beyond what is stipulated in the law, and from any company or project partially or fully owned by the government.<sup>757</sup>

HNEC regulation no. 85 2012 sets a spending limit for the campaign activities of individual candidates, as well as political parties, based on the population of the electoral district in which they campaign. Spending limits range from LYD 90,000 to 400,000 (US\$71,751-318,892) for parties and from LYD 25,000 to 150,000 (US\$19,931-11,958) for individual candidates. Article 25 declares that, within 15 days of the final election results, a detailed expenditure statement, including sources of funding and total revenue during and outside the campaign, must be submitted by both individual candidates and parties to the HNEC. Candidates must deposit all campaign-related donations in a bank account and provide updates on the usage of these donations to the HNEC on a regular basis. Public funds may not be used for electoral campaigns. Violation of these provisions may lead to imprisonment of up to one month or a fine not exceeding LYD 300 (US\$239).<sup>758</sup>

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<sup>755</sup> National Transitional Council, 2012, article 8.

<sup>756</sup> National Transitional Council, 2012, article 17.

<sup>757</sup> National Transitional Council, 2012, article 18.

<sup>758</sup> AFA/FRIDE/HIVOS, 2013.

## PRACTICE

To what extent can the public obtain relevant financial information from political parties?

Score: 0 / 100

In practice, Libyan political parties do not make their financial information available to the general public, as required by law no. 29 2012. Thus, it is not possible for the public to gain access to their sources of funding as well as their expenditures.<sup>759</sup> This poses a significant problem for the legitimacy of and public trust in the political parties, as it opens up the possibility of conflicts of interest, especially since the political parties are overly reliant on single sources of funding.

# GOVERNANCE: ACCOUNTABILITY

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## LAW

To what extent are there provisions governing the financial oversight of political parties by a designated state body?

Score: 75 / 100

A unit within the Political Affairs Committee is assigned to review and monitor that the financial reports of the political parties are in accordance with the law.<sup>760</sup> Article 23 of law no. 29 2012 requires political parties to put together a yearly financial report including revenues and expenditures and submit it to the Political Affairs Committee as well as to “various media outlets”. However, neither an exact deadline for submitting the report nor a specific definition of the term “various media outlets” is stipulated in the law. The law does not explicitly require external auditing.

In addition, all candidates are required to submit a detailed statement of the total amount of donations, their sources and campaign-related expenditure to the HNEC within seven days of the election.<sup>761</sup> It does not appear that there are any loopholes in the law that parties can exploit in order to avoid submitting financial reports.<sup>762</sup>

A party that fails to submit a yearly financial report no longer qualifies to receive state support.<sup>763</sup> However, seeing that public funding is more or less non-existent this provision is unlikely to have much impact.

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<sup>759</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

<sup>760</sup> Law no. 29 2012, article 19.

<sup>761</sup> Law no. 17 2013, article 20.

<sup>762</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

<sup>763</sup> Law no. 29 2012, article 22.

## PRACTICE

To what extent is there effective financial oversight of political parties in practice?

Score: 0 / 100

In practice, not all parties submit financial statements to the Political Affairs Committee, as required by law, nor do all candidates disclose the amount of funding they have received and their expenditures to the HNEC following an election.<sup>764</sup>

While there appears to be some requirements regarding audit statements; at present, there is not a comprehensible mechanism in place to ensure accuracy in the reports submitted.<sup>765</sup>

# GOVERNANCE: INTEGRITY

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## LAW

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

Score: 100 / 100

There is no central regulation on this area, and as private organisations, it is mainly up to the parties themselves to decide their internal democratic governance. In accordance with law no. 29 2012, political parties must, however, have internal bylaws, including mechanisms for choosing the leadership, provisions regarding their powers, and means to monitor their work and hold them accountable.<sup>766</sup>

## PRACTICE

To what extent is there effective internal democratic governance of political parties in practice?

Score: 25 / 100

Prior to the 2012 GNC elections, the political parties had limited time to organise and establish clear rules for nominating and selecting candidates, and thus the parties followed a number of procedures in that process. The most common strategies were for local branches to select their own candidates or for the executive to select the candidates. Only a few parties had clear and established rules for

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<sup>764</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

<sup>765</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

<sup>766</sup> Law no. 29 2012, article 12.

the nomination process.<sup>767</sup> Subsequently, the vast majority of political parties have expressed that they intend to establish clear rules for internal elections of political candidates before the next elections take place.<sup>768</sup> As such, there is at the moment little internal democratic governance in political parties.<sup>769</sup>

The development of policies is usually driven by the executive committee of a party. Some parties allow members to propose issues and then vote on whether to include them as focus areas. In general, the parties are very open to including members in the policy development process, but few have formalised ways for members to communicate with the leadership. Outreach to members is mostly conducted through direct contact and personal relationships between members and party officials.<sup>770</sup>

## ROLE: INTEREST AGGREGATION AND REPRESENTATION

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To what extent do political parties aggregate and represent relevant social interests in the political sphere?

Score: 50 / 100

The political parties' ability to aggregate and represent relevant social interests is challenged by the parties' limited ability to recruit members and the distrust in the population toward political parties.

Political parties perceive mobilisation as their most important role, but at the same time, they believe that their skills in this regard are poor due to challenges they experience in relation to the recruitment of members, communication and campaigning. Especially membership recruitment is perceived as a challenging task because of the historical stigmatisation and the distrust of political parties in the population. In general, parties recruit members via social networks, personal relations and social interaction. A study from 2013 that included 19 of the largest political parties found that their membership base average was around 5,000 members. However, the average membership of local parties is approximately 2,100 while broad-based parties have around four times as many members.<sup>771</sup> Members of the parties are mostly well-educated young men, and most parties are located in all of the three regions of Libya.<sup>772</sup> Some parties are dominated by various militias, while other parties are influenced by businessmen.<sup>773</sup>

Political parties struggle with the public perception that they are less and less important for democracy and certain parties and their leaders are increasingly viewed negatively according to

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<sup>767</sup> JMW Consulting and Lust, 2013.

<sup>768</sup> JMW Consulting and Lust, 2013.

<sup>769</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

<sup>770</sup> JMW Consulting and Lust, 2013.

<sup>771</sup> JMW Consulting and Lust, 2013.

<sup>772</sup> JMW Consulting and Lust, 2013.

<sup>773</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.



popular opinion. The decline in the perceived necessity of political parties could potentially affect the voter turnout, as this worsening correlates with a decrease in Libyans' intention to vote in future elections.<sup>774</sup> However, it is difficult to say whether there is a direct connection between the two factors. Moreover, 39 per cent of the population perceives the parties to be either corrupt or extremely corrupt.<sup>775</sup> Thus, the current political landscape does not enjoy a high degree of legitimacy among the Libyan population.<sup>776</sup> The negative popular perception of the political parties stems in part from the suppression by the former regime using the tagline *Man thazb khan* (he who joins a party is a traitor) to vilify the parties. In addition, the negative legacy has been nurtured by the parties' inability to perform and compromise in the GNC, as well as some parties' close links to militias.

The linkage between political parties and CSOs is quite strong and the majority of the parties have ties with specific CSOs, which they cooperate with on specific issues. It seems as if parties attempt to strengthen their relationships and connections with various CSOs at the same pace as they lose support from the population.<sup>777</sup>

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<sup>774</sup> JMW Consulting and NDI, 2014.

<sup>775</sup> [www.transparency.org/gcb2013/country/?country=libya](http://www.transparency.org/gcb2013/country/?country=libya) [accessed 3 July 2014].

<sup>776</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

<sup>777</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

# ROLE: ANTI-CORRUPTION COMMITMENT

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To what extent do political parties give due attention to public accountability and the fight against corruption?

Score: 25 / 100

To some extent, anti-corruption commitment plays a role in the party manifestos that have been possible to locate; however, they do not outline specific measures to combat corruption. For instance, the National Front Party, which holds three seats in the GNC, making it the third largest party in terms of representation in the GNC, specifically mentions the fight against corruption and bribery as one of its main goals in the principles and objectives of the party.<sup>778</sup> The second largest party in the GNC, the Justice and Construction Party, does not specifically mention anti-corruption measures in its vision for the future. It, however, points to Libya's poor ranking in Transparency International's corruption perceptions index as one of Libya's main challenges moving forward.<sup>779</sup> The Homeland Party, which currently does not hold any seats in the GNC, does not mention the role of corruption in its values.<sup>780</sup> It has not been possible to locate the manifesto of the largest party in Libya, the National Forces Alliance.

However, even though anti-corruption is mentioned in party manifestos. However, the fight against corruption and initiatives in this regard are not emphasised as being particularly important in speeches given by party leaders.<sup>781</sup>

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<sup>778</sup> [www.jabha.ly/online](http://www.jabha.ly/online) [accessed 25 August 2014].

<sup>779</sup> [www.ab.ly/ar](http://www.ab.ly/ar) [accessed 25 August 2014].

<sup>780</sup> [www.wattan.ly](http://www.wattan.ly) [accessed 25 August 2014].

<sup>781</sup> Interview with anonymous source, employed in an international organisation that has supported Libyan political parties.

**MEDIA**  
**26 / 100**

# SUMMARY

An independent media industry has only recently emerged in Libya and is still trying to establish its role in the complex political climate. Even though the media is in principle free and numerous media outlets have been established, the sector's ability to play a significant role in the public sphere is still limited by a variety of factors, including the heavy legacy of the past, a general lack of professionalism and necessary skills among journalists, inadequate funding, as well as self-censorship due to threats from militias operating in the country. The legal framework regulating the sector is very limited and recent legislation has reinstated repressive provisions similar to those in place during the Gaddafi era, such as the press code from 1972 which criminalised any insult to the state, its emblem and flag.<sup>782</sup> The lack of specific legal provisions weakens the transparency of the media significantly – there are, for instance, no rules that require media outlets to reveal their sources of funding or to disclose their ownership to the public. Nevertheless, there are signs that the media is attempting to play a more investigative role and trying to expose government officials engaged in corruption. In addition, the use of blogs has recently emerged as a new concept in the Libyan media sector and has resulted in a significant increase in the general public's interaction with journalists and reporters.

The table below presents the indicator scores that summarise the assessment of the media in terms of its capacity, its internal governance and its role within the Libyan integrity system. The remainder of this section presents the qualitative assessment for each indicator.

| OVERALL PILLAR SCORE: 26 / 100 |   |     |          |
|--------------------------------|---|-----|----------|
| Category                       | Index   | Law | Practice |
| <i>Capacity</i><br>31 / 100    | Resources   | 25  | 50       |
|                                | Independence  | 25  | 25       |
| <i>Governance</i><br>13 / 100  | Transparency  | 0   | 0        |
|                                | Accountability                                      | 25  | 25       |
|                                | Integrity   | 0   | 25       |
| <i>Role</i><br>33 / 100        | Investigate and expose cases of corruption practice | 25  |          |
|                                | Inform public on corruption and its impact          | 50  |          |
|                                | Inform public on governance issues                  | 25  |          |

<sup>782</sup> Fatima el Issawi, "Libya Media Transition: Heading to the Unknown", *POLIS — Media and Communications*, London School of Economics, 2013.

# STRUCTURE & ORGANISATION

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In general, the Libyan media industry suffers greatly from the heavy legacy of the former regime. During the Gaddafi era, the media, mainly publicly owned, was exclusively used to secure the power of the state. The content was highly politicised in favour of the government and criticism of Gaddafi or his regime would result in imprisonment or worse. The revolution led to an explosion of new private media while the state media struggled to deal with the transition phase.<sup>783</sup> For the first time in 25 years, the foreign press was again allowed into Libya, and so far, three foreign news agencies have opened in Tripoli. In November 2011, the NTC placed the media sector under the Ministry of Culture and Civil Society. In May 2012, the sector was reorganised again with the adoption of Decree 44, which established a High Media Council. The council became responsible for overseeing the media industry and was to report directly to the NTC. This reorganisation was met with criticism, which led to the suspension of all decisions related to the council. The possibility of placing the media industry under the High Media Council instead of a ministry with executive powers is still being debated.

## CAPACITY: RESOURCES

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### LAW

To what extent does the legal framework provide an environment conducive to a diverse independent media?

Score: 25 / 100

Independent media and freedom of the press is secured in the interim constitution, but no specific legislation regarding the media is in place to secure an environment conducive to a diverse independent media.<sup>784</sup>

Several initiatives have been taken to develop a legal framework for the media sector, but as of today, such a framework does not exist. A Ministry of Information was established in April 2013 to govern the sector. The ministry is in charge of issuing licences, which in practice is needed to acquire broadcast frequency. The licensing framework is not established by law, and as such, there is no restriction on setting up and operating without a licence, but neither is there any provisions for appealing a negative decision.<sup>785</sup>

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<sup>783</sup> Issawi, 2013a.

<sup>784</sup> Constitution, 2011, article 14.

<sup>785</sup> Interview with Khaeri Aboushagor, Libya Office Manager – DW Academy, with Sherif Jenan, Tripoli, 8 May 2014 and interview with Nizar Ibrahim, Director of International Relations Department, Ministry of Information, with Sherif Jenan, Tripoli, 7 May 2014.

Licensing of print media is governed by the Association for Print and Press – an entity under the umbrella of the Ministry of Information. Similar to broadcast media, the Association for Print and Press does not have a legal framework that supports its licensing and there are subsequently no legal grounds for appealing a negative decision.<sup>786</sup>

Lastly, the lack of legislation also means that there are no restrictions to entering the journalistic profession.<sup>787</sup>

## PRACTICE

To what extent is there a diverse independent media providing a variety of perspectives?

Score: 50 / 100

In the post-Gaddafi era, a variety of media organisations have emerged. According to Legatum Institute's Libya Media Wiki, by mid-2012 there were at least 200 registered newspapers, 20 TV channels and 200 radio stations in operation. The radio sector has evolved particularly rapidly since the revolution.<sup>788</sup> However, since the Ministry of Information was established in April 2013, no licences have been issued for broadcast media and this has in practice meant that since that time no new broadcast media has been able to set up operations and broadcast. Licensing for print media is more conducive and there are more than 400 licensed print entities across the country.<sup>789</sup> The majority of print and broadcast media are in Tripoli, Benghazi and Misurata, but most cities have their own print media and radio stations. Internet infrastructure is poor in many parts of the country with some cities having no connection at all.<sup>790</sup>

The media spectrum is perceived to cover the entire political spectrum.<sup>791</sup> The private media outlets are usually categorised as one of three types, the first being liberal media outlets that primarily support former transitional council leader Mahmoud Jibril, the second being media outlets which support the Muslim Brotherhood and the third being media funded directly by Qatar. However, the main actors in the media sector reject this categorisation and usually present themselves as independent.<sup>792</sup> In practice, radio stations have so far proven to be more independent than TV stations, which are often politically biased or have strong ties to private businesses.<sup>793</sup>

Since the revolution, private media outlets are flourishing, but generally suffer from weak structures as well as opaque funding.<sup>794</sup> Most of them claim to obtain their financial resources solely from advertisement and grants from Libyan businesses. However, as the advertisement market in Libya is underdeveloped, this is likely only a limited source of funding. There have been unconfirmed reports regarding media outlets receiving funds from business executives who belonged to the former regime and are now living abroad. For instance, the television station Libya Awalan is said to allegedly be funded by Hassan Tatanaki, a businessman who worked as an executive under Gaddafi.<sup>795</sup> Since the media is not required to reveal its sources of funding these accusations are difficult to assess. For the same reason it is unclear to what extent the media in general have the

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<sup>786</sup> Interview with Nizar Ibrahim, 2014.

<sup>787</sup> Interview with Nizar Ibrahim, 2014.

<sup>788</sup> [http://en.libyamediawiki.com/index.php?title=Main\\_Page](http://en.libyamediawiki.com/index.php?title=Main_Page) [accessed 2 May 2014].

<sup>789</sup> Interview with Nizar Ibrahim, 2014.

<sup>790</sup> Interview with Khaeri Aboushagor, 2014 and interview with Nizar Ibrahim, 2014.

<sup>791</sup> Interview with Khaeri Aboushagor, 2014.

<sup>792</sup> Issawi, 2013a.

<sup>793</sup> Advisory Group, First Meeting, 2014.

<sup>794</sup> Issawi, 2013a.

<sup>795</sup> Fatima el Issawi, "Transitional Libyan Media: Free at Last?", *The Carnegie Papers, Carnegie Endowment for International Peace*, 2013

necessary financial resources at their disposal. However, the difficulty of obtaining financial support from the state along with an undeveloped advertisement industry makes it difficult for small media outlets to establish themselves.<sup>796</sup>

In general, Libyan journalists suffer from decades of repression, which has resulted in poor skills and a low degree of professionalism.<sup>797</sup> The professionals engaged in the media sector can be categorised into three distinct groups: The first includes staff employed in the former state media apparatus. The second group, the so-called media of the revolution, is made up of citizen journalists who were active in documenting events at the frontline during the rebellion. This group is mainly composed of doctors, engineers and other working professionals. The final group is made up of vocal dissenters from the Gaddafi era, mostly writers and cultural figures, who have limited or no previous media training.<sup>798</sup> Some journalists have attended and graduated from a school of journalism; however, the educational institutions, still burdened by the policies of the former regime, are to a large extent unable to provide students with the required practical qualifications.<sup>799</sup>

There are no indications that suggest that the various media outlets are overpriced or unaffordable for the common citizen. Since many of the new publications are not sustainable yet, it is extremely difficult to assess their distribution.

## CAPACITY: INDEPENDENCE

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### LAW

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

Score: 25 / 100

There are limited laws and regulations to prevent external interference in the work of the media. There are some laws that allow for external interference in the media sector in cases where anyone, including journalists, insults the revolution, its leaders, the people's authority or a judicial, defence or security body.<sup>800</sup>

Freedom of expression, as well as liberty of the press, is explicitly enshrined in the interim constitution, which cancels the oppressive laws installed by the Gaddafi regime that restricted freedom of speech.<sup>801</sup> Article 14 provides the most fundamental provisions regarding the freedom of the media. The article states: "Freedom of opinion for individuals and groups, freedom of scientific research, freedom of communication, liberty of the press, printing, publication and mass media... shall be guaranteed by the State in accordance with the law."<sup>802</sup> Since the adoption of the interim constitution, the freedom of the press has been limited by new laws and regulations. In May 2012, the NTC passed law no. 37, which criminalises a number of political subjects for speeches, including "glorifying the tyrant" [Gaddafi], "damaging the February 17 Revolution" and insulting Libya's

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<sup>796</sup> Interview with Nizar Ibrahim, 2014.

<sup>797</sup> Issawi, 2013a.

<sup>798</sup> Issawi, 2013a-

<sup>799</sup> Interview with Khaeri Aboushagor, 2014.

<sup>800</sup> Interview with Khaeri Aboushagor, 2014.

<sup>801</sup> Constitution, 2011, article 14.

<sup>802</sup> Constitution, 2011, article 14.

institutions. The law was challenged by a group of Libyan lawyers and declared unconstitutional by the Supreme Court in June 2012.<sup>803</sup> Nonetheless, in February 2014 the GNC reintroduced new rules similar to those in effect during the Gaddafi era limiting the freedom of the press. An amendment which modifies article 195 of the Libyan penal code prohibits any person from making what can be regarded as an attack or an insult on the 2011 revolution, its leaders, the people's authority or a judicial, defence or security body. This amendment allows the government to censor and prosecute any media outlets working in opposition to these rules,<sup>804</sup> the penalty is imprisonment for three to fifteen years.<sup>805</sup>

In addition, there are neither rules in place that ensure that journalists are permitted to withhold their sources, nor any provisions regarding editorial independence or the licensing system.<sup>806</sup> There are no laws prohibiting certain media formats from existing, neither private nor community-based.<sup>807</sup> In relation to libel laws, it is unclear whether a few laws from the 1960s are still in place.<sup>808</sup>

## PRACTICE

To what extent is the media free from unwarranted external interference in its work in practice?

Score: 25 / 100

In general, the independence of the media is hampered by insecurity and violent attacks, which has led to self-censorship and no-go-areas, both in terms of physical areas as well as topics that are off-limits to reporting.

Despite the absence of legal safeguards, in practice, government censorship and interference in the media sector has been quite limited since the revolution.<sup>809</sup> There are only few cases of the government trying to interfere with the media in attempts to increase or scale down the coverage of certain programmes, but without much success due to resistance from the media.<sup>810</sup> However, through state subsidies to public media outlets, the state can to some extent control their content.<sup>811</sup> In terms of international donors, it is nearly impossible to assess the extent to which they are capable of interfering in the work of the media due to the lack of transparency with regard to funding.<sup>812</sup>

Despite the fact that many private media outlets are tied to political movements, it is unclear to what extent these organisations are able to influence the agendas of the media.<sup>813</sup>

The main challenge for independent media comes from the general insecure environment in the country and armed groups, which have since the revolution increasingly threatened the independence of the media. For instance, in August 2014 a reporter and a camera operator who were covering a demonstration in Tripoli for al-Aseema television were abducted for several days; a host of a TV programme was shot in Abu Salim; and the two TV stations al-Aseema and al-Dawliya

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<sup>803</sup> Human Rights Watch, 2013.

<sup>804</sup> Interview with Khaeri Aboushagor, 2014 and interview with Nizar Ibrahim, 2014.

<sup>805</sup> <http://en.rsf.org/libya-libya-extends-draconian-gaddafi-19-02-2014,45893.html> [accessed 5 May 2014].

<sup>806</sup> Interview with Nizar Ibrahim, 2014.

<sup>807</sup> Interview with Khaeri Aboushagor, 2014 and interview with Nizar Ibrahim, 2014.

<sup>808</sup> Interview with Khaeri Aboushagor, 2014.

<sup>809</sup> [www.globalpost.com/dispatch/news/regions/africa/120301/libya-media-revolution-newspapers-television-radio-journalism-free-speech](http://www.globalpost.com/dispatch/news/regions/africa/120301/libya-media-revolution-newspapers-television-radio-journalism-free-speech) [accessed 5 May 2014].

<sup>810</sup> Interview with Khaeri Aboushagor, 2014.

<sup>811</sup> Interview with Khaeri Aboushagor, 2014.

<sup>812</sup> Interview with Khaeri Aboushagor, 2014 and interview with Nizar Ibrahim, 2014.

<sup>813</sup> Interview with Khaeri Aboushagor, 2014.



were ransacked by militias in Tripoli.<sup>814</sup> A widespread practice of self-censorship has emerged caused by journalists' concern for their personal security. New "redlines", such as religion and militias, are implicitly being imposed and journalists are threatened on a regular basis, intimidated and attacked by militias and other armed groups who do not accept critical journalism as a legitimate expression of opinion.<sup>815</sup> While some journalists practice self-censorship, others are threatened into broadcasting propaganda for the militias and on 20 August 2014 the government halted the broadcast of the state TV channels, al-Wataniya and al-Rasmiya, due to alleged biased broadcasting in relation to the fighting between militias.<sup>816</sup> Additionally, growing tribal tensions have obstructed the possibility to conduct field reporting in certain regional areas.<sup>817</sup> The government has so far been unable to protect journalists, resulting in at least eight reporters being briefly abducted in 2013.<sup>818</sup> In the two first months of 2014, more than 20 acts of intimidation and physical attacks against media personnel were reported.<sup>819</sup> The authorities have only to a limited degree proven to be able to prosecute crimes against journalists, even though a specific entity has been established in order to do so.<sup>820</sup> Allegedly, coordination between the Ministry of Information and law enforcement agencies is almost non-existent and it is unknown to what extent the ministry can operate independent from other actors on behalf of the media.

## GOVERNANCE: TRANSPARENCY

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### LAW

To what extent are there provisions in place to ensure transparency in the activities of the media?

Score: 0 / 100

As legislation regarding the media has not yet been adopted, the new media outlets are neither required to reveal their sources of funding nor disclose their ownership to the general public. Media outlets seeking a license with the authorities must however reveal their ownership and the structure of their board, but this information is not made public.<sup>821</sup>

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<sup>814</sup> UNSMIL/OHCHR, 2014.

<sup>815</sup> Issawi, 2013.

<sup>816</sup> UNSMIL/OHCHR, 2014.

<sup>817</sup> Issawi, 2013.

<sup>818</sup> <http://cpj.org/2014/02/attacks-on-the-press-in-2013-libya.php#more> [accessed 5 May 2014].

<sup>819</sup> <http://en.rsf.org/libya-more-than-20-attacks-on-media-and-24-02-2014.45923.html> [accessed 7 May 2014].

<sup>820</sup> Interview with Khaeri Aboushagor, 2014.

<sup>821</sup> Interview with Khaeri Aboushagor, 2014 and interview with Nizar Ibrahim, 2014.

## PRACTICE

To what extent is there transparency in the media in practice?

Score: 0 / 100

In practice, there is a very low degree of transparency in the Libyan media sector. Since the revolution, hundreds of private media outlets have been launched without clarity on their means of funding and with questionable production standards, resembling the practices of the former regime.<sup>822</sup> There is no practice in terms of making sources of funding, information on employees or the internal editorial policies public.<sup>823</sup>

In addition, most of the staff from the former state media are on the payroll and receive wages, though the majority is not working.<sup>824</sup>

## GOVERNANCE: ACCOUNTABILITY

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### LAW

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

Score: 25 / 100

The establishment of the Ministry of Information was in part intended to hold the media sector accountable, but the mandate of the ministry is still unclear. As such, there are only limited legal provisions, which ensure that media outlets are answerable for their activities and held accountable.

In May 2012, the NTC issued Decree 44, which established the High Media Council. The council was to report directly to the NTC and be responsible for overseeing the media sector. It was mandated to reorganise the sector with substantial functions, such as adopting a code of ethics, formulating laws and regulations, and granting necessary licences for various media groups. The establishment of the council was met with heavy criticism, especially in terms of how members were nominated, and the council was subsequently suspended and replaced by the Ministry of Information. Discussions regarding the establishment of a new High Media Council with the ability to oversee the media sector are still ongoing.<sup>825</sup>

The media are in principle required to submit frequent reports to the Ministry of Information, but other than this there are no legal provisions in place to hold media outlets accountable for their activities.<sup>826</sup> As such, there are no mechanisms for an individual or an agency subject to media criticism to reply and inform the public of his/her/its opinion on the given issue, nor requirements that the media correct erroneous information in a timely manner.

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<sup>822</sup> Issawi, 2013.

<sup>823</sup> Interview with Nizar Ibrahim, 2014.

<sup>824</sup> Issawi, 2013.

<sup>825</sup> Issawi, 2013.

<sup>826</sup> Interview with Khaeri Aboushagor, 2014.

## PRACTICE

To what extent can media outlets be held accountable in practice?

Score: 25 / 100

Due to the lack of legislation, the media is generally not held accountable in practice. As legislation during the previous regime was very restrictive on the media, this practice may stem from the fact that citizens are wary of laws that could in anyway be seen to infringe on the freedom of the media.

The lack of a clear mandate for the Ministry of Information inhibits its ability to hold the media sector accountable. For instance, an individual appeared on Al Dawlia pledging to assassinate members of the GNC. Subsequently, the ministry attempted to close Al Dawlia but failed because it did not have the legal basis for doing so.<sup>827</sup> Similarly, while the media sector is in principle required to submit frequent reports to the Ministry of Information under the commercial law, this is not enforced in practice.<sup>828</sup>

Media outlets do not have ombudsmen, and for the most part, media do not correct erroneous information unless pressured to and, even in those cases, corrections are generally not completed in a timely manner.<sup>829</sup>

The use of blogs has recently emerged as a new concept in the Libyan media sector and has resulted in a significant increase in the general public's interaction with journalists and reporters.<sup>830</sup> Media blogs heighten the accountability of the media sector, as they make journalism more directly accessible to the public and create a venue for discussion and criticism, as well as a venue where journalists and editors can be held accountable for their editorial and production decisions.<sup>831</sup> Several online news outlets, including Libya Herald, Tripoli Post, New Quryna and Lana Magazine have comment functions on their websites, which allows readers to comment, inquire and discuss the article content. Similarly, Libya Herald and Lana Magazine have Facebook pages where articles are posted and readers actively discuss the content and topics. These pages have 6,000 and 36,000 followers respectively.

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<sup>827</sup> Interview with Khaeri Aboushagor, 2014.

<sup>828</sup> Interview with Khaeri Aboushagor, 2014.

<sup>829</sup> Interview with Khaeri Aboushagor, 2014.

<sup>830</sup> Interview with Nizar Ibrahim, 2014.

<sup>831</sup> Medienhaus Wien GmbH, *Best Practice Guidebook: Media Accountability and Transparency across Europe*, 2012.

# GOVERNANCE: INTEGRITY

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## LAW

To what extent are there provisions in place to ensure the integrity of media employees?

Score: 0 / 100

The former High Media Council was tasked with developing a sector-wide code of conduct, but it is unclear if it managed to do so before its dissolution.<sup>832</sup> At present, neither a mandatory nor a voluntary code exists in the media sector.<sup>833</sup> Neither do ethics committees exist internally in media outlets.<sup>834</sup>

## PRACTICE

To what extent is the integrity of media employees ensured in practice?

Score: 25 / 100

There is no code of conduct and no established practice for journalists' ethics, standards and integrity.

There are no examples of journalists receiving independent instruction on ethics, nor are there examples of journalists following specific procedures or disclosing gifts or hospitalities offered to them.

In addition, the majority of the media often fails to report both sides of a story, either due to security reasons or because they have been paid to present a story from a certain point of view. For instance, in 2011 tensions arose between the two western cities Misrata and Bani Walid regarding the alleged torture and killing of a Misrati rebel by militias in Bani Walid. The rebel was believed to be involved in the killing of Gaddafi and the situation escalated as Libyan forces launched a military operation against Bani Walid, resulting in the death of at least 20 people and injury of more than 200. When covering the story, most media outlets failed to report both sides of the story in fear of retaliation.<sup>835</sup> Moreover, in the post-Gaddafi era the media has developed a widespread practice of relying on inadequate sources and publishing stories before having them verified.<sup>836</sup> Newly established private TV stations are often accused of using Facebook as a source for serious and unverifiable allegations.<sup>837</sup>

According to popular opinion, the media is perceived as rather corrupt. In the 2013 Global Corruption Barometer, 43 per cent of the respondents expressed that the media is either corrupt or extremely corrupt.

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<sup>832</sup> Issawi, 2013.

<sup>833</sup> Interview with Khaeri Aboushagor, 2014.

<sup>834</sup> Interview with Nizar Ibrahim, 2014.

<sup>835</sup> Issawi, 2013.

<sup>836</sup> Interview with Nizar Ibrahim, 2014.

<sup>837</sup> Issawi, 2013.

In October 2013, the Centre for Defence of Libyan Journalists was created with the aim to defend journalists in trials. However, no cases have yet been carried out.<sup>838</sup> In addition, a local entity entitled the Libyan Centre for Freedom of the Press monitors and publishes violations committed against journalists.<sup>839</sup>

## ROLE: INVESTIGATING AND EXPOSING CASES OF CORRUPTION PRACTICE

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To what extent is the media active and successful in investigating and exposing cases of corruption?

Score: 25 / 100

Since the revolution, the Libyan media have only to a limited extent been engaged in conducting investigative journalism and exposing cases of corruption.<sup>840</sup> Often, attempts to investigate corruption in public agencies are not published due to a lack of professionalism or the necessary resources.<sup>841</sup> Furthermore, several decades of oppression and the sector's structural shortcomings makes progress in this regard slow.

The new political sphere's lack of experience in terms of dealing with a free press is also hindering the development of investigative journalism. Under the former regime, news was not discussed publicly and even verified sensitive information was subject to nondisclosure. Libyan politicians are still coming to terms with the fact that information can no longer be limited to closed forums.<sup>842</sup>

However, there are examples of the media raising critical questions in relation to cases of corruption. For instance, the media were active in questioning former Prime Minister Ali Zeidan regarding government officials using bribes in a case concerning oil sales.<sup>843</sup> Additionally, in November 2012 a Libyan newspaper editor named Amara Abdalla al-Khatabi published a list of 84 judges allegedly involved in corruption.<sup>844</sup> A month after the release of the list, al-Khatabi was detained by the authorities and he is now being charged under the above-mentioned article 195 of the penal code for the "insulting of constitutional or popular authorities". The trial is ongoing at present.<sup>845</sup>

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<sup>838</sup> Interview with Khaeri Aboushagor, 2014.

<sup>839</sup> Interview with Nizar Ibrahim, 2014.

<sup>840</sup> Interview with Nizar Ibrahim, 2014.

<sup>841</sup> Interview with Khaeri Aboushagor, 2014.

<sup>842</sup> Issawi, 2013.

<sup>843</sup> Mohamed Eljarh, "On Top of Everything Else, Now Libya Has a Corruption Scandal to Worry About", *Foreign Policy*, 22 October 2013.

<sup>844</sup> [www.amnesty.org/en/appeals-for-action/LibyaAmara](http://www.amnesty.org/en/appeals-for-action/LibyaAmara) [accessed 12 May 2014].

<sup>845</sup> [www.amnestyusa.org/news/news-item/libyan-journalist-detained-on-defamation-charges-for-publication-on-corruption](http://www.amnestyusa.org/news/news-item/libyan-journalist-detained-on-defamation-charges-for-publication-on-corruption) [accessed 12 May 2014].

# ROLE: INFORMING PUBLIC ON CORRUPTION AND ITS IMPACT

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To what extent is the media active and successful in informing the public on corruption and its impact on the country?

Score: 50 / 100

The new media outlets are increasingly beginning to run programmes that attempt to educate the general public by monitoring and debating the activities of the government. However, these programmes are often incomprehensive and unsuccessful when it comes to obtaining and reporting sensitive information, such as issues related to corruption, which most individuals are resistant to disclose.<sup>846</sup>

Nonetheless, there are examples of certain media outlets that are rather successful in terms of informing the public on issues related to corruption. For instance, Aljawhara, a local radio station in Tripoli, runs a programme solely dedicated to discussing and exposing specific cases of corruption. Each programme presents various issues to be discussed, including accusations against, for example, responsible officials and subsequently invites listeners to call in and present their view on and knowledge of the particular case in order to enlighten the general listener. The programme is hosted by a young man named Sami Alsheri who, contrary to most TV hosts, does not navigate around sensitive subjects, such as the role of militias and misconduct among government officials.<sup>847</sup> Furthermore, the Libya Herald is increasingly beginning to publish op-eds that focus specifically on the role of corruption. For instance, in August 2013 Umar Khan wrote an op-ed entitled “Corruption – The Biggest Problem Facing Libya” in which the impact of corruption in contemporary Libya is discussed.<sup>848</sup>

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<sup>846</sup> Interview with Nizar Ibrahim, 2014.

<sup>847</sup> Mary Ahmed, “Opinion: Libyans Struggle for Freedom Continues”, *Tripoli Post*, 21 December 2012.

<sup>848</sup> Khan, 2013.

# ROLE: INFORMING PUBLIC ON GOVERNANCE ISSUES

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To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

Score: 25 / 100

The Libyan media is still getting acquainted with its new role as a public watchdog. For instance, talk shows have become a very popular exercise of public debate with unprecedented audience participation. Many talk shows attempt to cover controversial topics and give the audience the opportunity to phone in and ask questions. However, seeing that both the host and the participants from the new political sphere often are inexperienced, these programmes are generally run rather unprofessionally. Furthermore, due to security threats, the hosts often have to navigate around sensitive subjects inherent to Libya's new political sphere, such as the power of extremist militias.<sup>849</sup> In addition, journalists are hesitant to disclose certain types of information when informing the public of the activities of ministers and politicians due to fear of becoming labelled as troublemakers or being fired.<sup>850</sup> Lastly, as a result of poor education and limited practical experience among journalists, reports on government activities are often incomprehensive and biased due to reporters basing their stories primarily on information from the government.<sup>851</sup>

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<sup>849</sup> Issawi, 2013.

<sup>850</sup> Issawi, 2013.

<sup>851</sup> Interview with Khaeri Aboushagor, 2014.

**CIVIL SOCIETY**

**31 / 100**



# SUMMARY

Compared to the situation under the previous regime, civil society has flourished after the revolution with close to 2000 active CSOs in the country. Forming and joining CSOs is secured in the interim constitution, which provides the legal foundation for the sector. No specific law on civil society exists, and as such, there are no provisions which safeguard CSOs from undue external interference, but in practice external interference only poses a limited problem. Libyan CSOs are mainly funded by international donors contributing to the transparency of the sector, since donors require that a CSO register and make internal information public, such as its budget and other reports – a demand not made by the current legislation. On the other hand, this dependency on international donors can potentially have an effect on the agenda of the CSOs and their independence.

The key challenge for CSOs is their lack of financial resources and inability to attract skilled human resources having a negative impact on their transparency, as they often lack the resources to compile and publish relevant information on their activities and finances. Similarly, most of the organisations have been unable to establish well-functioning internal accountability systems and neither a formal nor an informal code of conduct exists in the sector. Lastly, the lack of resources and competencies also have an impact on the organisations' ability to act as a public watchdog, as well as perform their role in terms of influencing policy reform related to anti-corruption. There have been a few examples of CSOs monitoring and making efforts to hold the government accountable, but the impact of CSO activities has been limited.

The table below presents the indicator scores that summarise the assessment of civil society in terms of its capacity, its internal governance and its role within the Libyan integrity system. The remainder of this section presents the qualitative assessment for each indicator.

| OVERALL PILLAR SCORE: 31 / 100 |                                |     |          |
|--------------------------------|--------------------------------|-----|----------|
| Category                       | Index                          | Law | Practice |
| <i>Capacity</i><br>44 / 100    | Resources                      | 50  | 25       |
|                                | Independence                   | 25  | 75       |
| <i>Governance</i><br>25 / 100  | Transparency                   | -   | 25       |
|                                | Accountability                 | -   | 0        |
|                                | Integrity                      | -   | 50       |
| <i>Role</i><br>25 / 100        | Holding government accountable | 25  |          |
|                                | Policy reform                  | 25  |          |

# STRUCTURE & ORGANISATION

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Libyan civil society is heavily burdened by the oppressive laws and practices of the Gaddafi era, in which virtually no CSOs, trade unions or political parties were allowed to exist.<sup>852</sup> Gaddafi liked to characterise western multi-party political systems as systems in which citizens were “rode on like donkeys” and derided the idea of CSOs, claiming that Libya’s system of direct democracy made them irrelevant.<sup>853</sup> Already three months after the liberation of Tripoli in August 2011, 270 CSOs were registered in the capital.<sup>854</sup> In 2013, the estimated number of CSOs in the country was between 1,800 and 1,900. The newly founded organisations have a widespread geographic coverage, including urban and rural areas.<sup>855</sup> The CSOs vary in size and nature and work on a variety of different issues including humanitarian relief, anti-corruption, education, human rights, democracy and transparency, organisations and forums on women and young people, etc.

## CAPACITY: RESOURCES

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### LAW

To what extent does the legal framework provide an environment conducive to civil society?

Score: 50 / 100

Rules and regulations in post-Gaddafi Libya regarding civil society are few and broad in scope.<sup>856</sup> The legislation in place generally does not place restrictions on civil society. Article 14 of the interim constitution guarantees freedom of opinion for individuals and groups as well as freedom of assembly, and civil society is thus free to engage in advocacy and criticism of the government.<sup>857</sup> Article 15 of the interim constitution declares that: “The State shall guarantee the freedom of forming political parties, societies and other civil societies, and a law shall be promulgated to regulate same [...]”. In 2012 a draft law on associations was proposed entitled “Mashru’ Qanun bi-Shaan al-Jam’iyat”. The draft law has been amended several times and is still being debated by the GNC. In article 2, the draft law defines an association as: “...an agreement between two or more persons for purposes other than securing material gains.” However, in the next article it applies a limitation by stipulating that the objective of the organisation cannot be “...contradictory to morals or public order...”<sup>858</sup> This provision is very broad and open to interpretation, which creates a loophole for the authorities to ban CSOs and interfere in their work. The article has been received with heavy

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<sup>852</sup> Foundation For the Future, *Assessing the Needs of Civil Society in Libya*, 2011.

<sup>853</sup> St John, 2011.

<sup>854</sup> Foundation For the Future, 2011.

<sup>855</sup> Foundation For the Future, *Mapping and Participatory Needs Assessment of Civil Society in Libya*, 2013.

<sup>856</sup> Foundation For the Future, 2013.

<sup>857</sup> Constitution 2011, article 14.

<sup>858</sup> International Management Group, *Procurement, Civil Society, Communication and Media Support to Libya Civil Society and Women’s Rights in Libya*, 2012.

criticism, especially from the Libyan CSOs.<sup>859</sup> This draft law has still not been adopted, nor has any other specific law pertaining to civil society.<sup>860</sup>

CSOs can register with the Ministry of Culture and Civil Society and obtain a temporary licence,<sup>861</sup> but there are no prohibitions against unregistered organisations. There are minimal requirements for registering, which include the requirement of a minimum of three members, a list of objectives and a mission statement. The ministry has offices in various towns around Libya where local CSOs can register.<sup>862</sup> It appears that no fees apply for CSOs to register. It is unclear what the timeframe of the process is.

The tax system is quite favourable to CSOs, as they are exempt from paying taxes. They are nevertheless still required to pay tax on their staff's salaries.

## PRACTICE

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

Score: 25 / 100

Libyan CSOs generally suffer from a lack of financial resources. There are three general sources of funding available including government subsidies, private donors, and international donors.<sup>863</sup> Funding from the government is very limited.<sup>864</sup> The government has a grant of LYD 2 million (US\$1.6 million) in total, but the application process to access grants is not clear.<sup>865</sup> The primary source of funding for civil society is international donors, which means that organisations based far from donor organisations (i.e. not in major cities) find it more difficult to obtain financial support and donations.<sup>866</sup> It is unclear to what extent international donors try to affect the agenda of the CSOs they fund, but the CSOs' dependence on the donors could potentially have an impact on their independence. Due to donor restrictions on funding for operational costs, it is difficult to obtain funding to sustain entire projects.<sup>867</sup> In addition international donors usually require that CSOs be registered with the ministry to receive funding, which limits available funding for unregistered organisations. There are no known private philanthropic donors in the country and the CSOs generally do not tend to supplement their income with revenues from services, products or rents.<sup>868</sup>

According to a survey carried out between May and July 2012 only 17.5 per cent of Libyan CSOs either employ full-time or part-time staff; the rest rely on volunteers.<sup>869</sup>

CSOs also lack the necessary human resources, both in terms of the quantity of staff and the required skills, qualifications and professionalism.<sup>870</sup> Operational staff (i.e. finance, secretaries, human resource management, etc.) are available, but more technical staff are fewer and more

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<sup>859</sup> International Management Group, 2012.

<sup>860</sup> Interview with Rehab Alhaj, 2014 and interview with Dr Abdulmenam Mohamed, program manager at EUNIDA, with Sherif Jenan, Tripoli, 30 April 2014.

<sup>861</sup> Interview with Medhat Ghdamsy, 2014.

<sup>862</sup> Interview with Dr Abdulmenam Mohamed, 2014.

<sup>863</sup> International Management Group, 2012.

<sup>864</sup> Interview with Dr Abdulmenam Mohamed, 2014.

<sup>865</sup> Interview with Rehab Alhaj, 2014.

<sup>866</sup> Interview with Dr Abdulmenam Mohamed, 2014.

<sup>867</sup> Interview with Rehab Alhaj, 2014.

<sup>868</sup> Interview with Rehab Alhaj, 2014 and interview with Dr Abdulmenam Mohamed, 2014.

<sup>869</sup> Foundation For the Future, 2013.

<sup>870</sup> Foundation For the Future, 2013.

difficult to afford, as these staff usually go toward higher paying jobs in international organisations.<sup>871</sup> In addition the available staff is usually part-time and a survey among Libyan CSOs found that less than 17.5 per cent of the respondents stated that their organisation contained full-time or part-time employees; the rest relied on volunteers. The average number of employees in CSOs that employ their staff is eight.<sup>872</sup> The fact that many CSOs rely on volunteers, who generally do not possess the required know-how, has resulted in the fact that they are only to a limited extent able to play a significant role in areas such as politics, economics and law enforcement.<sup>873</sup> The recruitment of volunteers and members has nonetheless recently become increasingly difficult for CSOs, which could be explained by the lack of progress in the country according to the interviewees.<sup>874</sup> Generally, the CSOs lack the ability to build the organisation's vision and goals, campaign, conduct strategic planning, monitor the government, communicate in English, computer and social media skills, and so forth.<sup>875</sup>

Despite the few and minimal requirements for registration, there is a general confusion among CSOs on how and where to register, which has resulted in a number of CSOs operating unregistered, as well as representatives from CSOs travelling to Tripoli in order to register instead of applying at a local office.<sup>876</sup> In addition, the person in charge of registrations at the Ministry of Culture and Civil Society has been removed, and as such, there is no one leading the registration, which has added to the confusion for local CSOs.<sup>877</sup> Lastly, the public sector's general lack of consistency in applying laws and regulations means that the registration process for CSOs can be burdensome as different employees and offices will apply different rules and requirements for the registration.

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<sup>871</sup> Interview with Rehab Alhaj, 2014 and interview with Dr Abdulmenam Mohamed, 2014.

<sup>872</sup> Foundation For the Future, 2013.

<sup>873</sup> Interview with Medhat Ghdamsy, 2014.

<sup>874</sup> Interview with Rehab Alhaj, 2014 and interview with Dr Abdulmenam Mohamed, 2014.

<sup>875</sup> Foundation For the Future, 2011.

<sup>876</sup> Foundation For the Future, 2011; interview with Rehab Alhaj, 2014 and interview with Dr Abdulmenam Mohamed, 2014.

<sup>877</sup> Interview with Rehab Alhaj, 2014.

# CAPACITY: INDEPENDENCE

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## LAW

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

Score: 25 / 100

As there is no specific legislation governing civil society in Libya, the independence of civil society is not safeguarded by law. Only in broad terms, as defined in article 14 and 15 of the interim constitution, is the right to join and form CSOs secured. Article 8 of the draft law on civil society allows associations to freely develop their activities without interference from the authorities unless by judicial decision. The draft law further states in article 1 that associations must respect "...democracy, civic values, equality, human rights, transparency, the fight against corruption, national laws and international conventions". Thus, a legal framework for CSOs seems to be developing, including provisions related to the independence of CSOs. However, it is unclear when the draft law will be adopted and effectuated.<sup>878</sup>

## PRACTICE

To what extent can civil society exist and function without undue external interference?

Score: 75 / 100

Even though specific legislation on association is still lacking, CSOs can to a large extent be formed and act without interference from the authorities.<sup>879</sup> This study has not found any examples of external interference by the government in the activities of CSOs or attempts at manipulating CSOs to advance the government's interests. According to the interviewees, the arrest of activists or civil society members is not a common occurrence.<sup>880</sup> Even though this study has not found any examples of international donors interfering with the agenda of Libyan CSOs, the fact that the CSOs depend so heavily on financial support from abroad could potentially result in undue interference in their workings.

It appears that the only undue external interference in the work of civil society has come from armed groups attacking activists in a few instances, which could most recently be seen in the attack on an activist camp outside parliament, which was calling for the parliament not to extend their mandate.<sup>881</sup>

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<sup>878</sup> Interview with Dr Abdulmenam Mohamed, 2014.

<sup>879</sup> International Management Group, 2012; interview with Rehab Alhaj, 2014 and interview with Dr Abdulmenam Mohamed, 2014.

<sup>880</sup> Interview with Rehab Alhaj, 2014 and interview with Dr Abdulmenam Mohamed, 2014.

<sup>881</sup> Interview with Dr Abdulmenam Mohamed, 2014.

# GOVERNANCE: TRANSPARENCY

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## PRACTICE

To what extent is there transparency in CSOs?

Score: 25 / 100

CSOs are generally not very transparent regarding their finances and activities. According to a survey of CSOs almost 70 per cent of them have failed to make public any internal information.<sup>882</sup> As there are no legal requirements for CSOs to provide such information to the public, it is only in limited instances that organisations pro-actively do so. The lack of publicly reporting on finances and activities is also related to the lacking human resources and capacity of the CSOs.<sup>883</sup> In the instances when CSOs do publicly report on their activities and finances, it is because of the requirements of international donors.<sup>884</sup>

There is a bit more transparency in CSOs when it comes to their internal structures and composition of boards, which is often available on the organisations' websites or Facebook pages.<sup>885</sup>

# GOVERNANCE: ACCOUNTABILITY

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## PRACTICE

To what extent are CSOs answerable to their constituencies?

Score: 0 / 100

Libyan CSOs are generally not accountable to their constituencies and lack well-functioning boards to hold the organisations accountable.

Few CSOs have so far managed to hold proper elections within their organisation, as there is a tendency for the general assembly of the constituent bodies to be appointed rather than elected. In a CSO survey, 94 per cent of the CSOs declared that the general assembly was appointed rather than internally elected. Moreover, 89 per cent stated that the constituent body had been appointed rather than elected.<sup>886</sup>

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<sup>882</sup> Foundation For the Future, 2013.

<sup>883</sup> Interview with Rehab Alhaj, 2014.

<sup>884</sup> Interview with Rehab Alhaj, 2014 and interview with Dr Abdulmenam Mohamed, 2014.

<sup>885</sup> Interview with Rehab Alhaj, 2014 and interview with Dr Abdulmenam Mohamed, 2014.

<sup>886</sup> Foundation For the Future, 2013.

The function of the board in terms of holding leadership and organisation accountable is still an undeveloped concept in Libya. Most board members are friends and family who are appointed and have no involvement in the organisation, but are used in order to abide by the regulations for establishing and registering a CSO.<sup>887</sup>

## GOVERNANCE: INTEGRITY

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### PRACTICE

To what extent is the integrity of CSOs ensured in practice?

Score: 50 / 100

CSOs generally have limited clear efforts to ensure their internal integrity and there is at the moment neither a clearly written internal code of conduct internally nor a sector-wide code. Only 18 per cent of the respondents in the survey on civil society declared that their board of directors agreed to adopt such an internal code of ethics for their respective association.<sup>888</sup> Nevertheless, according to popular opinion, Libyan NGOs are perceived as one of the least corrupt sectors of society. In the 2013 Global Corruption Barometer, 31 per cent of the respondents perceived NGOs as either corrupt or extremely corrupt, making it the least corrupt sector along with the business sector.<sup>889</sup>

However, there is some tendency of self-regulation among Libyan CSOs in terms of which funding sources they accept and how funding is spent, as members are generally quite cautious of how they are perceived. In addition, according to the interviewees there is a natural system of checks and balances, since CSOs with integrity will be able to attract members and funding, while those without will not.<sup>890</sup>

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<sup>887</sup> Interview with Rehab Alhaj, Founder 2014 and interview with Dr Abdulmenam Mohamed, 2014.

<sup>888</sup> Foundation For the Future, 2013.

<sup>889</sup> [www.transparency.org/gcb2013/country/?country=libya](http://www.transparency.org/gcb2013/country/?country=libya) [accessed 12 May 2014].

<sup>890</sup> Interview with Rehab Alhaj, 2014.

# ROLE: HOLDING GOVERNMENT ACCOUNTABLE

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To what extent is civil society active and successful in holding the government accountable for its actions?

Score: 25 / 100

While CSOs in general have attempted to hold the government accountable, their impact has been limited. There are a number of positive examples, though, of CSOs attempting to hold the government accountable. For instance, in February 2014 a number of organisations launched a voter guide initiative in order to raise awareness regarding the election of a constitutional committee.<sup>891</sup> In 2012, CSOs criticised the NTC for its lack of transparency in the appointment of board members of the electoral management body.<sup>892</sup> In addition, a project entitled “Eye on the GNC” initiated by the Bokra Organisation and the H2O Team works to increase transparency, inform the public of the work of the parliament and thereby bring voters closer to their representatives.<sup>893</sup> As of 29 June 2014, 36 reports have been published.<sup>894</sup> Lastly, a number of political figures now heading CSOs have tried to hold the GNC accountable by outlining an alternative roadmap for the transition of power from the GNC.<sup>895</sup>

Despite these examples, CSOs in general have only had a limited impact on holding the government accountable. The lack of financial and human resources limits their ability to have an impact. In addition, the transitional stage of politics with unclear legislation and a high turnover in the members of the executive also complicates the ability of the Libyan CSO community to act as a watchdog of government activities.<sup>896</sup> Furthermore, only few CSOs work on advocacy related to anti-corruption and transparency in the government.<sup>897</sup>

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<sup>891</sup> Salam Tekbali, “Opinion: CSOs Launch Voter Guide Initiative to Raise Constitutional Election Voter Awareness”, *Libya Herald*, 4 February 2014.

<sup>892</sup> EU, 2012.

<sup>893</sup> [www.ignc.net.ly/about-ignc/](http://www.ignc.net.ly/about-ignc/) [accessed 10 September].

<sup>894</sup> [www.ignc.net.ly/category/reports/](http://www.ignc.net.ly/category/reports/) [accessed 10 September].

<sup>895</sup> Ahmed Elumami, “Former National Leaders Back Plan to Relieve Congress of Its Duties by 7 February”, *Libya Herald*, 22 January 2014.

<sup>896</sup> International Management Group, 2012.

<sup>897</sup> Interview with Rehab Alhaj, 2014 and interview with Dr Abdulmenam Mohamed, 2014.



# ROLE: POLICY REFORM

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*To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?*

Score: 25 / 100

CSOs are only to a limited extent engaged in policy reform initiatives on anti-corruption. According to a CSO survey, 25 per cent of the CSOs surveyed declared “Human rights, democracy, good governance, the rule of law, and *fighting against corruption*” [emphasis added] as a major area of their work. An additional 55 per cent of the organisations listed it as a sub-area.<sup>898</sup> According to the key informants for this assessment, anti-corruption and transparency is the least developed focus area of CSOs in Libya and the organisations focusing on these issues are not able to provide strong and relevant inputs related to reform discussions. The organisations lack the resources and experience to initiate and play an essential role in anti-corruption reforms.<sup>899</sup> Plus, when working on corruption, CSOs have tended to focus on individual cases rather than the government and system as a whole.<sup>900</sup>

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<sup>898</sup> Foundation For the Future, 2013.

<sup>899</sup> Interview with Dr Abdulmenam Mohamed, 2014.

<sup>900</sup> Interview with Rehab Alhaj, 2014.

**BUSINESS**

**29 / 100**

# SUMMARY

The Libyan business sector is severely challenged by a variety of factors. During the former regime, private companies played an insignificant role in the economy, which was mostly dominated by a large public sector that tended to crowd out private investments. Current legislation to ensure transparency and uphold integrity in the sector is limited and not sufficiently enforced in practice. For instance, only firms listed on the stock exchange make annual reports, the names of their directors and additional information available to the general public. Bribes remain a widespread practice similar to how it was in the Gaddafi era and so far no Libyan companies have adopted the United Nations Global Compact.<sup>901</sup> Nevertheless, in the 2013 Global Corruption Barometer only 31 per cent of the respondents perceived the Libyan businesses to be either corrupt or extremely corrupt which makes the private sector the least corrupt along with CSOs according to popular perception. In addition, in the 2013 Global Competitiveness Report published by the World Economic Forum, Libya ranks relatively high when taking its structural challenges into consideration. The report characterised the macroeconomic climate in Libya as somewhat well functioning and the market size as fairly large.

Analysing the Libyan business sector has been a difficult task as there is only very limited data and research available from secondary resources. There are therefore some areas of this report that are underdeveloped due to this lack of available data.

The table below presents the indicator scores that summarise the assessment of the business sector in terms of its capacity, its internal governance and its role within the Libyan integrity system. The remainder of this section presents the qualitative assessment for each indicator.

| OVERALL PILLAR SCORE: 29 / 100 |   |     |          |
|--------------------------------|---|-----|----------|
| Category                       | Index                                     | Law | Practice |
| <i>Capacity</i><br>44 / 100    | Resources                                 | 75  | 25       |
|                                | Independence                              | 50  | 25       |
| <i>Governance</i><br>42 / 100  | Transparency                              | 75  | 25       |
|                                | Accountability                            | 50  | 25       |
|                                | Integrity                                 | 25  | 50       |
| <i>Role</i><br>0 / 100         | Anti-Corruption policy engagement         | 0   |          |
|                                | Support for/engagement with civil society | 0   |          |

<sup>901</sup> US Department of State, 2014 Investment Climate Statement - Libya, June 2014

# STRUCTURE & ORGANISATION

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In the Gaddafi era, private businesses only played a minor role in the economy, which was dominated by a large public sector fuelled by the oil industry. For instance, the first stock market in Libya was not established until 2006.<sup>902</sup> The vast majority of Libya's working population remains employed by the public sector and the private sector is still viewed with suspicion by the government and to some extent also by society.<sup>903</sup> The business environment is further challenged by a large informal sector, which is estimated to make up approximately 30 per cent of the Libyan economy.<sup>904</sup> This assessment, however, primarily focuses on the formal corporate sector of the Libyan economy. Economic growth has been unstable during and after the revolution; it fell by 62.1 per cent in 2011, increased by 104.5 per cent in 2012, fell by 6 per cent in 2013, and is predicted to increase by 23 per cent in 2014.<sup>905</sup>

## CAPACITY: RESOURCES

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### LAW

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

Score: 75 / 100

The legal framework in Libya is assessed to be suitable for a conducive business environment, with legislation protecting property rights and enforcement of contracts.

The majority of the legislation governing the Libyan private sector dates back to before the revolution. Law no. 65 1970 on commercial companies lays out very restrictive regulations and prohibits foreigners from engaging in joint-venture or other types of partnerships in Libya.<sup>906</sup> Law no. 5 1997, amended by law no. 7 2003, eases these restrictions and allows inflows of foreign capital in order to encourage construction and investment projects. This encouragement is supported by article 5 of law no. 7 2003 that establishes the Libyan Foreign Investment Board; created as an independent body tasked with attracting foreign investment, handling applications, and issuing licences for investment projects.<sup>907</sup> The law defines an investment project as: "Any economic establishment based on the Law, whose work results in production of commodity for final or intermediary consumption or investment commodities or for export or providing service or any other

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<sup>902</sup> Atiya Aljbiri, "The Performance of Libyan Stock Market", *Acta Univ. Agric. Silvic. Mendelianae Brun.*, vol. 60, issue 7, 2012.

<sup>903</sup> Legatum Institute, *Libya in Transition: Reforming the Financial Sector to Spur Economic Growth*, 2013.

<sup>904</sup> AfDB, OECD, UNDP & UNECA, 2012.

<sup>905</sup> World Bank, 2014a.

<sup>906</sup> Law no. 65 1970 Concerning Decision of Some Rules in Respect of Trades and Commercial Companies and Supervision Thereon, article 2.

<sup>907</sup> Law no. 5 1997 for the Promotion of Investment of Foreign Capital, as amended by law no. 7 2003, article 9.

establishment approved by the Secretariat of General People's Committee."<sup>908</sup> Projects established in accordance with the law enjoy exemptions from income tax for a period of five years. Furthermore, machinery, raw materials and additional equipment necessary for executing various projects are exempted from taxes, customs and other charges.<sup>909</sup> Law no. 9 2010 on investment promotion reaffirms many of these provisions and allows national as well as foreign investors to establish investment enterprises in the main industries with the exception of the oil and gas sector.<sup>910</sup> The GNC, however, changed this exemption by issuing decree no. 207 2012, which allows foreign investors to open branches in the oil and gas sector on the condition that the manager or the deputy manager of the company's Libyan office is a Libyan national.<sup>911</sup>

Article 23 of law no. 9 2010 protects nationals' and foreign investors' property rights as it is stipulated that: "It is not allowed to nationalise the project or privatise, take by force, confiscate, impose custody, freeze, or subjugate to procedures having the same effect, except under a judicial decision and for a fair compensation, provided that these procedures shall be taken in a non discriminatory manner."<sup>912</sup> In addition, there is also a legal framework for protection of intellectual property.<sup>913</sup> Generally, however, there was a widespread lack of laws prior to the revolution in terms of governing and protecting business owners, for instance, regarding the enforcement of contracts.<sup>914</sup> During the current regime, new legislation has emerged to ensure that the enforcement of contracts is protected by law. Thus, the current legal framework is assessed as quite suitable and enabling for the establishment of private businesses, and restrictions appear to be in place primarily to ensure the integrity of the sector.<sup>915</sup>

Currently, there are four main steps involved in establishing a new business. These include: the opening of a bank account, the completion of a memorandum of the association, usually performed by a lawyer, registration in the commercial register and with the Chamber of Commerce, and finally the actual application for an operation licence which must be approved by the Ministry of Economy.<sup>916</sup> It takes on average 10 legal procedures and 35 days to open a business. However, it is especially the initial procedures that are the most time-consuming.<sup>917</sup> The last step requires that the applicant provide an address of the business, which is not allowed to be located in residential areas. This requirement has proven to be an impediment for potential small business owners who wish to run the company from their house or apartment,<sup>918</sup> and this can potentially lead these small business owners to operate in the informal economy rather than within the formal economy. This is in line with the perception of the head of economic policies section at the National Economic Development Board, who sees the current legal framework as primarily benefiting larger firms rather than sole proprietorships or entrepreneurs attempting to start new businesses.<sup>919</sup>

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<sup>908</sup> Law no. 5 1997 as amended by law no. 7 2003, article 3.

<sup>909</sup> Law no. 5 1997 as amended by law no. 7 2003, article 10.

<sup>910</sup> Law no. 9 2010 on Investment Promotion, article 27.

<sup>911</sup> [www.libya-businessnews.com/2013/02/11/libyan-construction-law-contractors-liabilities/](http://www.libya-businessnews.com/2013/02/11/libyan-construction-law-contractors-liabilities/) [accessed 25 June 2014].

<sup>912</sup> Law no. 9 2010, article 23.

<sup>913</sup> Interview with Aref Kashar, 2014.

<sup>914</sup> AfDB, OECD, UNDP & UNECA, 2012.

<sup>915</sup> Interview with Aref Kashar, 2014 and interview with Dr Mohamed Khalil Fayad, 2014.

<sup>916</sup> Interview with Aref Kashar, 2014.

<sup>917</sup> World Bank, *Doing Business 2014 – Economic Profile: Libya*, 2014 (2014b).

<sup>918</sup> Interview with Aref Kashar, 2014.

<sup>919</sup> Interview with Medhat Ghdamsy, 2014.

## PRACTICE

To what extent are individual businesses able to form and operate effectively in practice?

Score: 25 / 100

The ease of doing business in Libya is assessed very poorly by the World Bank, while the World Economic Forum gave a slightly better assessment. The general conclusion, however, is that the business environment is hampered by inefficient bureaucracy, lack of effective capital markets and significant costs when starting a business.

In practice the Libyan business climate is seriously challenged by the heavy legacy of the former regime and the large public sector that has tended to crowd out private investments and businesses.<sup>920</sup> The World Bank ranks Libya 187 out of 189 in its 2014 report on the ease of doing business, which is the same rank as in 2013.<sup>921</sup> The report assesses the ease of opening and running a small to medium-size business for a local entrepreneur when complying with relevant regulations. On average, it takes 35 days to register a business and 10 official procedures are involved, which cost approximately 19 per cent of the average yearly income in required official, legal and professional fees.<sup>922</sup> Libya has the worst climate in the world for doing business in terms of dealing with construction permits, registering property and resolving insolvency.<sup>923</sup> Furthermore, in the same report, Libya ranks among the four worst countries regarding access to credit and protection of investors. The only indicator where Libya receives a relatively high score is with respect to access to electricity – ranked 68 out of 189 – which is mainly due to the fact that it only requires four official procedures on average to obtain a new electricity connection.<sup>924</sup>

In the 2013 Global Competitiveness Report published by the World Economic Forum, Libya ranks significantly higher, 108 out of 148 countries.<sup>925</sup> Economic competitiveness is assessed based on 12 indicators; each of which is scored on a scale from 1 to 7.<sup>926</sup> Libya averaged 3.73 due to a somewhat well-functioning macroeconomic climate, as well as its market size. The inefficient government bureaucracy is considered the biggest obstacle for doing business. Additional factors hindering an effective business environment include corruption, an inadequate infrastructure, a low degree of market efficiency and an undeveloped financial market.<sup>927</sup> While the regulatory framework of the Libyan stock market is quite strong, in practice it remains relatively inefficient.<sup>928</sup> As such, it does not significantly contribute to the Libyan business climate and does not in practice work as an effective capital market that enables businesses in Libya to operate efficiently. There is a complaint mechanism in place for private businesses to make use of; however, its working is not perceived to be completely clear in practice and only effective to a certain extent.<sup>929</sup>

After the revolution there have been positive signs toward improvement of the business environment, since private businesses have allegedly been allowed to operate freely and with very

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<sup>920</sup> Advisory Group, First Meeting, 2014.

<sup>921</sup> World Bank, 2014b.

<sup>922</sup> World Bank, 2014b.

<sup>923</sup> World Bank, 2014b.

<sup>924</sup> World Bank, 2014b.

<sup>925</sup> World Economic Forum, *The Global Competitiveness Report 2013-2014*, 2013.

<sup>926</sup> The 12 pillars include institutions, infrastructure, macroeconomic environment, health and primary education, higher education and training, good market efficiency, labor market efficiency, financial market development, technological readiness, market size, business sophistication and innovation.

<sup>927</sup> World Economic Forum, *The Africa Competitiveness Report*, 2013 (2013a).

<sup>928</sup> Aljbiri, 2012.

<sup>929</sup> Interview with Aref Kashar, 2014.

few restrictions.<sup>930</sup> However, the section at the Ministry of Economy responsible for issuing operating licences to new businesses is reportedly inactive at present, making it impossible to enter the market legally in practice.<sup>931</sup> The question of property rights protection has become more uncertain after the revolution. During the former regime, Gaddafi introduced a redistribution of property in order to ensure that all households had access to residential and agricultural property. Under law no. 4 1978 properties, agricultural lands and businesses were seized and nationalised.<sup>932</sup> The GNC has pledged to return the properties to their original owners; however, the complexity as well as the number of property claims complicates the task in practice. The various disputes of ownership and the uncertainty of real estate property rights and land rights have resulted in banks being hesitant in terms of allowing property as collateral, which is limiting the amount of loans being issued, and thus the level of economic activity.<sup>933</sup> Other statements point to the fact that, since the revolution, property rights violations have been largely absent<sup>934</sup> and the uncertainty of property rights might cause conflicts in the future.

In 2007, there was a surge of privatisation in the banking sector, but the private banks have to a large extent stopped lending out capital, even though they are heavily capitalised.<sup>935</sup> Recently, the Central Bank declared that all institutions must become “sharia compliant” by 2015. It is unclear what consequences this decision will have in practice, but it is likely to discourage investment and economic growth as few Libyan banks and agencies have the capacity to operate solely as Islamic institutions and will find it difficult to make the conversion by 2015.<sup>936</sup> Islamic finance uses measures that are quite different from the traditional western system. It is mostly known for the prohibition of interests as it is considered an unethical practice.<sup>937</sup>

## CAPACITY: INDEPENDENCE

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### LAW

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

Score: 50 / 100

While public servants have been granted a fairly large role in trademark registration and approval of licences, which can lead to unwarranted external interference in the activities of private business, there are mechanisms in place for businesses to seek redress in case of undue external interference.

Historically, the legal framework regarding the independence of the private sector has developed in three stages. In the first period – between 1955 and 1969 – the business sector's independence from the state was nearly non-existent. The economy was best characterised as nationalistic as

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<sup>930</sup> Interview with Aref Kashar, 2014.

<sup>931</sup> Interview with Medhat Ghdamsy, 2014.

<sup>932</sup> Lawyers for Justice in Libya, 2014.

<sup>933</sup> Legatum Institute, 2013.

<sup>934</sup> Interview with Dr Mohamed Khalil Fayad, 2014.

<sup>935</sup> Fayruz Abdulhadi, “Opinion: Libya’s Credit Crunch”, Libya Herald, 18 June 2013.

<sup>936</sup> Legatum Institute, 2013.

<sup>937</sup> [www.forbes.com/sites/timothyspangler/2011/04/05/islamic-funds-sharia-law-and-investment-structures/](http://www.forbes.com/sites/timothyspangler/2011/04/05/islamic-funds-sharia-law-and-investment-structures/) [accessed 25 June 2014].

public ownership was encouraged and the private sector was very small. In the second stage – from 1970 to 2000 – there were only few improvements regarding the independence of Libyan businesses. The government continued to play a large role in relation to the private sector and the legal framework was rather unsupportive of private businesses. As the banking sector was restricted and the judiciary was inefficient, the private sector had few non-governmental institutions to rely on for support.<sup>938</sup>

From 2000 onwards, the former regime made several efforts to strengthen the legal provisions for the private sector and provide a basic level of isolation from the government. Decree no. 313 2003 transferred 360 public companies to shareholders and cooperative ownership. This was part of a privatisation programme initiated by the government in order to expand the ownership base and restructure economic activities by replacing state-owned firms with partnerships and joint stock companies.<sup>939</sup>

Some of the old laws that remain in effect today are rather vague in their formulation, which allows for different interpretations and thus the potential for political interference.<sup>940</sup> The Trademark Law, law no. 40 1956, was replaced by book 10 of the Commercial Law, law no. 23 2010, which establishes a new Trademark Law.<sup>941</sup> The Trademark Law defines a trademark as "anything characterising a product or a service from another" and it outlines a non-exhaustive list of what may be considered a trademark.<sup>942</sup> The definition of a trademark is thus broadened to include names, sound marks and colour marks. Additionally, well-known trademarks are recognised in the law and ensured protection, even if they are not registered. The law also gives owners of trademarks the right to initiate civil and criminal actions against any infringing person or organisation. The penalties for violating the rights of trademark owners include imprisonment for a maximum of two years and economic compensation of up to LYD 9,461 (US\$7,500).<sup>943</sup> Nevertheless, according to one of the informants in this study, public servants play a fairly large role regarding the process of trademark registering and the approval of licences for new businesses as vague provisions in the law leaves it up to the interpretation of the civil servants to settle a case.<sup>944</sup> The businesses are therefore not protected sufficiently by the law and neither are the civil servants who risk being accused of wrongdoings. The Trademark Office, which is the responsible entity for registering trademarks in Libya, closed in 2011 due to civil unrest but reopened in May 2013 where it provided a comprehensive database of newly published trademarks in its first Official Gazette. All deadlines and priority dates that fell due within the period of closure are to be properly handled in order to ensure that all files are in order.<sup>945</sup>

Article 21 of law no. 9 2010 on investment promotion allows investors to file written complaints of violation of the provisions outlined in article 23 of the law which include nationalisation, privatisation, confiscation and freezing of projects, as well as forceful take-overs and the imposition of custody.<sup>946</sup> In addition, there are also regulations in place that allow businesses to seek compensation for alleged external interference.<sup>947</sup>

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<sup>938</sup> Najeb M.H. Masoud, "A Review of Libyan's Economy, Structural Changes and Development Patterns", *Business and Economics Journal*, vol. 4, issue 2, 2013.

<sup>939</sup> Masoud, 2013.

<sup>940</sup> Interview with Aref Kashar, 2014.

<sup>941</sup> Law no. 23 2010 on Commercial Activity, book 10.

<sup>942</sup> [www.internationallawoffice.com/newsletters/detail.aspx?q=69637bca-0e86-44dc-a774-d4c4046b2adc#Penal](http://www.internationallawoffice.com/newsletters/detail.aspx?q=69637bca-0e86-44dc-a774-d4c4046b2adc#Penal) [accessed 21 August 2014].

<sup>943</sup> [www.internationallawoffice.com/newsletters/detail.aspx?q=69637bca-0e86-44dc-a774-d4c4046b2adc#Penal](http://www.internationallawoffice.com/newsletters/detail.aspx?q=69637bca-0e86-44dc-a774-d4c4046b2adc#Penal) [accessed 21 August 2014].

<sup>944</sup> Interview with Aref Kashar, 2014.

<sup>945</sup> [www.inta.org/INTABulletin/Pages/LIBYATrademarkOfficeResumesWork.aspx](http://www.inta.org/INTABulletin/Pages/LIBYATrademarkOfficeResumesWork.aspx) [accessed 21 August 2014].

<sup>946</sup> Law no. 9 2010, article 21.

<sup>947</sup> Interview with Aref Kashar, 2014.



## PRACTICE

To what extent is the business sector free from unwarranted external interference in its work in practice?

Score: 25 / 100

It appears to be difficult for the private sector to operate free from unwarranted external interference in its work, as corruption in the public sector is perceived to be widespread, the banking sector dominated by the Central Bank and compensation to businesses for unwarranted interference is unlikely to be upheld.

In practice, the Libyan economy remains heavily state-controlled, which poses a significant challenge for private businesses. The decision-making procedures by public agencies are inconsistent, which intensifies uncertainty for potential investors and hence the development of the economic sectors (besides the oil industry) is hampered.<sup>948</sup> Additionally, the private sector's independence is challenged by the fact that the Libyan banking sector remains highly dependent on the Central Bank, which owns 85 per cent of Libya's banking assets.<sup>949</sup> During the former regime, public agencies frequently abused their power to gain access to the business sector's financial resources.<sup>950</sup> It is unclear to what extent this practice has continued after the revolution. However, it is still perceived as common practice for civil servants to accept and request bribes when dealing with private firms.<sup>951</sup>

The legal framework allows for lawsuits and complaints against public departments and civil servants, which are fairly easy to file but at the same time very rare in practice, as it is perceived as a waste of resources to seek compensation due to political interference. As such, compensation is extremely unlikely to be disbursed even if the company was to prevail in the case.<sup>952</sup> Thus, there are no mechanisms in place that ensure that the judgement is put into effect.

Apart from accepting and asking for bribes, it is unknown how common it is for government officials to abuse their office in order to exploit the private sector. Also, the extent of undue involvement in the economy with negative implications for the rule of law is uncertain.<sup>953</sup>

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<sup>948</sup> KPMG/NKC, *Libya Snapshot 2013 Quarter 1*, 2013.

<sup>949</sup> Legatum Institute, 2013.

<sup>950</sup> Masoud, 2013.

<sup>951</sup> Interview with Aref Kashar, 2014.

<sup>952</sup> Interview with Aref Kashar, 2014.

<sup>953</sup> Interview with Dr Mohamed Khalil Fayad, 2014.

# GOVERNANCE: TRANSPARENCY

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## LAW

To what extent are there provisions to ensure transparency in the activities of the business sector?

Score: 75 / 100

There are adequate provisions in place to ensure transparency in the business sector, as the legal framework in Libya requires businesses to be audited annually by licensed external auditors.

Law no. 23 2010 on commercial activity requires private businesses to be audited annually by a licensed external auditor. Article 18 stipulates that every private firm subject to the law must appoint at least one external auditor, which can be an extraordinarily high burden to place on small business owners.<sup>954</sup> The external auditor must submit a yearly written report in which the auditor addresses several matters, including the financial authenticity of the company's accounts, the validity of its final financial statements and the extent to which the company meets adopted accounting standards.<sup>955</sup> The management of each business is additionally required to provide its external auditor with the final financial statements within 60 days of the end of the fiscal year. The external auditor must subsequently complete the audit within 45 days of receiving the report.<sup>956</sup> Lastly, several provisions in law no. 23 2010 require accountants to adhere to statutory codes when completing and approving the financial statements of private firms. These provisions include the International Financial Reporting Standards.<sup>957</sup>

Article 1 of Banking Law no. 1 2005 declares the Central Bank of Libya to be: "...an autonomous institution with the status of a legal entity with independent financial liability."<sup>958</sup> The Central Bank is required to publish a statement of its assets and liabilities immediately after the end of the last day of each month in accordance with article 24 of the Banking Law.<sup>959</sup> The Central Bank is further authorised to inspect Libyan banks' financial records, which to a large extent ensures transparency in the banking sector.<sup>960</sup> Article 5 allows the Central Bank to: "Monitor and supervise banking institutions to ensure the soundness of their financial position, monitor their performance, and protect the rights of their depositors and customers."<sup>961</sup> Additionally, article 85 requires each Libyan bank to submit monthly statements of their financial records within 15 days of the end of the financial month as well as a copy of its most recent audited financial statements within four months of the end of its fiscal year.<sup>962</sup> Failure to comply with these provisions will result in a fine of up to LYD 1,000-10,000 (US\$817-8,170).<sup>963</sup>

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<sup>954</sup> Law no. 23 2010, article 18.

<sup>955</sup> Law no. 23 2010, article 209.

<sup>956</sup> Law no. 23 2010, article 210.

<sup>957</sup> Interview with Dr Mohamed Khalil Fayad, 2014.

<sup>958</sup> Banking Law, law no. 1 2005, article 1.

<sup>959</sup> Banking Law, law no. 1 2005, article 24.

<sup>960</sup> Banking Law, law no. 1 2005, article 61.

<sup>961</sup> Banking Law, law no. 1 2005, article 5.

<sup>962</sup> Banking Law, law no. 1 2005, article 85.

<sup>963</sup> Banking Law, law no. 1 2005, article 107.

## PRACTICE

To what extent is there transparency in the business sector in practice?

Score: 25 / 100

There are generally low levels of transparency in the business sector with the exception of companies registered on the stock exchange, which opened in 2012 after the revolution with a capital value of LYD 3,9 billion (US\$3,2 billion). This corresponds to approximately 4,8 per cent of Libya's GDP that year.<sup>964</sup> There is, however, some degree of standardised financial measures being used in auditing and accounting.

While the Banking Law includes provisions to ensure transparency in the financial and banking sectors, in practice few banks work with high standards of transparency. The banking sector has a weak institutional framework, especially the commercial banks, and is not capable of making general information available to the public.<sup>965</sup> Libyan financial markets are rather underdeveloped and weak, compared to both neighbouring African countries and on a global scale, and are not able to contribute to a high degree of transparency.<sup>966</sup>

In practice, only companies in the stock exchange make annual reports, the names of their directors and contact information available to the general public.<sup>967</sup> It is possible to request access to such information with the commercial register; however, this information is very unlikely to be released.<sup>968</sup> Even though law no. 23 2010 demands businesses to make their ownership structure, mergers, divisions and other changes in their legal form publicly available, this is not followed in practice.<sup>969</sup> Additionally, it does not appear that publication of information regarding corporate sustainability and responsibility is a widespread practice among private businesses, and no Libyan companies have adopted the UN Global Compact.<sup>970</sup>

The international standards regarding auditing and accounting are not widely applied by Libyan companies. In terms of third-party verification of financial records, it appears that the general assembly of a company is assigned with this task.<sup>971</sup>

In relation to countering corruption, it is unknown what actions private companies take in this regard and whether such actions are made public.

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<sup>964</sup> <https://au.finance.yahoo.com/news/libyas-stock-market-low-key-051058680.html> [accessed 7 July 2014].

<sup>965</sup> Legatum Institute, 2013.

<sup>966</sup> World Economic Forum, 2013b.

<sup>967</sup> Interview with Aref Kashar, 2014.

<sup>968</sup> Interview with Aref Kashar, 2014.

<sup>969</sup> Interview with Dr Mohamed Khalil Fayad, 2014.

<sup>970</sup> Interview with Dr Mohamed Khalil Fayad, 2014.

<sup>971</sup> Interview with Dr Mohamed Khalil Fayad, 2014.

# GOVERNANCE: ACCOUNTABILITY

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## LAW

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

Score: 50 / 100

There is a fair amount of provisions governing the oversight of the business sector and corporate governance, but there is a lack of reporting requirements of business owners and no financial regulation agency.

The rules regarding corporate governance are outlined in law no. 23 2010 article 182-185. The board in each company is required to fulfil their legal duties in good faith and with loyalty toward the company. The chairman and the board of directors can be held jointly accountable for not performing their functions properly, including poor financial results, unless a particular malfunction was reported in a timely manner or took place without their knowledge.<sup>972</sup> Creditors are able to file a written complaint if a company is not able to pay off its debts or goes bankrupt, if it is due to the board of directors not meeting their responsibilities.<sup>973</sup> The board is further responsible for submitting a detailed statement annually to its shareholders at least seven days prior to the convening of the General Assembly which must include all amounts received by the chairman and the board of directors, such as salaries, reimbursement of expenses, other commissions, physical benefits, including automobiles and housing received by the president and the board, bonuses that the board proposes to distribute, and a list of donations made by the company.<sup>974</sup>

Rules regarding the requirements of managers, such as reporting to the board, to shareholders and to partners are not clear in the current legal framework with the exception of the banking sector, which has somewhat well-developed rules in this area that live up to international standards.<sup>975</sup> For instance, article 69, sub-article 2, of Banking Law No. 1 2005 declares that any person appointed to serve as general manager of a commercial bank must submit to the chairman of the board of directors a statement of the stocks and shares that he/she owns in commercial companies within one month. Additionally, the general manager is responsible for notifying the chairman within one month if any changes are made to his/her stocks and shares.<sup>976</sup>

The stock market is monitored by an independent regulatory authority established by law no. 11 2010, which aims at enacting the concepts of transparency and disclosure, and to protect investors from non-market risks. The oversight body is tasked with supervising the functions of the market including listings, settling and trades.<sup>977</sup>

Libya lacks a credit bureau to operate as an independent legal entity with the objective to research and collect individual credit information and sell it to lending institutions, for example, banks and

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<sup>972</sup> Law no. 23 2010, article 182.

<sup>973</sup> Law no. 23 2010, article 185.

<sup>974</sup> Law no. 23 2010, article 183.

<sup>975</sup> Interview with Aref Kashar, 2014.

<sup>976</sup> Banking Law, law no. 1 2005, article 69, sub-article 2.

<sup>977</sup> Aljbiri, 2012.

mortgage lenders.<sup>978</sup> Furthermore, there is no established regulatory body tasked with monitoring Libyan firms.<sup>979</sup>

In relation to a financial regulator overseeing Libyan firms, it does not appear that such an agency is in place at present.

## PRACTICE

To what extent is there effective corporate governance in companies in practice?

Score: 25 / 100

The few oversight bodies in place appear to be effective, though to varying degrees, but generally there is a low level of accountability in the business sector. The lack of accountability in the private sector is also related to the fact that a large part of the private sector is unregulated and informal.

The effectiveness of the few oversight bodies in place varies in practice due to different ways of implementing the legal provisions by the various agencies.<sup>980</sup> The accountability of the Libyan private sector is greatly affected by the large informal sector in the country. Estimates from 2010 find that 30 per cent of the Libyan economy is made up of the informal sector making it one of the most dominant in the economy.<sup>981</sup> Due to the nature of the black market, there is no corporate governance and no actors that can be held accountable or uphold accountability.

No evidence was found that the state has encouraged companies in the private sector to engage in anti-corruption practices and disclose relevant information in this respect. The effectiveness of current provisions in relation to ensuring good corporate governance among Libyans businesses is additionally unclear and unknown.

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<sup>978</sup> Legatum Institute, 2013.

<sup>979</sup> Interview with Medhat Ghdamsy, 2014.

<sup>980</sup> Interview with Dr Mohamed Khalil Fayad, 2014.

<sup>981</sup> AfDB, OECD, UNDP & UNECA, 2012.

# GOVERNANCE: INTEGRITY

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## LAW

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

Score: 25 / 100

The legal framework regulating the integrity of the Libyan business sector is relatively weak. Law no. 2 2005 on Combating Money Laundering offers exemption from punishment for citizens reporting crimes of money laundering before they are discovered by the authorities.<sup>982</sup> Additional legislation regarding whistleblowing or protection of employees reporting cases of corruption and bribery in the private sector is absent.<sup>983</sup> In 2007, the Libyan Corporate Governance Code was developed by the Libyan stock market. The code covered the main principles of good corporate governance, including shareholders' rights, boards of directors, conflicts of interest, disclosure and transparency, and board committees.<sup>984</sup> Nevertheless, the code was characterised by a weak legal environment, lack of knowledge regarding cooperative governance and poor leadership, and it does not appear to exist today seeing that a study published by the *OECD Journal: Financial Market Trends* in 2010 found that no general corporate governance code exists in Libya.<sup>985</sup> International companies conducting business in Libya, on the other hand, appear to have fairly well-developed codes of conduct.<sup>986</sup>

The current legislation only prohibits bribery locally in Libya, but not when conducting business abroad.<sup>987</sup> Recent legislation has installed provisions that exclude companies involved in certain illegalities from conducting business. Law no. 36 2012, passed by the NTC in May 2012,<sup>988</sup> froze the assets of 78 companies and 260 individuals, as they are suspected of committing fraud and being affiliated with the former regime.<sup>989</sup> Law no. 36 2012 was amended by law no. 47 2012, also adopted by the NTC, which decreases the number of companies that will have their assets frozen to six as well as the number of individuals to 234.<sup>990</sup> The six companies on the list are: Ashararah Co. (oil marketing), Al-Watan Al-Khaled Constructions & Investment Co., Al-Mustakbal (advertisement, printing and commercials), Ajaweed Arts and Media Production Co., the Al-Wafa Bank and the Al-Aman Bank.<sup>991</sup>

The current legislation covers both personal and corporate liability.<sup>992</sup> There are furthermore provisions in place that require bidders of public contracts to be engaged in ethics programmes on issues such as anti-corruption and various other business principles.<sup>993</sup>

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<sup>982</sup> Law no. 2 2005 on Combating Money Laundering, article 6.

<sup>983</sup> <https://blueprintforfreespeech.net/document/libya-overview> [accessed 3 April 2014].

<sup>984</sup> PhD Thesis by Abdelhamid Ali Ali Magrus entitled "Corporate Governance Practices in Developing Countries: The Case of Libya", University of Gloucestershire, United Kingdom, 2012.

<sup>985</sup> Alissa Koldertsova, "Second Corporate Governance Wave in the Middle East and North Africa", *OECD Journal: Financial Market Trends*, issue 2, 2010.

<sup>986</sup> Interview with Aref Kashar, 2014.

<sup>987</sup> Interview with Aref Kashar, 2014.

<sup>988</sup> Law no. 36, 2012.

<sup>989</sup> Sami Zaptia, "NTC Freezes 338 Assets of Which 260 Are Individuals and 78 Are Companies", *Libya Herald*, 21 May 2012.

<sup>990</sup> Law no. 47, 2012.

<sup>991</sup> Law no. 47, 2012.

<sup>992</sup> Interview with Aref Kashar, 2014 and interview with Dr Mohamed Khalil Fayad, 2014.

<sup>993</sup> Interview with Dr Mohamed Khalil Fayad, 2014.

Employment of professional chief compliance officers does not seem to be a general practice as it only takes place within certain corporations.<sup>994</sup>

## PRACTICE

To what extent is the integrity of those working in the business sector ensured in practice?

Score: 50 / 100

Corruption seems to be widespread in the business sector and there is only a limited degree of integrity in the sector. On the other hand, citizens perceive it to be among the least corrupt sectors in Libya.<sup>995</sup>

The Libyan Corporate Governance Code developed in 2007 does not exist today and thus there is no corporate code of conduct.<sup>996</sup> As a legacy from the Gaddafi era, bribery continues to be a widespread practice in the business sector,<sup>997</sup> as it still provides the solution to many problems, which gives larger companies an advantage over smaller ones that often lack the necessary resources to make such payments.<sup>998</sup> Especially the construction sector is at high risk of corruption and accepting kickbacks and awarding contracts to family companies in order to maximise profits are widespread practices.<sup>999</sup> There are reports of projects being delayed for no particular reason while there are other instances where contracts are awarded, signed and initial payments completed due to the fact that personal interests are involved.<sup>1000</sup>

According to the 2013 Global Corruption Barometer, only 31 per cent of the surveyed Libyans found private businesses to be either corrupt or extremely corrupt, making it the least corrupt sector in Libya along with CSOs.<sup>1001</sup> The citizens' perception is also confirmed by a professor of economics at the University of Benghazi who has stated that there seems to be a general awareness of the importance of upholding integrity in the private sector in order to improve the overall performance of private businesses.<sup>1002</sup> Even if integrity is rather low in the sector, the assessments find it to be a positive sign that the sector acknowledges the importance of upholding integrity.

During the previous regime, foreign corporations were allegedly often involved in bribery when conducting business in Libya. The current authorities have filed several lawsuits in order to prosecute the suspected companies. For instance, in March 2014, the Libyan Investment Authority filed a LYD 1.9 billion (US\$1.5 billion) lawsuit against the second-biggest bank of France, Société Générale. The Libyan Investment Authority accuses Société Générale of funnelling bribes worth at least LYD 72.6 million (US\$58 million) to associates of Saif al-Islam, who is one of Gaddafi's sons, between 2007 and 2009.<sup>1003</sup> In January 2014, the Libyan Investment Authority filed a case against Goldman Sachs which it accused of implementing equity derivative trades in 2008 that cost the Libyan Investment Authority more than LYD 1.3 billion (US\$1 billion) and made Goldman Sachs

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<sup>994</sup> Interview with Dr Mohamed Khalil Fayad, 2014.

<sup>995</sup> [www.transparency.org/gcb2013/country/?country=libya](http://www.transparency.org/gcb2013/country/?country=libya) [accessed 12 May 2014].

<sup>996</sup> Koldertsova, 2010.

<sup>997</sup> Interview with Aref Kashar, 2014 and interview with Dr Mohamed Khalil Fayad, 2014.

<sup>998</sup> Khan, 2013.

<sup>999</sup> Khan, 2013.

<sup>1000</sup> Khan, 2013.

<sup>1001</sup> [www.transparency.org/gcb2013/country/?country=libya](http://www.transparency.org/gcb2013/country/?country=libya) [accessed 12 May 2014].

<sup>1002</sup> Interview with Dr Mohamed Khalil Fayad, 2014.

<sup>1003</sup> Reuters, 2014a.

more than LYD 438,2 million (US\$350 million) in profits.<sup>1004</sup> Additionally, in January 2014 the Norwegian fertiliser company Yara International was fined 295 million Norwegian crowns, which corresponds to LYD 60,1 million (US\$48 million) for paying or agreeing to pay LYD 15 million (US\$12 million) in bribes between 2004 and 2009 to senior government officials in Libya, including an oil minister.<sup>1005</sup>

## ROLE: ANTI-CORRUPTION POLICY ENGAGEMENT

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To what extent is the business sector active in engaging the domestic government on anti-corruption?

Score: 0 / 100

No Libyan companies have so far adopted the UN Global Compact, which is a strategic policy initiative for businesses committed to align their operations and strategies in accordance with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption.<sup>1006</sup> This could indicate that Libyan businesses have not yet committed to adopt anti-corruption policies.

According to the Law of Chambers of Commerce from 2004, chambers are charged with various monitoring tasks and expected to uphold the current business laws. However, no specific articles mention that the chambers are to be engaged in anti-corruption activities.<sup>1007</sup> Additionally, it has not been possible to find any examples of private corporations publicly calling on the government to combat and adopt new legislation regarding corruption.<sup>1008</sup> For instance, in 2003 the Libyan Businessmen Council that was established in order to organise the activities of Libyan businessmen. The council has members in different parts of the country and offices in four of the main cities including Tripoli, Benghazi, Misrata and Zliten. The Libyan Businessmen Council has seven main goals, including submission of proposals for new legislation with the aim of raising the competitiveness of the economy. However, none of the goals explicitly mention commitment to anti-corruption or promotion of a more transparent private sector.<sup>1009</sup> Likewise, the Libyan British Business Council, which was established in 2004 in order to promote business relations and

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<sup>1004</sup> [www.euromoney.com/Article/3309317/Category/17/ChannelPage/0/Libya-lodges-claim-against-Goldman-Sachs.html?copyrightInfo=true](http://www.euromoney.com/Article/3309317/Category/17/ChannelPage/0/Libya-lodges-claim-against-Goldman-Sachs.html?copyrightInfo=true) [accessed 18 August 2014].

<sup>1005</sup> Reuters, 2014b.

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[www.unglobalcompact.org/participants/search?utf8=?&commit=Search&keyword=&country\[\]=118&joined\\_after=&joined\\_before=&business\\_type=all&sector\\_id=all&listing\\_status\\_id=all&cop\\_status=all&organization\\_type\\_id=&commit=Search](http://www.unglobalcompact.org/participants/search?utf8=?&commit=Search&keyword=&country[]=118&joined_after=&joined_before=&business_type=all&sector_id=all&listing_status_id=all&cop_status=all&organization_type_id=&commit=Search) [accessed 2 April 2014].

<sup>1007</sup> Law no. 4 2004 on Chambers of Commerce.

<sup>1008</sup> Interview with Dr Mohamed Khalil Fayad, 2014.

<sup>1009</sup> <http://lbc.com.ly/en> [accessed 21 August 2014].



commercial activities between Libyan and British private corporations, does not explicitly mention commitment to anti-corruption in its founding principles and long-term objectives.<sup>1010</sup>

Moreover, it is uncertain what role anti-corruption plays when large business associations and the Chamber of Commerce hold meetings with politicians and the government.

## ROLE: SUPPORT FOR/ENGAGEMENT WITH CIVIL SOCIETY

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To what extent does the business sector engage with/provide support to civil society in its task of combating corruption?

Score: 0 / 100

The extent to which private businesses are engaged in collaboration with CSOs in relation to initiatives on anti-corruption is unknown and no examples of companies providing financial support in this regard have been identified.<sup>1011</sup>

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<sup>1010</sup> [www.lbbc.org.uk/index.php](http://www.lbbc.org.uk/index.php) [accessed 21 August 2014].

<sup>1011</sup> Interview with Dr Mohamed Khalil Fayad, 2014.

## **VIII. CONCLUSIONS AND RECOMMENDATIONS**

# CONCLUSIONS

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In the assessment of Libya's integrity system in 2014, it is important to note that it was put together on the backdrop of 42 years of a dictatorship that left few or no institutions upon which to build a well-functioning state. The dictatorship *inter alia* included a ban on the right to opinion, the right to expression and the right to organisation in political parties. To compound this issue, the lack of institutions left a vacuum in which competing informal structures and networks emerged to fill the void left by the absent state, which has complicated Libya's transition toward democracy. Most institutions, laws and regulations are of very recent origin and implementation of the laws is severely hampered by a malfunctioning central and local government. The constant challenge from the militias and recent serious fighting (from May 2014) has brought public sector reform to a standstill and has resulted in the backsliding of the transition, despite some positive trends identified in this integrity assessment. These positive trends are a general consensus in the Libyan population that the country should move toward democracy and respect for human rights, which is also reflected in the Constitutional Declaration;<sup>1012</sup> a well-functioning electoral management body that has organised three nationwide elections that have been characterised as free and fair by international observers; an Audit Bureau that seems to work fairly well and is able to scrutinise the executive; numerous political parties that before the recent turmoil and attacks on party headquarters were trying to fill their role in the democracy; and fairly independent media outlets and CSOs that put critical issues on the public agenda to the extent possible. Yet, the National Integrity System in Libya has several weaknesses that permeate almost all individual pillars and thereby undermine the system in its totality.

## Poor security situation severely affects development of institutions

In general, Libya's democratic development is seriously affected by the poor security situation in the country. Across almost all pillars, there is fear of coercion and attacks from militias, which in the judiciary system leads to cases not going to court and perpetrators not being held accountable, as prosecutors are reluctant to take on sensitive cases. At the same time, neither public prosecutors nor police officers are held accountable for any wrongdoings. While this obviously hampers the weak democratic foundation of Libya, the militias have played a major role in parts of the country where they fulfil government-like roles by, for example, acting as the local police force and running prisons. They are continuously the main – and often the only – security actor locally. However, at the national level the militias pose a significant threat to state institutions' independence and Libya's National Integrity System and democratic transition. While militias represent a severe security challenge at the national level, for many Libyans they are the main guarantor of security at the local level and thus presents Libyans with a thorny security dilemma.

The poor security situation and the role of the militias have escalated since the election in June 2014 and a regular civil war has broken out. A group of militias has refused to acknowledge the election results and took over control of Tripoli in August. Since the newly elected House of Representatives has no military power, the militias are still (November 2014) controlling the capital. On 6 November, the Supreme Court declared the country's internationally recognised and democratically elected House of Representatives illegal and unconstitutional. International observers expressed concern that the court was forced to rule as it did, as no explanation for the declaration was given.<sup>1013</sup> As such, militias are currently *de facto* ruling the country at both the national and the local level.

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<sup>1012</sup> Democracy Reporting International, 2011.

<sup>1013</sup> Mohamed Eljarh, 2014.

## The legacy of Gaddafi

Several public agencies' governance systems suffer severely from the legacy of the Gaddafi rule, where corruption, dysfunctionality of departments, informal structures, unclear lines of communication, and lack of integrity and control mechanisms was *modus operandi*. This poses a heavy burden and especially the police force, the judiciary and large parts of the public administration struggle to shake it off and move into a new mode of operation built on integrity, accountability and transparency as three cornerstones in any democratic governance system. The private sector is also influenced by the legacy and the integrity mechanisms among businesses are very weak. No corporate governance code exists, no Libyan companies have signed Global Compact and bribery is a common practice when private businesses are dealing with public authorities.

The media struggles with this legacy, as they were previously state-owned with the main function to secure the power of the state. To play a watchdog role in relation to the state and to undertake investigative journalism are completely new types of responsibilities for this sector, and the media and civil society actors struggle to become progressive actors in the fight against corruptive practices and putting corruption on the political agenda. There are still various constraints limiting the organisations' ability to actually fulfil this role, such as lack of financial and human resources available, fear of repression and the insecure environment in general. Furthermore, recent legislation reintroduces limits on the freedom of the press similar to those under Gaddafi. In February 2014, the GNC modified article 195 of the Libyan penal code and it now prohibits any person from making what can be regarded as an attack on or an insult to the 2011 revolution, its leaders, the people's authority or a judicial, defence or security body. This amendment allows the government to censor and prosecute any media outlets in opposition to these rules;<sup>1014</sup> the penalty is imprisonment for three to fifteen years.<sup>1015</sup>

There are, however, positive examples of both the media and CSOs trying to fulfil the watchdog role, as well as several examples of CSOs with success in lobbying for issues that enhance the democratic foundation of the country. These organisations are however burdened by poor professional skills, both of staff and on an organisational level. The media, CSOs and also political parties that were flourishing immediately after the revolution are now experiencing a downward trend with lower levels of public support and are being met with increased levels of scepticism. If they are to keep momentum and continue to work with the anti-corruption agenda in Libya and enjoy the support of the people in the country's struggle for change, it is extremely important that they heighten their level of professionalism.

## Lack of resources and capacity across the pillars in the integrity system

Another key feature in Libya, which has a major influence on the integrity system across all pillars, is that the professional qualifications of the employees in public and private agencies are poor. This does not only lead to the inefficient use of resources but also to an increased risk of mismanagement and potential flaws in the application of laws and regulations. Furthermore, many public agencies are still characterised by nepotism and favouritism in appointments, also at the management level. This was also a general trait of the judiciary during Gaddafi's rule, and only few judges have been replaced since the revolution. To fulfil its role, the judiciary struggles with a major backlog of cases from the Gaddafi era and the revolution at the same time as the system is being reformed. Experienced prosecutors and judges play an important role in this process, but also form part of the problem.

The skills-gap across the pillars has been exacerbated by the Public and Administrative Isolation Law by which candidates with experience with public administration from the former regime are not able to take on positions in the new administration. The law was passed by the GNC under pressure

<sup>1014</sup> Interview with Khaeri Aboushagor, 2014.

<sup>1015</sup> <http://en.rsfor.org/libya-libya-extends-draconian-gaddafi-19-02-2014,45893.html> [accessed 05 May 2014]

from militia groups and it disqualifies anyone associated with the former regime – besides 14 specific categories, including ministers, ambassadors and the military – from being employed in the new state apparatus. It aims at clearing out remnants of the former regime and starting with a clean slate. The extent to which the law will be implemented is still unclear but it is highly problematic. The first ruling from the justice system on the basis of the law has acquitted two high-level officials from Gaddafi's regime from misappropriation of public finances. A High Commission for the Implementation of the Integrity and Patriotism Standard was established by the NTC. It is responsible for vetting a wide range of individuals who seek public employment to ensure that they comply with the law and are not involved in criminal activities. While this could be regarded as a sign of accountability and integrity, the commission has been criticised for applying too broad and vague criteria and not using hard facts in their assessments, which allows for political manipulation, arbitrary application of the law and hampers the accountability of the work of the commission.

## Unclear division of powers

According to judges in Libya the Political and Administrative Isolation Law also threatens the newly found independence of the judiciary by violating the separation of powers among the three branches of government. This is *inter alia* seen by a last minute amendment of the interim constitution by the GNC that deprives the judiciary of its right to challenge the law along with its implementation. This points to a general problem in the governance system in Libya and the Constitutional Declaration from 2011 which fails to clearly define checks and balances; the division of power between the legislature, the executive and the judiciary, which is fundamental for both independence and accountability of the agencies. The line between the legislature and the executive is blurred and some argue that the legislature has too strong powers over the executive. The fact that it is not clear in Libya whether the President of the GNC belongs to the legislative or executive branch of government and who is actually the formal head of state are examples of the lack of clarity regarding the checks and balances of the system. There exists a great risk in Libya that either the legislative or the executive gains too much power, for which there already exist several examples.

## Discrepancies between the law and the practice of the law

Another key trait in the integrity system of Libya which relates to both capacity and governance is the clear discrepancy between law and practice; there is a lack of implementation of the legal framework and application of the rules, regulations and codes of conduct that actually do exist. The pillar scorings clearly indicate this, as most scores are lower in practice than in law. Especially in relation to the public sector, which constitutes by far the largest employer in Libya and the biggest part of the economy, this is a major issue. The level of integrity (in law and practice) in this part of the economy is fundamental for the entire Libyan integrity system and even though rules and regulations are in place in many areas and in many cases uphold international standards, their low level of application allows for undue interference and does not promote accountability and integrity. The difficult situation in the country constitutes a challenge regarding the exercise of the budget discipline while maintaining macroeconomic stability along with managing the political transition, normalising the security environment and addressing institutional capacity constraints. Historically there have been few institutions tasked with checking, for example, the executive, which has been characterised and still is characterised by vast overspending, and many public sector entities have more people on their payroll than who actually work full time. Spending has not been monitored, as financial resources have historically not been a constraint in the oil-rich country. With the recent establishment of the National Audit Bureau and the National Anti-Corruption Commission, Libya is trying to address this. While the National Anti-Corruption Commission is not yet up and running efficiently and transparently, the audit institution is actually showing good progress and has been able to put key issues in relation to spending and integrity on the public agenda.

## Accountability vacuum between the public sector and the people

The fact that the public sector is funded almost exclusively (95 per cent) by oil revenues as opposed to via taxes, creates a gap, or an “accountability vacuum” between the public sector and the general population. If the public sector was financed via taxes paid by the workforce, the population might feel a greater need to demand proper and efficient spending of resources and a high level of integrity at the same time. Public servants would probably also show greater carefulness in their administration of resources. As regards transparency, there is still a long way for Libya to go. The mere fact that it has been extremely difficult and in many cases impossible to get access to or even confirmation about the existence of laws, regulations and codes of conduct for the researchers, as well as the informants (internal as well as external), indicates a low level of transparency.

## STRENGTHS AND WEAKNESSES OF THE INDIVIDUAL PILLARS OF THE NATIONAL INTEGRITY SYSTEM IN LIBYA

### Legislature

#### Key strengths

- The GNC and its individual members are open to conducting sessions with CSOs, replying to inquiries by citizens and engaging in consultations with the public on new legislation. Parliamentary sessions are in principle open to the public and broadcast on a regular basis.
- The legal framework ensures a high degree of independence of the legislature and the legislature has the power to dismiss members of the executive. Rules of procedure have been developed which quite clearly define the procedures for the operations of the legislature.

#### Key weaknesses

- No code of conduct exists and hence no rules or standards related to gifts, hospitality, post-employment, lobbying or declaration of assets.
- Legislation and rules of procedure are yet to be properly implemented and/or enforced, including rules for public access meeting minutes, voting records, etc.
- Low level of transparency: the budget is not published in full, nor are expenditure reports made public, meeting agendas are not always published in a timely manner and it is difficult for the public to gain access to information and to attend sessions.
- Low ethical standard among members of the GNC, high perceptions of lack of integrity and prevalence of corruption.
- Independence is in practice severely limited and challenged by attacks of militias and arbitrary lifting of immunity for members of the GNC.

### Executive

#### Key strengths

- Legislation exists on the public disclosure of assets and both the Audit Bureau and the National Anti-Corruption Commission have the power to enforce this.
- In principle, minutes of cabinet meetings are made public and the budget is available for public scrutiny.

- Legislation ensures that the executive is held accountable by the GNC, the Audit Bureau and the National Anti-Corruption Commission, which also works fairly well in practice. Furthermore, a disciplinary council, established by the executive, conducts disciplinary procedures against high-level civil servants.
- Has taken different initiatives to meet the considerable public demand for greater transparency in the government.

### **Key weaknesses**

- Human and technical resources, including skilled staff, are insufficient and the working environment is considered “harmful” and there is a great deal of internal competition between cabinet staff, which makes the executive ineffective.
- Current legislation largely favours the legislature over the executive and there are no clear lines as to where the executive’s powers starts and where those of the legislature end.
- There exists no code of conduct for members of the executive and it has become common practice for members of the cabinet to move back and forth between private business and holding office.
- Independence is in practice severely limited and challenged by armed attacks and kidnappings by militias.
- Transparency is blurred by a lack of coordination and lack of consistent publication of all relevant material in plain language. Often, the executive does not provide requested information to the GNC and does not consult with the public or CSOs on important matters and there is no protection of whistleblowers.

## Judiciary

### **Key strengths**

- A new comprehensive legislative framework for the entire legal system is underway. A set of new bills is being proposed with the intention to restore public trust in the system, which also indicates political will to reforms.
- Reforms in the judicial system are enjoying a great deal of financial and technical support from international donors.
- Several reforms to strengthen the independence of the judicial system have been implemented including the removal of the Ministry of Justice from the HJC, which supervises the judiciary.
- High enrolment rates at law faculties, which provide an adequate level of education for new staff.

### **Key weaknesses**

- General lack of financial resources in the judiciary and many judges take on supplementary jobs in the private sector, creating risks of conflicts of interest.
- Lack of transparency mechanisms in the judiciary, which is not obligated to publish judgements, court hearings, etc.
- Lack of updated code of ethics and no legislation that regulates gifts and hospitalities. Furthermore, the general perception is that the legal system has no intension of sanctioning corruption and that the system itself is rather corrupt.

- The current judicial system is very similar to the old one, which creates a high degree of public mistrust in the system and judges from the Gaddafi era, who in many cases were installed on the basis of their political connection and not their merits, are still serving even though they are perceived to be incapable of providing fair trials.
- Enforcement of the regulations that ensures the independence of the legal system is lacking and there are several examples of political interference despite the steps taken toward increased independence. Also, attacks and even assassinations by the armed militias are negatively influencing the judiciary.

## Public sector

### Key strengths

- Some public agencies have started on their own initiative to collaborate with CSOs and businesses on operational procedures, which indicates a will to change.
- Several international organisations are supporting public sector entities with development of procurement regulation and strengthening of institutional oversight mechanisms.
- Legal framework in place regarding transparency in appointments, disclosure of personal assets, public procurement and it is possible to prosecute civil servants engaged in corruptive activities.

### Key weaknesses

- Corruption in the public sector is widespread and trust in the public system is very low.
- Lack of qualified human resources, due to inefficient use of financial resources, low salary levels and hence inability to attract qualified staff. This further results in poor administrative and management capacity in the system and hence in poor public service delivery. Conflict of interest in hiring new staff and management also increases inefficiency.
- Low degree of implementation and application of regulatory framework on procurement, appointments, asset disclosure, etc.
- Low degree of transparency, laws are not publicly accessible and it is extremely difficult for citizens to access information of the public sector and reforms in this area are extremely slow.
- Low degree of independence – rules are rarely enforced and the functioning of the sector including appointments is heavily interfered with by both politicians and militias.
- Low degree of accountability, no provisions on whistleblowing and poorly functioning oversight mechanisms. Citizens are generally not aware of their opportunities for filing complaints.

## Law enforcement agencies

### Key strengths

- The police experiences a high enrolment from previous militiamen and law enforcement agencies have received substantial training and capacity development support from international agencies.
- Strong focus and commitment from the national authorities to build a strong law enforcement sector.

### Key weaknesses

- Enjoys low level of trust in the population and not effectively able to keep public order.



- Insufficient technical and financial resources at its disposal. Severe backlog in the prosecution system and prisons are filled with people detained but without charges raised or any right to due process.
- A parallel uncontrolled system of law enforcement exists in the form of militias carrying out law enforcement activities such as border control, arrests and running prisons.
- Even though there are some provisions in place to ensure that law enforcement agencies can be held accountable for their actions, these provisions are practically never used and both public prosecutors and police officers are not held accountable for any wrongdoings.
- Even though there are procedures in place that ensure that citizens' complaints can be handled within the system, these are not used in practice.
- The Code of Criminal Procedures is not enforced in practice and there is generally neglect among prosecutors, meaning that there is an integrity problem in the system.
- Low levels of transparency in the sector, especially in practice.

## Electoral management body

### Key strengths

- Well-developed legal framework that governs the HNEC, including provisions for independence of and also a certain degree of transparency and accountability in the commission.
- The HNEC does not experience interference from militias or others that compromise its independence as the only institution under assessment in this study.
- High level of integrity in the commission; there exists a code of conduct based on internationally recognised standards, which in practice is adhered to by staff.
- Enjoys the support and confidence of the people, which is probably due to successful competitive elections being a key symbol of the end of the Gaddafi era.
- Has proved its relatively strong competence in managing elections that have been considered fair and free by international observers.

### Key weaknesses

- Weak institutional memory, poor internal reporting and rather high levels of miscommunication.
- Poor transparency provisions and poor provisions as regards the professional criteria that staff must meet and the power relationships internal to the organisation, which means that the chairman has enjoyed a high level of influence.
- Even though the HNEC has been able to manage three elections, which have been characterised as free and fair, the commission still faces some challenges in order to ensure some key democratic principles in the management of elections and in the electoral system such as equal suffrage, a voter's right to appeal and candidacy rights.

## Supreme audit institution

### Key strengths

- The bureau shows some degree of openness and transparency and is publishing most of its reports on its website.

- Legal provisions ensure the independence of the bureau and it has also been proved in practice that it has been able to conduct annual audits of the executive without undue interference, though the criticism has been raised that it is politicised.

#### **Key weaknesses**

- Suffered from a lack of financial and human resources, which has resulted in a lack of depth in many of the reports it has released. The annual report for 2013 is however more critical than previous reports.
- Its independence is challenged by attacks from armed militias.

### Anti-corruption agency

#### **Key strengths**

- Legal framework in place to secure the independence of the commission.

#### **Key weaknesses**

- Generally a very weak, but also newly founded (est. 2014), institution, which operates in fear of retaliation due to the poor security environment.
- Non-transparent working procedures; so far no information on any activities or investigations has been published. No publication of the commission's financial activities either.
- Vague legal framework regarding lines of accountability.
- So far, plays an insignificant role in terms of corruption prevention and public education.
- No code of conduct exists and staff members are not trained for the role they are supposed to fill and very few have any experience with combating corruption.

### Political parties

#### **Key strengths**

- Legal framework in place that is conducive to the formation of political parties. Political party formation is a new thing in Libya and there has been an overwhelming "interest" in forming parties.
- Close collaboration between political parties and CSOs on specific issues and topics.
- Strong legal framework that protects the political parties from external interference with clear provisions for inspections, etc.

#### **Key weaknesses**

- Insufficient financial and human resources to be able to function professionally.
- Low degree of independence in practice – several examples of both militia groups and the authorities having tried to influence the agenda of the parties.
- Struggle with their legitimacy and experience has increased scepticism in the population.
- Even though there are clear regulations on the disclosure of financial information, it does not happen in practice and both transparency and accountability in this respect are low.
- Fairly weak democratic governance structure within the parties, which is however mainly due to the short time they had to organise before the first election.

- Despite the great interest in forming parties, the parties are considered less and less important among the population, experience a low degree of trust and are struggling with mobilisation. Furthermore political parties have not been allocated any seat in the newly formed House of Representatives, hampering their ability to fulfil their role and have an influence on the direction of the country.

## Media

### Key strengths

- A large variety of media outlets have emerged since the restrictions imposed during the Gaddafi regime were lifted.
- Signs that the media is trying to play an investigative role and function as watchdog; some corruption cases have been exposed in the media (list of corrupt judges).
- The use of blogs, comments functions on online media, Facebook, etc. have increased the interaction between the media and the public considerably and has also heightened the accountability of the sector.

### Key weaknesses

- Even though freedom of opinion and freedom of the press is enshrined in the interim constitution, repressive laws similar to those in place during the Gaddafi regime have also been implemented.
- Governing framework around the sector is not yet fully established, which creates confusion as regards reporting lines, broadcasting licences, appeal mechanisms, etc., and the entire accountability framework is weak.
- Very limited regulatory framework, including little that prevents external interference. No law permits journalists to withhold their sources. The independence of the media is limited by violent attacks and problems related to the personal security of journalists which has led to self-censorship.
- Extremely low degree of transparency; the media is not obliged to inform on their internal editorial policies or reveal their funding sources, which makes political and corporate affiliations opaque.
- Low integrity in the sector – no code of conduct, ethics or standards exist. Basic principles, such as telling both sides of a story, are rarely followed, partly due to security issues, partly due to a lack of professionalism.
- Poor skills and low degree of professionalism among Libyan journalists and the current educational institutions are not able to provide students with the required qualifications.

## Civil society

### Key strengths

- A flourishing sector after the end of the Gaddafi regime and the interim constitution secures freedom of opinion and of assembly and as such CSOs are, contrary to previously, allowed to engage in advocacy and criticise the government.
- Fairly easy and quick to register as a CSO despite confusion around the process. CSOs' work is furthermore tax-exempted (not salaries).
- In practice, the CSOs are able to work without particular undue interference from the government and only few cases of direct interference from militias have been experienced.

### **Key weaknesses**

- No laws or regulations safeguard CSOs from external interference and draft legislation includes a provision that could be used by the authorities as a loophole to interfere with CSOs' work.
- Lack of financial resources, very limited funding from the government and very dependent on international donors, which creates a risk of influencing the agenda.
- Lack of human resources in terms of quantity, skills, qualifications and professionalism, and recruitment of volunteers is becoming increasingly difficult to handle.
- Organisational capacity (vision and mission formulation, strategic planning, financial reporting, monitoring, etc.) of CSOs is weak and there is limited impact on CSO activities on policy reform and low ability of the CSOs to work as watchdogs.
- Very weak internal accountability and integrity measures in the organisations; appointed rather than elected boards, which creates conflict of interest and the CSOs are not accountable to their constituencies.
- Poor transparency in the sector, poor accountability systems in organisations and lack of codes of conduct.

## **Business**

### **Key strengths**

- Regulatory framework is quite conducive and enabling for private businesses, including protection of property rights, intellectual property rights, enforcement of contracts etc.
- Quite strong legal framework as regards transparency and auditing of businesses, and at least companies on the stock exchange are adhering to the regulation.
- Some level of internal integrity feeling and acknowledgement exists.

### **Key weaknesses**

- Inefficient bureaucracy, ineffective capital markets and high costs of starting up businesses make the business environment in Libya very poor. Processes such as obtaining construction permits, registering property, resolving insolvency, accessing credit and protecting of investors is extremely difficult and challenging. Bribery is common in the construction sector.
- Widespread corruption, inadequate infrastructure, low degree of market inefficiency and undeveloped financial markets.
- Weak transparency and integrity in the sector and no legislation to ensure openness.
- Bribes are widespread, though the population does not perceive the sector to be as corrupt as public institutions.
- Even though there are regulations in place, which allows businesses to seek compensation for external interference, these are not strongly enforced in practice, and a vague regulatory framework increases the risk of arbitrary interpretation and hence political interference.
- Low degree of transparency and accountability in practice, which is also related to the large informal sector. Also, the banking and financial sectors have a low degree of transparency and accountability.
- Weak integrity mechanisms – no corporate governance code, no companies have signed UN Global Compact and bribery is a common practice when private businesses are dealing with public authorities.

# RECOMMENDATIONS

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The current security situation in Libya seriously challenges the implementation of the recommendations proposed in relation to this National Integrity System assessment. It is acknowledged that stability needs to be established first in order to enable democratic state-building based on transparency and accountability. Security sector reform and disarmament of militias goes beyond the mandate of Transparency International, but such initiatives need to be initiated to allow implementation of these recommendations. However, improving access to information and CSOs and citizens' involvement in the ongoing reform processes might have a positive effect in terms of building trust in the state. Distrust in public authorities and the public administration is fuel on the fire in the ongoing conflict and citizens will be even more inclined to support militias, as opposed to the official structures, if this trust is not built and secured. Therefore, it is considered important to focus on both the supply and demand side of the integrity system, and, for example, make sure to involve all relevant stakeholders in the development of new legislation and especially in the development of Libya's new constitution. The following five key recommendations are prioritised in terms of urgency.

## 1. Constitution-making process

The constitution-making process opens a window of opportunity for the participation of different stakeholders, which can increase accountability and the sense of ownership of the new constitution by more Libyans. One key recommendation in this process is to ensure that the roles of the executive, the judiciary and the legislative arms of government are clearly defined, not overlapping and that each institution's independence is secured. A modern system of checks and balances should be put in place and be embedded in the constitution.

## 2. Reform of the justice sector

There is an urgent need for the judiciary and the law enforcement agencies in Libya to become more credible institutions to secure the entire integrity system and avoid parallel structures that challenge state authority. It is recommended that international donors and national partners ensure that the reform process is transparent, for example, by conducting public hearings, communication to both stakeholders and citizens; that citizens and organisations are involved and heard in the reform process by reserving seats for CSO in boards and committees; and that the legitimacy of the judiciary reform process is established from the outset by involving both the supply side (the judiciary, the public sector, etc.) and the demand side (citizens and CSOs).

### 3. Transparency in the public sector and access to information

The low level of trust that the Libyan people have in the very dominant public sector is detrimental to the integrity system. In order to build trust, it is recommended to focus on the improvement of transparency in the public sector in general in order for citizens, CSOs, the media, etc. to be able to access information about its work and its functioning. It is therefore recommended to develop, adopt and enforce a law on access to information, and ensure easy accessibility to laws, rules and regulation by collecting all essential documents in one central place, for example, in an online database/website. Short versions in the common language of all laws, rules and regulations for easy access by the public should be published here, and the state budget, vacancies in the public sector, asset declarations and financial interest of public employees should be publicly disclosed.

### 4. Focus on potential conflicts of interest (integrity and accountability in the public sector)

There are no common rules of procedures/codes of conduct applicable to the entirety of the public sector. Therefore, it is recommended to develop, adopt and enforce a general code of conduct that includes rules and regulations regarding recruitment, gifts, hospitality, post-employment, etc.; conduct training of public officials in conflicts of interest in employments and in their work functions; and establish a public agency with the mandate to handle citizens' complaints of the public sector.

### 5. Focus on civil society

CSOs and the media are important actors in the attempt to create a society with a more balanced participation of different stakeholders, and as such, enhance the accountability mechanisms in Libya. Therefore, it is recommended to establish a legal framework that enhances the ability of CSOs and the media to operate independently; involve citizens and organisations in the development of new legislation (for example, through reserved seats in decision-making bodies) and hold public hearings on all new laws; and establish a civic education programme on rights and responsibilities that could raise awareness of rules and regulations that apply to the public sector and inform citizens of complaint opportunities and mechanisms.

### 6. Anti-corruption agencies reforms

ACAs are key actors in preventing corruption, initiate corruption prevention reforms and increase knowledge of corruption prevention. In Libya, the legal framework helps to ensure the independence of its relatively new-founded National Anti-Corruption Commission, but the commission has so far not been able to fulfil its mandate. In this respect, the following is recommended:

- a) Establish a code of conduct for the staff to ensure that the ACA, in its internal operations, becomes a model for other public institutions to follow
- b) Enhance preventive, investigative and technical capabilities of the ACA, by 1) ensuring a central role for the ACA in legislative reforms related to anti-corruption and 2) capacity building with the assistance of experts, the ability of ACA staff to conduct research and awareness activities on corruption and on corruption investigation skills
- c) Consolidate the various public agencies working on anti-corruption in Libya under the auspices of the National Anti-Corruption Commission to ensure a uniform and integrated approach to combating corruption
- d) Publish information on ACA activities and investigations conducted to increase transparency and credibility of the agency

## 7. Law enforcement agency reforms

The Libyan law enforcement agencies face several significant challenges, specifically from the multitude of militias in the country challenging their monopoly on power, as well as from low levels of trust in the population. In this respect, the following is recommended:

- a) Define procedures on how to deal with wrongdoings by police officers and public prosecutors, including both disciplinary and criminal codes, adequate investigative capacity, procedures for punishment and appeal procedures
- b) Establish an independent body in charge of overseeing such procedures, receive complaints from citizens and investigate alleged wrongdoings
- c) Secure increased state budget for law enforcement agencies, including more human resources and technical equipment

## 8. Business sector reforms

The Libyan business sector has traditionally been weak in Libya with the economy dominated by the public sector. With corruption widespread in the country, the business sector is seen both as a victim and contributor to the problem. In this respect, the following is recommended:

- a) Ensure implementation of existing law requiring budget transparency for business entities, particularly the banking sector; ensure stronger application of law no. 47 2012 excluding companies in certain illegalities from conducting business and of law no. 2 2005 on combating money laundering
- b) Establish stronger legislation regulating the integrity of the business sector, to include stronger punitive measures and the crime of bribery committed abroad
- c) Establish forum for engagement between civil society and the business sector, especially the various chambers of commerce, to collectively engage in promoting an anti-corruption agenda in Libya. This could include a campaign to promote the signing up of business to the UN Global Compact initiative
- d) Together with the leading Chamber of Commerce, develop an updated and comprehensive corporate governance code to enhance the integrity in the business sector, including provisions on transparency and openness, financial reporting, risk management, internal controls and auditing.

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