

## Libya\*

Since 1969, Libya was ruled by an autocratic regime under which power was completely consolidated in the hands of Moammar al-Qadhafi. During this time, institutional frameworks became essentially non-existent and any components of the state supporting the rule of law were eliminated. Similarly, all forms of activity by political parties and independent civil society were criminalized and all political opposition figures were targeted with killings, enforced disappearance, or torture in prison. After 42 years of this autocratic rule, the winds of popular change first seen in Tunisia and Egypt spread to Libya on February 17, 2011, when a popular uprising calling for the downfall of the Qadhafi regime began.

Only weeks after this popular uprising was initiated, the brutal repression with which the Qadhafi regime confronted the uprising pulled the country into a fierce armed conflict between Qadhafi loyalist forces and rebel fighters backed by NATO which lasted for the following eight months. After the rebels took control of the city of Benghazi at the end of February 2011, they announced the formation of the National Transitional Council (NTC) in

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\* As previous annual reports published by the Cairo Institute for Human Rights Studies did not deal with the state of human rights in Libya, this year's report covers the most important developments and challenges seen in the country since the fall of the Qadhafi regime in October 2011.

order to coordinate the efforts of the rebels towards bringing down the regime.<sup>1</sup> On August 3, 2011, the NTC issued a Constitutional Declaration to govern the country's transitional period. Shortly thereafter, the NTC received broad international recognition as the sole legitimate authority in Libya, taking over Libya's seat at the United Nations in September 2011.<sup>2</sup> Just a few weeks later, Qadhafi was captured and killed in Sirte on October 20, and Libya was declared liberated after the rebels took Tripoli three days later.

Following the fall of the Qadhafi regime, the transitional authorities in Libya faced a series of grave challenges. Not only was the country reeling from the armed conflict during which crimes against humanity and war crimes had been committed by both sides,<sup>3</sup> but deep-rooted issues such as regionalism, religious extremism, and the tribal loyalties which had been pitted against each other during the war threatened to prevent the NTC from asserting its authority across the country.<sup>4</sup> The NTC further suffered from a lack of consensus over its legitimacy to govern in the wake of the revolution. Moreover, Qadhafi's four-decade grip on power had left the country devoid of the institutions and infrastructure which are supporting the transitional periods in other countries in the region, such as Egypt and Tunisia. Libya's lack of even basic institutions such as security forces to preserve order led the NTC to support the presence of forces working in parallel to the police and armed forces, including the Supreme Security Committee and the Libyan Shield forces, both of which are composed of groups which had fought during the revolution.<sup>5</sup>

The transitional period in Libya has been marred by a great number of human rights violations. Over the last year and a half, the country has seen discrimination and violence against both suspected Qadhafi loyalists as well as individuals of sub-Saharan African descent, who are often suspected of having supported Qadhafi or worked for him as foreign mercenaries. Heavily

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<sup>1</sup>National Transitional Council of Libya, "Announcement of the Establishment of the Interim Transitional National Council" (Arabic), Mar. 2, 2011, <<http://ntclibya.org/arabic/first-announcement/>>.

<sup>2</sup> United Nations General Assembly, "After Much Wrangling, General Assembly Seats National Transitional Council of Libya as Country's Representative for Sixty-Sixth Session," Sep. 16, 2011, <<http://www.un.org/News/Press/docs/2011/ga11137.doc.htm>>.

<sup>3</sup> United Nations News Center, "Both Pro- and Anti-Qadhafi Forces Committed War Crimes in Libya – UN Panel," Mar. 2, 2012, <<http://www.un.org/apps/news/story.asp?NewsID=41444&Cr=libya&Cr1#.UIow2meDBEN>>

<sup>4</sup> International Crisis Group, "Divided We Stand: Libya's Enduring Conflicts," Sep. 14, 2012, <<http://www.crisisgroup.org/en/regions/middle-east-north-africa/north-africa/libya/130-divided-we-stand-libyas-enduring-conflicts.aspx>>.

<sup>5</sup> Ibid.

armed militias have continued to exert *de facto* control over large swaths of the population and territory of the country, and their refusal to disarm and to turn over thousands of detainees held without due process poses a major challenge to the NTC's authority. Violations by such non-state parties to the rights to freedom of religion and belief, freedom of expression, and due process have gone largely unaddressed by the state in practice, thus leading to the entrenchment of a culture of impunity in the country. The Libyan authorities have also been party to a number of serious crimes, including holding detainees for extended periods of time without trial and disproportionate use of force, as in the case of the recent military operations in Bani Walid.

Legislatively, although the Libyan authorities have refrained from implementing abusive laws from the Qadhafi era, they have failed to repeal many of these restrictive laws, with the notable exception of the annulment of Law 71/1972, which had criminalized political parties under Qadhafi. There is an urgent need for the swift development of legislation to uphold basic rights and freedoms and to organize the exercise thereof according to international standards. It is also critical that these rights be established in the new Libyan constitution, in order to preclude continued abuses.

It is important to note that the NTC upheld the freedom to establish political parties through the law which governed the election of the members of the General National Committee (GNC). In addition, the NTC drafted a bill to govern the establishment and activities of non-governmental organizations which largely meets international standards on the right to freedom of association; unfortunately, this bill has not yet been passed. At the same time, the NTC passed a law granting the authorities broad powers to arbitrarily arrest individuals and to restrict their freedom of movement without bringing specific charges against them. For its part, the GNC passed legislation to govern the right to peaceful protest, some of the provisions of which clearly contradict international standards.

Despite the challenges which face Libya's transition to democracy, the clear increase in tolerance for free expression and the significant growth in the number of independent media outlets in the country should not be overlooked. Similarly, the number and diversity of civil society organizations – including human rights organizations – working in Libya have also seen major progress.

## The Transfer of Power to an Elected Body

The process of electing the members of the General National Congress represented an important milestone for the Libyan transition to democracy and marked the end of the role of the National Transitional Council. According to the constitutional declaration issued by the NTC,<sup>6</sup> the GNC was granted legislative powers and tasked with appointing a prime minister and approving his/her proposed government, setting up the regulations and mechanisms by which a new constitution would be drafted for the country, and passing legislation according to the new constitution to govern the general elections which would be held following the adoption of the new constitution.<sup>7</sup>

The legislation passed by the NTC in February 2012 to govern the process of electing the GNC specified that the GNC would be made up of 200 members, 120 of whom would be elected according to a system of direct election of individuals and the remaining 80 according to a system of proportional representation based on closed lists submitted by political parties for particular electoral districts. The law further created the High National Elections Commission (HNEC) to supervise the elections. It also allowed for Libyans who hold dual citizenships to run for office and put in place a quota for women by requiring party lists to alternate between men and women.<sup>8</sup>

On July 7, 2012, over 3,000 Libyans competed in the elections for the General National Congress. While the elections process went smoothly overall and was considered to have taken place with a large degree of transparency, the HNEC came under mild criticism for a number of issues, including its implementation of last-minute measures affecting polling times and locations in a number of areas of the country, as this may have resulted in voter confusion.<sup>9</sup> In addition, several incidents of violent attacks on polling centers occurred in towns in eastern Libya,<sup>10</sup> where protests had

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<sup>6</sup> National Transitional Council – Libya, “Constitutional Declaration” (Arabic), <<http://lyrcc.wordpress.com/page-4/page-3/>>.

<sup>7</sup> General National Congress – Libya, “Al-ehtefal be-enteqal al-sulta men al-magles al-watani al-enteqali ela al-mo’tamar al-watani al-a’am,” Aug. 9, 2012, <[http://www.gnc.gov.ly/index.php?option=com\\_content&view=article&id=1:2012-08-09-13-22-44&catid=1:2012-08-09-13-20-21&Itemid=12](http://www.gnc.gov.ly/index.php?option=com_content&view=article&id=1:2012-08-09-13-22-44&catid=1:2012-08-09-13-20-21&Itemid=12)>.

<sup>8</sup> National Transitional Council – Libya, “Law No.4 of 2012 on the Election of the General National Congress,” <[bit.ly/Tjh8hN](http://bit.ly/Tjh8hN)>.

<sup>9</sup> The Carter Center, “The Carter Center Finds Libya’s Tabulation Process Credible,” July 18, 2012, <<http://www.cartercenter.org/news/pr/libya-071812.html>>.

<sup>10</sup> United Nations Support Mission in Libya, “Briefing by Mr Ian Martin SRSG for Libya - Meeting of the Security Council,” July 18, 2012,

taken place in the weeks leading up to elections calling for Libyans to boycott the elections and demanding greater autonomy for the region. On the day of the polls, one man was shot and killed by a local security guard in the eastern city of Ajdabiya after he and two other men attempted to disrupt the voting process and to steal a ballot box.<sup>11</sup>

Despite the fact that these elections were largely hailed as a success for the country's transition, the GNC faced significant challenges later in the year in appointing an acceptable government. The first prime minister elected by the GNC, Mostafa Abu Shaqur, failed to form a government and was replaced in October by Ali Zeidan. Later the same month, however, Zeidan's proposed government led to large protests around the parliament building,<sup>12</sup> delaying the GNC's vote of confidence in the government.<sup>13</sup> The protestors considered the proposed government to include ministers who had enjoyed strong relations with the former dictator, Moammar al-Qadhafi. In response to the GNC's acceptance of Zeidan's government, dozens of armed men occupied the parliament building for one day in early November.<sup>14</sup>

Such developments reveal that despite the relative success of the elections process in mid-2012, Libya's transitional period remains troubled by a number of factors, chief among them instability, a heavily armed and divided population, and the inability of the central government to bring rival factions under the control of the central government.

## **Freedom of Assembly**

The transitional period has seen a marked improvement in terms of citizens' ability to exercise their right to freedom of assembly, as evidenced by the many gatherings and demonstrations which have taken place over the past year. In a worrying step taken to impose restrictions on the right to peaceful assembly, however, the Ministry of Interior issued a statement on July 13, 2012, banning citizens and organizations from planning for or participating

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<<http://unsmil.unmissions.org/Default.aspx?tabid=3543&ctl=Details&mid=6187&Itemid=409044&language=en-US>>.

<sup>11</sup> Reuters, "Libyan anti-poll protester shot dead in east," July 7, 2012, <<http://www.reuters.com/article/2012/07/07/us-libya-elections-death-idUSBRE8660CP20120707>>.

<sup>12</sup> BBC Arabic, "Libya: ergaa' al-tasweet a'ala al-hokuma ethr eqteham motathaheroon maqar al-mo'tamar al-watani," Oct. 31, 2012, <[http://www.bbc.co.uk/arabic/middleeast/2012/10/121030\\_libya\\_gov\\_protesters.shtml](http://www.bbc.co.uk/arabic/middleeast/2012/10/121030_libya_gov_protesters.shtml)>.

<sup>13</sup> BBC News Africa, "Gunmen Occupy Libyan Parliament," Nov. 1, 2012, <<http://www.bbc.co.uk/news/world-africa-20170826>>.

<sup>14</sup> BBC News Africa, "Libya Gunmen End Occupation of Parliament Building," Nov. 2, 2012, <<http://www.bbc.co.uk/news/world-africa-20178222>>.

in demonstrations without obtaining prior permission from the Ministry. The statement also asserted that those who held such unauthorized gatherings would be held responsible for any disorder that may occur as a result.<sup>15</sup> Both requiring prior authorization for assemblies and imposing undue burdens on the organizers of gatherings are condemned by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.<sup>16</sup>

In practice, the exercise of the right to freely assemble in Libya has been limited as a result of the country's general lack of security. The exercise of this right has been marred not only by violent attacks on such gatherings by third parties, but also by the devolvement of such gatherings themselves into disorder and violence.

On January 21, 2012, the headquarters of the NTC was stormed by angry protestors demanding greater transparency from the NTC; they used hand grenades to enter the premises and looted the building of furniture and electronics.<sup>17</sup> Ahead of the elections in July, demonstrators similarly stormed the HNEC headquarters in Benghazi,<sup>18</sup> and attempts were made to disrupt the elections process.<sup>19</sup> Following the election of the General National Congress, the parliament building was temporarily occupied in November by demonstrators protesting the Congress's proposed formation for the government.<sup>20</sup>

On March 16, 2012, clashes broke out during a demonstration in Freedom Square in Benghazi calling for the establishment of a semi-autonomous region of Cyrenaica. The demonstration was attacked by men armed with firearms and knives, and the ensuing clashes resulted in at least one death and multiple injuries.<sup>21</sup> It was also reported that the local television station *Libya al-Ahrar* was also targeted by the attackers in order to keep the

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<sup>15</sup> IFEX, Arabic Network for Human Rights Information, "Interior Ministry Urged to Reserve Decision Restricting Right to Peaceful Demonstrations," July 16, 2012, <[http://www.ifex.org/libya/2012/07/16/rights\\_restricted/](http://www.ifex.org/libya/2012/07/16/rights_restricted/)>.

<sup>16</sup> United Nations Human Rights Council, "20<sup>th</sup> Session: Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association," Maina Kiai, A/HRC/20/27, May 21, 2012, paras. 28-31, <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/135/86/PDF/G1213586.pdf?OpenElement>>.

<sup>17</sup> The Guardian, "Libyans Storm Transitional Government Headquarters in Benghazi," Jan. 21, 2012, <<http://www.guardian.co.uk/world/2012/jan/21/libyans-transitional-government-headquarters-benghazi>>.

<sup>18</sup> Reuters, "Protestors Storm Libya Election Office in Benghazi," July 2, 2012, <<http://in.reuters.com/article/2012/07/02/libya-elections-benghazi-idINDEE86102S20120702>>.

<sup>19</sup> See above section on *The Transfer of Power to an Elected Body*.

<sup>20</sup> See above section on *The Transfer of Power to an Elected Body*.

<sup>21</sup> BBC News Africa, "Libya Rally on Cyrenaica Autonomy Plan Ends in Violence," March 16 2012, <<http://www.bbc.co.uk/news/world-africa-17411134>>.

demonstration from being covered.<sup>22</sup> The matter ended when militia fighters from Benghazi, who have been responsible for security in the city, arrived at the square and chased the attackers out.

On August 26, 2012, an imam was kidnapped<sup>23</sup> while participating in a peaceful protest condemning attacks on Sufi shrines.<sup>24</sup>

On September 11, 2012, armed individuals attacked the US consulate in Benghazi during a protest, leaving four US citizens, including US Ambassador to Libya Christopher Stevens, and 10 Libyan personnel dead.<sup>25</sup> This incident further reveals the urgent need for disarmament and implementation of rule of law in the country.

In this context, the GNC issued Law 65/2012<sup>26</sup> on November 6 to govern the right to peaceful protest.<sup>27</sup> Despite the fact that the law upholds that Libyan citizens have a right to peaceful assembly and protest, it does not comply with international standards on a number of issues. For example, the law grants the authorities broad powers to restrict or prohibit the practice of this right; it also allows for the imposition of prison sentences on those who do not fully comply with the law's provisions. Finally, the law does not exempt spontaneous gatherings from its arbitrary restrictions.<sup>28</sup>

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<sup>22</sup> USA Today, "Libya: Protesters Supporting Self-Rule Attacked," Mar. 16, 2012, <<http://usatoday30.usatoday.com/news/world/story/2012-03-16/libya-unrest/53575790/1>>.

<sup>23</sup> Lawyers for Justice in Libya, "LFJL Strongly Condemns Recent Attacks of Religious Shrines in Libya," Aug. 28, 2012, <<http://www.libyanjustice.org/news/news/post/36-lfjl-strongly-condemns-recent-attacks-of-religious-shrines-in-libya->>.

<sup>24</sup> See below section on *Freedom of Expression and the Press*.

<sup>25</sup> Lawyers for Justice in Libya, "LFJL Strongly Condemns the Violent Attacks on the U.S. Consulate in Benghazi and Calls on the Libyan Government to Hold Perpetrators Accountable and Provide Greater Protection to Foreign Diplomatic Staff," Sep. 14, 2012, <<http://goo.gl/8H6yu>>.

<sup>26</sup> Egypt Independent, "Libya Ratifies Law Governing Demonstrations," Nov. 14, 2012, <<http://www.egyptindependent.com/news/libya-ratifies-law-governing-demonstrations>>.

<sup>27</sup> General National Congress – Libya, "Law No. 65 of 2012 regulating the Right to Peaceful Protest" (Arabic), <[bit.ly/U9d3tQ](http://bit.ly/U9d3tQ)>.

<sup>28</sup> Cairo Institute for Human Rights Studies, "Libya and Arab Rights Organizations Warn that New Libyan Law Undermines Freedom of Assembly," Dec. 3, 2012, <<http://www.cihrs.org/?p=5178&lang=en>>.

## Freedom of Expression and of the Press

Prior to the February 17 Revolution, Libya had been among the worst-ranked countries in the world in terms of freedom of the press,<sup>29</sup> with independent media either non-existent or severely circumscribed. In the wake of the Libyan uprising, however, freedom of expression improved markedly in terms of press and media independence. This improvement is evidenced through the establishment of a plethora of new television stations, radio stations, and newspapers and journals following the fall of the Qadhafi regime,<sup>30</sup> including in the English and Amazigh languages, which had been banned under Qadhafi.<sup>31</sup> In addition, it was reported that the state-owned media institutions which had controlled the press and broadcasting under Qadhafi were dissolved upon the rebels' seizure of Tripoli in August, 2011.<sup>32</sup> The state-owned paper *Sabah al-Youm* was prevented from publishing in one instance, while another, *al-Balad*, was banned in April 2012 over a dispute involving revenue from advertisements. According to the editor of *al-Balad*, it was ordered that the paper be renamed and that all former staff be replaced.<sup>33</sup> The journalists union in Tripoli sharply criticized this move as “a blatant violation of freedom of opinion and expression.”

In a worrying step for freedom of expression in Libya, on May 2, 2012 the NTC passed Law 37/2012, which imposed severe restrictions on free speech. Article 1 of the law imposed sentences reaching up to life in prison for anyone who “spreads untrue or biased news, statements, or rumors” or incites calls which could incur damage to the war efforts to defend the country, spread fear among the population, or weaken the morale of citizens.<sup>34</sup> The law goes on to specify that such acts include any praise of Moammar al-Qadhafi, his regime, his thoughts, or his children or “twisting the truth and misguiding the people about the acts perpetrated by them against the nation and its people.”

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<sup>29</sup> Reporters Without Borders, “Europe Falls From its Pedestal, No Respite in the Dictatorships,” Oct. 10, 2012, <[http://www.rsf.org/IMG/CLASSEMENT\\_2011/GB/C\\_GENERAL\\_GB.pdf](http://www.rsf.org/IMG/CLASSEMENT_2011/GB/C_GENERAL_GB.pdf)>.

<sup>30</sup> Reporters Without Borders, “Crackdowns on Protests Cause Big Changes to Index Positions,” Jan. 1, 2012, <[http://en.rsf.org/IMG/CLASSEMENT\\_2012/C\\_GENERAL\\_ANG.pdf](http://en.rsf.org/IMG/CLASSEMENT_2012/C_GENERAL_ANG.pdf)>.

<sup>31</sup> International Press Institute, “IPI Feature: Incoming Libyan Government Faces Press Freedom Hurdles,” July 11, 2012, <<http://www.freemedia.at/home/singleview/article/ipi-feature-incoming-libyan-government-faces-press-freedom-hurdles.html>>.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> National Transitional Council – Libya, “Law No. 37 for 2012 on Criminalization Glorification of Tyrants” (Arabic), <<http://bit.ly/YLWNoY>>.

Similarly, Article 2 of the same law imposes prison sentences for any speech or other form of expression critical of the February 17 Revolution. It imposes the same penalties for insulting the religion of Islam, the reputation of the state and its institutions, or the people, emblem, or flag of Libya.<sup>35</sup>

Positively, this law was later ruled unconstitutional by the Libyan Supreme Court,<sup>36</sup> which considered it to violate the Constitutional Declaration,<sup>37</sup> which included protections for several basic rights, including freedom of expression. However, the passage of this law by the NTC sends a serious warning about the direction which the country could take if legislation is not passed to protect the rights to freedom of opinion and expression as well as media independence, particularly as a number of repressive laws which violate freedom of expression and impose restrictions on media remain in place. Although they have not been implemented by the NTC or GNC, nothing prevents the authorities from resorting to these laws as long as they remain in effect.

In May, 2012, three decrees were issued by the NTC<sup>38</sup> announcing the creation of a supreme media authority,<sup>39</sup> national press institute,<sup>40</sup> and radio and television broadcasting institute.<sup>41</sup> Although these institutions were not effective in carrying out their mandates, their establishment was protested by a number of Libyan journalists who feared that these institutions would reimpose state control over their work and were angered by the fact that they had not been consulted in the drafting process of the decrees.<sup>42</sup>

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<sup>35</sup> Ibid.

<sup>36</sup> The Tripoli Post, "Democracy Wins in Libya: Law Restricting Speech Rules Unconstitutional," June 6, 2012, <<http://www.tripolipost.com/articledetail.asp?c=1&i=8582>>.

<sup>37</sup> Lawyers for Justice in Libya, "LFJL Applauds the Supreme Court of Libya's Decision on Law 37," June 27, 2012, <<http://www.libyanjustice.org/news/news/post/28-lfjl-applauds-the-supreme-court-of-libya%E2%80%99s-decision-on-law-37>>.

<sup>38</sup> National Transitional Council – Libya "Egtema'a be-shaa'n al-hayaa' al-a'olya al-mo'akata lel-a'alam," May 14, 2012, <[http://www.ntc.gov.ly/index.php?option=com\\_content&view=article&id=34:2012-05-14-15-37-28&catid=2:2012-04-05-23-35-10&Itemid=23](http://www.ntc.gov.ly/index.php?option=com_content&view=article&id=34:2012-05-14-15-37-28&catid=2:2012-04-05-23-35-10&Itemid=23)>.

<sup>39</sup> National Transitional Council – Libya, "Decree No. 44 for 2012 on the Establishment of the Supreme Council for Information" (Arabic), <<http://bit.ly/KouXHB>>.

<sup>40</sup> National Transitional Council – Libya, "Decree No. 43 for 2012 on the Establishment of the National Press Foundation" (Arabic), <<http://bit.ly/TYkaa0>>.

<sup>41</sup> National Transitional Council – Libya, "Decree of the President of the NTC No. 37 for 2012 on the Establishment of Radio and Television Corporation" (Arabic), <<http://bit.ly/ZAfPjA>>.

<sup>42</sup> Doha Center for Media Freedom, "Libyan Journalists Reject NTC Media Laws," May 28, 2012, <<http://www.dc4mf.org/en/node/1798>>.

On November 25, the GNC replaced these institutions with a Ministry of Information to administer and fund the field of media.<sup>43</sup> This step was also met with harsh criticism from legal experts and media professionals, who feared that the powers of such a ministry could be abused to restrict media outlets and to bring them under the control of the government, as had occurred in the Qadhafi era.<sup>44</sup>

Since the beginning of the uprising, reporting in Libya has indisputably placed journalists at great risk; it was reported that at least 5 journalists were killed during the fighting in 2011,<sup>45</sup> while dozens more were detained and several subjected to mistreatment before being released.<sup>46</sup> However, since the official liberation of the country on October 23, 2011, journalists continued to be at risk for abduction and detention at the hands of local militias, particularly in light of the inability of the transitional authorities to assert their authority over these groups and to guarantee the safety of journalists while carrying out their work.

For example, in February 2012 two British journalists working for the Iranian *Press TV* were detained by the militia in Misrata while driving and taking photographs late at night.<sup>47</sup> Their arrest followed a report they produced on the militia's attacks on black Libyans, particularly in Tawergha.<sup>48</sup> The journalists were eventually turned over to the Libyan authorities and released.<sup>49</sup>

On July 7, 2012, two Libyan cameramen with the Misrata-based TV station Tobacts were taken hostage and held in Bani Walid, where they had gone to

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<sup>43</sup> General National Congress – Libya, “Enshaa’ Wezaret E’alam,” Nov. 25, 2012, <[http://www.gnc.gov.ly/index.php?option=com\\_content&view=article&id=82:2012-11-26-09-01-44&catid=1:2012-08-09-13-20-21&Itemid=12](http://www.gnc.gov.ly/index.php?option=com_content&view=article&id=82:2012-11-26-09-01-44&catid=1:2012-08-09-13-20-21&Itemid=12)>.

<sup>44</sup> Libya Herald, “Libyan Media to be Regulated by New Ministry of Information,” Nov. 26, 2012, <<http://www.libyaherald.com/2012/11/26/national-congress-votes-to-create-new-ministry-of-information/>>.

<sup>45</sup> Reporters Without Borders, “2011: Journalists Killed – Libya,” <<http://en.rsf.org/press-freedom-barometer-journalists-killed.html?annee=2011>>.

<sup>46</sup> International Press Institute, “IPI Feature: Incoming Libyan Government Faces Press Freedom Hurdles,” July 11, 2012, <<http://www.freemedia.at/home/singleview/article/ipi-feature-incoming-libyan-government-faces-press-freedom-hurdles.html>>; Committee to Protect Journalists, “Libyan Journalists Syndicate,” <<http://cpj.org/tags/libyan-journalists-syndicate>>.

<sup>47</sup> Committee to Protect Journalists, “In Libya, Two Journalists Detained Without Charge,” Feb. 27, 2012, <<http://cpj.org/2012/02/in-libya-two-british-journalists-detained-without.php>>.

<sup>48</sup> See below section on *Impunity*.

<sup>49</sup> Committee to Protect Journalists, “In Libya, Two Journalists Detained Without Charge.”

cover the elections process.<sup>50</sup> The situation escalated while the cameramen were being held in detention, with at least one of the militias from Misrata threatening to attack the town if the two were not released. Their release on July 16 followed intense negotiations in which the NTC played a key role.<sup>51</sup>

On July 19, British documentary filmmaker Sharron Ward was arrested by the Supreme Security Committee (SSC) – forces operating in cooperation with the Interior Ministry due to the ineffectiveness of the official police forces – and held for several hours while filming at a camp for internally displaced persons in Janzour, west of Tripoli. After being briefly released, she was again detained by the SSC from July 21-23 and then deported from the country.<sup>52</sup>

Similarly, on August 25, 2012, three journalists were detained<sup>53</sup> while covering the destruction of Sufi religious sites,<sup>54</sup> including director of *al-Assema TV*, Nabil Shebani, who was summoned for questioning by the SSC regarding the channel's coverage of the destruction of the Sufi al-Sha'ab mosque in Tripoli.<sup>55</sup>

## Freedom of Association

For nearly four decades under Moammar al-Qadhafi's rule, exercising the right to freedom of association in Libya through establishing non-governmental organizations or participating in civil society was all but impossible. Independent NGOs able to voice dissenting views or criticize state policies and practices were essentially non-existent in the country, as were trade unions and political parties. Indeed, the law itself was worded in

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<sup>50</sup> IFEX, Reporters Without Journalists, "Two TV Cameramen abducted and Held and Bani Walid," July 10, 2012, <[http://www.ifex.org/libya/2012/07/10/fosouk\\_badi\\_abducted/](http://www.ifex.org/libya/2012/07/10/fosouk_badi_abducted/)>; Committee to Protect Journalists, "Libyan Journalists Kidnapped After Covering Elections," July 10, 2012, <<http://cpj.org/2012/07/two-libyan-journalists-kidnapped-after-covering-el.php>>; Reporters Without Borders, "Two Tobacts TV Journalists Freed After Negotiations," July 16, 2012, <<http://en.rsf.org/libya-two-tv-cameramen-abducted-and-held-10-07-2012,42997.html>>.

<sup>51</sup> IFEX, Reporters Without Borders, "Two TV Journalists Freed After Negotiations," July 16, 2012, <[http://www.ifex.org/libya/2012/07/17/journalists\\_released/](http://www.ifex.org/libya/2012/07/17/journalists_released/)>; Reporters Without Borders, "Two Tobacts TV Journalists Freed After Negotiations."

<sup>52</sup> Reporters Without Borders, "Freedom of Information Threatened by Visa Refusals Filming Bans and Arbitrary Arrest," Oct. 1, 2012, <<http://en.rsf.org/libya-freedom-of-information-threatened-01-10-2012,43465.html>>.

<sup>53</sup> Lawyers for Justice in Libya, "LFJL Strongly Condemns Recent Attacks of Religious Shrines in Libya."

<sup>54</sup> See below section on *Impunity*.

<sup>55</sup> Reporters Without Borders, "Freedom of Information Threatened by Visa Refusals Filming Bans and Arbitrary Arrest."

order to guarantee that any independent civil society groups would be considered illegal and that establishing or participating in such groups would be punishable under law, including by the death penalty.<sup>56</sup>

Positively, the NTC immediately abolished Law 71/1972, which had long outlawed political parties. A number of political parties have in fact been formed since the revolution and took part in the recent elections for the GNC.<sup>57</sup> However, several related laws which could be used to criminalize such activities remain in place in the Penal Code, although they have not been implemented since the fall of Qadhafi.

Additionally, the NTC proposed a bill to govern the work of civil society associations which was considered to be one of the most progressive pieces of legislation in the entire region of North Africa. If passed, it would uphold the right of Libyans to establish and participate in organizations and comply with international standards in most areas, including by providing for a system of notification for establishing organizations rather than a system of prior authorization by the state; leaving fields of work open to organizations; avoiding the imposition of criminal sanctions for breaches of the provisions of the law; allowing for civil society organizations to seek and receive funding for their activities; permitting the formation of networks between organizations; and requiring a judicial ruling for the dissolution of an organization, rather than an administrative decision.<sup>58</sup>

The failure to pass this bill is worrying, however, particularly as the former law on associations, Law 19/2002, had not yet been repealed, although this law's repressive measures had not been implemented by the Libyan authorities following the revolution. The lack of a clear law to govern registration and other aspects of civil society work has left new groups in Libya without a clear framework for how to legally establish and run their organizations. Despite this, civil society groups have been allowed to register officially, and the number of civil society groups in Libya has grown exponentially since the fall of Qadhafi. Just a month after the official liberation of Libya in October 2012, some 360 organizations had been

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<sup>56</sup> Euro-Mediterranean Human Rights Network, "Freedom of Association in the Euro-Mediterranean Region: Monitoring Report 2009," <[http://www.ohchr.org/Documents/Issues/FAssociation/Responses2012/other\\_contributions/World-EMHRN2009\\_Annual\\_Report\\_on\\_Free\\_Association.pdf](http://www.ohchr.org/Documents/Issues/FAssociation/Responses2012/other_contributions/World-EMHRN2009_Annual_Report_on_Free_Association.pdf)>.

<sup>57</sup> See above section on *The Transfer of Power to an Elected Body*.

<sup>58</sup> Cairo Institute for Human Rights Studies, "Libya and Arab Rights Organizations Warn that New Libyan Law Undermines Freedom of Assembly."

registered in Benghazi, along with some 500 in Tripoli.<sup>59</sup> Indeed, the Ministry of Culture and Civil Society reportedly estimated that between 2,000-2,400 organizations had been established since the revolution,<sup>60</sup> among them dozens of human rights and humanitarian groups, including organizations working to establish a culture of human rights through education, to raise civic awareness among Libyan citizens, to document ongoing violations of human rights, and to advocate for legislative reform, national reconciliation, and transitional justice.<sup>61</sup> Moreover, the NTC cooperated with various human rights organizations, including international rights groups, on various occasions, allowing them to conduct studies, meet with diverse groups within Libya, and even visit detention facilities.

Cases in which civil society activists have been targeted by armed groups due to their work related to the defense of human rights raise new concerns about the future of civil society in Libya. In April 2012, Eisa Doudou, a Libyan rights advocate who works with the Arab Organization for Human Rights, was abducted while participating in meetings in Tripoli;<sup>62</sup> the militia in Zintan released him days later.<sup>63</sup> On September 26, Dr. Ahmed Abu Raqba, head of the Libyana Foundation for Mother and Child, was arrested by the SSC and held in the Ryowami prison in Tripoli after he intervened to defend detainees held by the SCC in the same prison and to assist their relatives in filing complaints with the attorney general.<sup>64</sup> On November 18, a group of civil society activists were abducted in Bani Walid<sup>65</sup> while documenting the violations which were taking place in the city.<sup>66</sup>

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<sup>59</sup> Foundation for the Future, "Assessing Needs of Civil Society in Libya," November 2011, <<http://www.icnl.org/research/library/files/Libya/ASSESSING%20NEEDS%20OF%20CIVIL%20SOCIETY%20IN%20LIBYA.pdf>>.

<sup>60</sup> Interview conducted Dec. 19, 2012 by CIHRS researcher with Libyan lawyer and activist from Lawyers for Justice in Libya.

<sup>61</sup> International Federation for Human Rights, "Preliminary Note on Libya Mission," Feb. 2, 2012, <<http://www.fidh.org/Preliminary-note-on-Libya-Mission>>.

<sup>62</sup> Arab Organization for Human Rights, "Tasreeh sahafi...Libya...ekhtetaf qiyadi bel-monathama fi libya we al amin al a'am yonashed al-efrag a'ano," Apr. 14, 2012, <<http://www.aohr.net/?p=2064>>.

<sup>63</sup> Arab Organization for Human Rights, "Tasreeh sahafi...Libya... al-efrag a'an qiyadi al-monathama al-mokhtatef fi libya..we al-amin al-a'am yatawageh bl-shokr le-kafet al-atraf allati ashamed fi mo'alaget al'qadeyya," Apr. 14, 2012, <<http://www.aohr.net/?p=2071>>.

<sup>64</sup> Amnesty International, "Libya – Activist Held Incommunicado in Libya," Oct. 3, 2012, <<http://www.amnesty.se/upload/apps/webactions/urgentaction/2012/10/04/51901912.pdf>>.

<sup>65</sup> See report issued by the Libyan Monitor for Human Rights, <[http://www.facebook.com/photo.php?fbid=429782960409578&set=a.184921321562411.67720.172887752765768&type=1&relevant\\_count=1](http://www.facebook.com/photo.php?fbid=429782960409578&set=a.184921321562411.67720.172887752765768&type=1&relevant_count=1)>.

<sup>66</sup> See below section on *Impunity*.

## **Arbitrary Arrest, Torture, and Extrajudicial Killings**

Perhaps the most worrying development in post-Qadhafi Libya has been the proliferation of abuses such as arbitrary arrest, extrajudicial killings, forced displacement, torture, and mistreatment in detention, whether committed at the hands of the transitional authorities or by the armed militias that continue to exert control over vast areas of the country.

Despite the issuance of a decree by the NTC on November 29, 2011 prohibiting arrests by militias and pro-revolutionary fighters, this has gone largely ignored in reality, and militias across the country continue to hold detainees who are suspected of having supported Qadhafi. Migrant workers have also been caught up in the waves of arrests,<sup>67</sup> particularly because their dark skin and background as sub-Saharan Africans leads many in Libya to believe that they supported Qadhafi or worked for him as foreign mercenaries.

In a worrying development, on May 2 the NTC passed Law 38/2012, which legalized arbitrary arrest without judicial review. Articles 6 and 10 of this law authorized the Ministers of Interior and Defense to detain any person considered to be a “threat to public security and stability during the interim period” for up to two months or to impose restrictions on his/her movement. The law states that such measures may be taken based on the person’s “previous acts, affiliation, or cooperation with any of the apparatuses or mechanisms of the former regime, whether in an official or unofficial capacity.”<sup>68</sup>

Even though Law 38/2012 required the Ministries of Interior and Defense to ensure that all detainees were brought before the competent judicial authorities by July 12, this deadline passed with many detainees still being held illegally by both militias and the official authorities; as of November the number of arbitrarily held detainees was estimated to be 8,000, with half of them being held by armed militias.

In this context, extrajudicial killings and deaths due to torture continued to be reported. On April 13, 2012, three individuals died while being held in a detention center in Misrata. The United Nations expressed concern that the deaths may have resulted from torture, as the UN mission in Libya had received information of seven other cases of torture in the same facility as

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<sup>67</sup> Amnesty International, “We are Foreigners, We Have No Rights,” Nov. 2012, <[http://www.amnesty.eu/content/assets/131112\\_Libya\\_-\\_briefing.pdf](http://www.amnesty.eu/content/assets/131112_Libya_-_briefing.pdf)>.

<sup>68</sup> National Transitional Council – Libya, “Law No.38 of 2012 on Transitional Period Procedures” (Arabic), <<http://bit.ly/Um8aQT>>.

well.<sup>69</sup> In response, the Supreme Security Committee in Misrata issued a statement condemning acts of torture.

Despite the continued allegations of torture and other forms of ill-treatment heard from detainees held by armed militias in various detention centers, including in Tripoli, Zawiya, Zintan, and Misrata,<sup>70</sup> the authorities have yet to take serious steps to confront such practices and refer those responsible to trial. Those thought to be connected to the former regime are at particular risk of torture.<sup>71</sup> For example, the former Libyan ambassador to France, Omar al-Barbish, died one day after he was detained and tortured by a Zintan militia in late January 2012. Foreign detainees are also at heightened risk of torture, as in the case of a number of individuals from sub-Saharan Africa.<sup>72</sup> Secret detention facilities run by these militias have also been reported, and it is likely that detainees at such centers would be at even greater risk of torture. Further concerning is that confessions have been extracted from such detainees under duress.<sup>73</sup>

## Impunity

It seems that the Libyan authorities are not prepared to adopt a consistent approach to ensuring accountability for the grave crimes and violations committed since the beginning of the revolution, whether perpetrated by the Qadhafi regime or by the armed militias which fought to overthrow it. First, even though the NTC had promised to cooperate with the International Criminal Court (ICC) following Security Council Resolution 1970, which authorized the ICC to investigate violations being committed in Libya, the Libyan authorities have been reluctant to hand over officials from the former regime, despite arrest warrants issued for them by the ICC. The Libyan authorities have further challenged the jurisdiction of the ICC to review the charges brought against these officials.

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<sup>69</sup> United Nations Support Mission in Libya, “UNSMIL Calls on Libyan Government to Hold to Account those Behind Deaths, Torture of Detainees,” May 1, 2012, <<http://unsmil.unmissions.org/Default.aspx?tabid=3543&ctl=Details&mid=6187&ItemID=223938&language=en-US>>.

<sup>70</sup> Ibid.

<sup>71</sup> United Nations Human Rights Council, “Report of the International Commission of Inquiry on Libya,” March 2012, Annex 1, Art. 348-382, <<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.68.pdf>>.

<sup>72</sup> Amnesty International, “We are Foreigners, We Have No Rights.”

<sup>73</sup> Amnesty International, “Libya Must Seek Justice Not Revenge In Case of Former Al-Gaddafi Intelligence Chief,” Oct. 18, 2012, <<http://www.amnesty.org/en/news/libya-must-see-justice-not-revenge-case-former-al-gaddafi-intelligence-chief-2012-10-18>>.

The ICC had issued arrest warrants for Moammar al-Qadhafi, his son Seif al-Islam al-Qadhafi, and head of military intelligence Abdullah al-Senoussi, after they were charged of having committed crimes against humanity. However, attempts to internationally try Moammar al-Qadhafi were thwarted when he was arrested and killed by armed militia fighters in Zintan in southern Libya in November 2011. Further, Libya has challenged the ICC's jurisdiction to rule in the case of Seif al-Islam, as government officials are determined to try him in Libyan courts. The Libyan authorities have also been reluctant to surrender al-Senoussi, who is detained in Tripoli, as they hope to try him in Libya as well.<sup>74</sup>

The arbitrary nature of detention and access to justice in Libya was highlighted by the detention of four International Criminal Court staff for nearly four weeks in June, 2012 by the militia in control of the town of Zintan, where they gone to meet with Seif al-Islam. Although the trip by these ICC representatives had been authorized by ICC judges and agreed to by the Libyan authorities, their detention by the Zintan militia was not condemned by the NTC. Rather, the NTC declared it would seek an end to the court staff's immunity in order to initiate investigations against them, and Libyan officials justified this by stating that they suspected some of the ICC representatives of having submitted documents to Seif al-Islam which threatened Libya's national security.<sup>75</sup>

The killing of Moammar al-Qadhafi and his son Muatassim after they were detained further reveals the inability of the Libyan judiciary to ensure that ex-regime members are guaranteed their right to a prompt and fair trial. These fears are reinforced by the fact that thousands of other detainees suspected of having committed crimes on behalf of the Qadhafi regime have been denied their right to a fair trial, despite having been held in detention for extended periods of time; nor are these detainees guaranteed protection from physical assaults and torture inside detention centers. Recently, the daughter of Abdullah al-Senoussi was also arrested on October 6 and held in incommunicado detention as of October 20.<sup>76</sup>

In contrast, Law 38/2012 enshrines a culture of impunity for anti-Qadhafi forces in Libya, as its provisions provide immunity from accountability and

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<sup>74</sup> Human Rights Watch, "UN Security Council: Press Libya on ICC Cooperation, Impunity," Nov. 6, 2012, <<http://www.hrw.org/news/2012/11/06/un-security-council-press-libya-icc-cooperation-impunity>>.

<sup>75</sup> Human Rights Watch, "Libya: ICC Staff Detentions Raise Justice Concerns," July 3, 2012, <<http://www.hrw.org/news/2012/07/03/libya-icc-staff-detentions-raise-justice-concerns>>.

<sup>76</sup> Amnesty International, "Safety Concerns for Loyalist's Daughter," Oct. 31, 2012, <<http://www.amnesty.org/en/library/asset/MDE19/022/2012/en/b274d13f-93e3-4df5-b5bc-d42d4004cd91/mde190222012en.pdf>>.

punishment for all acts committed by the revolutionaries in order to protect or bring about the success of the revolution. Such broad language has left ample room to protect supporters of the revolution from accountability, even for grave crimes under international law such as extrajudicial killings, arbitrary arrest, torture, sexual violence and rape, and forced displacement.<sup>77</sup>

Under the protection of this law, a number of attacks and violations committed against minorities by anti-Qadhafi militias have been overlooked. For instance, in August 2011 militias from Misrata attacked and forcibly expelled an estimated 35,000 people from the town of Tawergha,<sup>78</sup> whose residents they accuse of having participated with Qadhafi's forces in committing atrocities in Misrata during the uprising of early 2011. Subsequently, IDP camps of Tawerghans in western Libya have been repeatedly targeted for attacks by militias, leading to several additional deaths.<sup>79</sup> The militias are responsible for acts of forced displacement, arbitrary arrest, torture, and extrajudicial killings committed against the population of Tawergha, as documented by the Commission of Inquiry on Libya mandated by the UN Human Rights Council.<sup>80</sup>

This pattern of impunity was again clearly demonstrated in late August 2012, when various religious sites belonging to the Sufi minority were destroyed<sup>81</sup> and those responsible faced no consequences. In fact, the Libyan authorities did not even seek to stop the demolitions as they were ongoing, let alone ensure justice for the perpetrators of these violations against the right to the freedoms of religion and belief. Moreover, security forces

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<sup>77</sup> National Transitional Council – Libya, “Law No.38 of 2012 on Transitional Period Procedures” (Arabic).

<sup>78</sup> The United Nations Refugee Agency, “Q&A: Fresh Challenges in Libya for an Expanded UNHCR Team,” Mar. 16, 2012, <<http://www.unhcr.org/4f637acc6.html>>.

<sup>79</sup> United Nations Support Mission in Libya, “UNSMIL Calls Upon the Government to Provide Greater Security to Tawergha IDPs,” <<http://unsmil.unmissions.org/Default.aspx?tabid=3543&ctl=Details&mid=6187&Itemid=54555&language=en-US>>; Lawyers for Justice in Libya, “LFJL Condemns Continued Attacks against the Tawergha People,” July 25, 2012, <<http://www.libyanjustice.org/news/news/post/81-lfjl-condemns-continued-attacks-against-the-tawergha-people>>.

<sup>80</sup> United Nations Human Rights Council, “Report of the International Commission of Inquiry on Libya.”

<sup>81</sup> Cairo Institute for Human Rights Studies/Lawyers for Justice in Libya, “Violations of Freedom of Religion, Expression and Assembly and Alleged Acts of Torture in the Context of Attacks against Places of Worship of a Minority Religious Group,” Sept. 2012, <<http://www.cihrs.org/wp-content/uploads/2012/09/LFJL.CIHR.S.Urgent-Appeal-Libya.pdf>>.

behaved aggressively towards journalists and protestors who tried to approach the sites that were being demolished.<sup>82</sup>

In late September 2011, the GNC issued decree 7/2012, which authorized the Ministries of Defense and Interior to use “all necessary powers,” including the use of force,<sup>83</sup> to apprehend all criminal suspects in Bani Walid, a town southwest of Tripoli which is known as a stronghold of Qadhafi supporters and has a history of animosity with the city of Misrata. This decree came after the government failed to arrest those responsible for the killing of Omran Shaaban - who was credited with having found al-Qadhafi in late October 2011 - after he was detained in Bani Walid in mid-2012. Following this decree, the Libyan armed forces and aligned militias – particularly militias from Misrata - placed Bani Walid under siege. The ensuing disproportionate use of force, including indiscriminate bombings<sup>84</sup> on civilian-populated areas, led to dozens of deaths and prompted thousands to flee.<sup>85</sup> Although the GNC later called for an investigation of the situation,<sup>86</sup> it is feared that such calls merely reflect a growing pattern in Libya of rhetoric reflecting rights ideals without being followed by concrete action. Indeed, the Libyan government’s issuance of such a decree allowing for an entire town to be attacked in response to criminal acts committed by individual citizens clearly reflects the absence of rule of law in Libya as well as the lack of state institutions able to confront the severity of the challenges faced by the country during this transitional period.

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<sup>82</sup> Cairo Institute for Human Rights Studies, “United Nations Reacts to Attacks on Religious Sites in Libya,” Sept. 20, 2012, <<http://www.cihrs.org/?p=4112&lang=en>>.

<sup>83</sup> Human Rights Watch, “Libya: Residents of Bani Walid at Risk,” Oct. 24, 2012, <<http://www.hrw.org/news/2012/10/24/libya-residents-bani-walid-risk>>.

<sup>84</sup> United Nations Support Mission in Libya, “UNSMIL Statement on the Situation in Bani Walid,” Oct. 20, 2012, <<http://unsmil.unmissions.org/Default.aspx?tabid=3561&ctl=Details&mid=8549&ItemID=641124&language=en-US>>.

<sup>85</sup> Lawyers for Justice in Libya, “Lawyers for Justice in Libya Condemns the Use of Disproportionate Measures that have Resulted in Civilian Casualties in Bani Walid,” Oct. 12, 2012, <<http://www.libyanjustice.org/news/news/post/44-lawyers-for-justice-in-libya-condemns-the-use-of-disproportionate-measures-that-have-resulted-in-civilian-casualties-in-bani-walid-/>>.

<sup>86</sup> General National Congress – Libya, “Al-mo’tamar al-watani al-a’ am yonaqesh fi galsato al-ma’aseyya al-tagawezat allati a’ akabet entehaa’ al-a’ameleyat al-a’ akreyya fi madinet bani walid,” Nov. 5, 2012, <[http://www.gnc.gov.ly/index.php?option=com\\_content&view=article&id=46:2012-11-05-08-41-02&catid=1:2012-08-09-13-20-21&Itemid=12](http://www.gnc.gov.ly/index.php?option=com_content&view=article&id=46:2012-11-05-08-41-02&catid=1:2012-08-09-13-20-21&Itemid=12)>.