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Managing the Secure Release of Sensitive Detainees in Libya

By *Fiona Mangan and Lillian Dang with Nathaniel L. Wilson*



Gadhafi-era prisoners line up in queues ahead of their release in Misrata, Libya, in August 2017. (Photo by Ayman al-Sahili/Reuters)

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Summary

- During and after Libya's 2011 revolution, large numbers of Gadhafi loyalists were detained for a loose array of crimes in prison facilities and makeshift detention centers around the country.
- Since the revolution, ongoing conflict and the rise of extremist groups such as ISIS have contributed to a large backlog of cases and a glut of high-profile or sensitive detainees being held in Libya's prisons.
- In conflict, postconflict, and transitional environments, the release of sensitive detainees who have served their sentences or been acquitted of crimes is a political problem that can trigger cycles of violence that undercut or hamper political negotiations and peace and reconciliation processes.
- While Libya's domestic laws provide a reasonably strong framework for pre- and post-release procedures, the laws are less clear or lacking altogether on how to handle the release process itself and how to ensure the safe return of detainees to their communities.
- International law and standards may have limited applicability in Libya, as they often apply only to international conflicts rather than intra-state conflicts such as Libya's.
- Furthermore, international standards are generally concerned with the pre-release and post-release phases of detention, and there are very few guidelines concerning the release process itself.
- There are numerous examples of safe release and reintegration programs that Libya can learn from, including Afghanistan's framework for the release of Hezb-e Islami fighters, Northern Ireland's multi-agency partnership approach for releasing and reintegrating detainees following the 1998 Good Friday Agreement, and Timor-Leste's community reconciliation program.

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**JUSTICE,
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ABOUT THE REPORT

This report examines the challenges Libya faces in ensuring the safety and security of sensitive detainees as they pass from the custodial care of prison authorities and are returned to their communities under the remit of police or other security agencies. It was supported by USIP's Middle East & North Africa program with financial assistance from the US Department of State's Bureau of International Narcotics and Law Enforcement Affairs.

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The views expressed in this report are those of the authors alone. They do not necessarily reflect the views of the United States Institute of Peace. An online edition of this and related reports can be found on our website (www.usip.org), together with additional information on the subject.

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A Libyan inmate is greeted by family members in Benghazi after his release from prison in January 2017.
(Photo by Esam Omran Al-Fetori/Reuters)

Introduction

Since the 2011 uprising that ousted dictator Muammar Gadhafi, Libya has struggled to effectively establish the rule of law and maintain security. Libya's justice and security sector has come under particular strain. During the 2011 conflict, revolutionary fighters rounded up large numbers of Gadhafi loyalists accused of a loose array of crimes, detaining them in prison facilities and makeshift detention centers around the country. In many cases, evidence against these individuals was scant, and prosecutors and judges struggled to investigate, lay charges, prosecute, and conduct fair trials. Even when trials were concluded, the release of detainees deemed to have served their sentence or of individuals who were acquitted has raised sensitivities. Adding to this complex situation, conflict and instability in the years since the revolution, along with the rise of activities in Libya by extremist groups such as ISIS, has contributed to a large backlog of cases and a new glut of high-profile or sensitive detainees being held in Libya's prisons.

Further complicating this picture, detention and security provision in Libya is now conducted by a complex web of security actors. Multiple armed groups answer to different commanders who are variously associated with the Ministry of Justice, Ministry of Interior, or Ministry of Defense. These groups carry out policing, military security, and detention functions all across Libya with differing levels of state control and intervention. As is the case in other conflict and postconflict environments, this contributes to some security actors and prison guards seeing detainees as enemies and vice versa. This hostility exacerbates problems of prisoner care and secure release of detainees back into the community.

The secure release of sensitive detainees—defined in this report as someone well-known locally or internationally who garners a lot of attention as a result of political or social offenses, either as an individual or due to his or her profile—may seem like a limited problem. But in conflict, postconflict, and transitional environments, secure release often presents as a political problem with implications for prospects for peace. The release of certain individuals or groups back into society can trigger or fuel cycles of violence and undercut or hamper political negotiations and peace and reconciliation processes. On the other hand, if the release and return of detainees to their communities is securely managed, the process of prisoner release can serve as an important milestone in peace processes. It can be a key step in restoring faith in the rule of law and confidence in and legitimacy of state security providers and social services. Furthermore, promoting cooperation between state agencies in the management of secure release processes can present an opportunity to build interagency trust and coordination.

The secure release of prisoners is an issue that encompasses a number of government actors—from prison guards, police, and other security officials to social workers. It also involves nongovernmental actors such as civil society representatives. The release of detainees who were involved in—or accused of—conflict-related offenses and who could face violent reprisals upon release further compounds existing challenges of prisoner release and reintegration into society. This paper delves into the challenges these many actors face in managing the moment of release of detainees from custody and their return to society. It examines the grey areas of responsibility for the safety and security of detainees as they pass from the custodial care of prison authorities and return to their communities under the remit of police and other security agencies. Comparative case studies of recent release and reconciliation programs in Afghanistan, Northern Ireland, and Timor-Leste provide an array of examples and policy ideas that Libya may wish to consider in addressing the shortcomings of its current release procedures, post-release care, and supervision of detainees.

Obstacles to Secure Release

The safe release of prisoners is an area of growing concern for human rights monitors in Libya. In the immediate aftermath of the 2011 revolution, obstacles to the secure release of detainees and fear of reprisals had a chilling effect on the work of prosecutors. One prosecutor interviewed in Misrata in 2012 conceded that, by law, most of the cases he was reviewing should have been dismissed and the detainees released, either because of insufficient evidence to prosecute them or because they were held for unlawful periods without charge. However, amid an environment of post-revolutionary fervor, the prosecutor feared that detainees would be gunned down at the prison gates. As he put it, “Perhaps it could be considered protective detention?”¹ He also feared that he would face reprisals at the hands of revolutionary armed groups for releasing someone these groups believed should be punished. This assessment was echoed in focus groups and workshop conversations with Libyan lawyers, members of armed groups, and officials conducted by the United States Institute of Peace from 2012 to 2019.

In a number of reported incidents, detainees have been killed shortly after being released from government-controlled prisons. The most prominent of these incidents occurred in June

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2016, when twelve detainees were acquitted of conflict-related crimes and granted supervised release from Al Baraka prison (formerly known as Al-Ruwaimi) in Tripoli's Ain Zara neighborhood.² All twelve were Gadhafi-era officials, and all twelve were killed just one day later, their bodies dumped in different parts of the city and found by passersby.³ More recently, there have been reports of bodies of prisoners found following their release from sections of prisons in eastern Libya controlled by the self-proclaimed Libyan National Army, including Al Quafiya prison

in Benghazi and Gernada prison in Al Bayda.⁴ Lack of access to prisons in eastern Libya, however, has impeded the ability of human rights monitors to properly investigate such allegations.

Even in instances where the government has intervened to ensure the secure release of prisoners, insecurity has often prevailed. Former Minister of Justice Salah El-Marghani shared an example that underscores the challenges of ensuring the safe release of high-profile detainees. In 2013, he sought to ensure the safe release of Anoud Al-Senussi, the daughter of Abdullah Al-Senussi, a top Gadhafi-era intelligence official, from Al Baraka prison. She had been charged with entering Libya from neighboring Algeria on a fake passport, allegedly with the intent of helping her father escape from prison. She served a ten-month sentence and was due for release.⁵ Her family, who are from Sebha in southern Libya, were unable to travel to the prison facility to collect her, as armed groups controlled the area surrounding the facility. The family reached out to the Ministry of Justice and to El-Marghani, who organized a three-car convoy to provide enhanced security to escort her from the prison to Tripoli airport, where she was to be met by her family and taken back to Sebha. Upon leaving the prison, the convoy was attacked and Anoud Al-Senussi was kidnapped just yards from her point of release. It was subsequently claimed that the kidnapping had been carried out “for her own protection” by armed elements associated with the Supreme Security Committee, a new post-2011 policing body under the auspices of the Ministry of Interior.⁶ Al-Senussi was eventually released back to her family, but the case highlights the dangers posed by the release of detainees when the government does not have clear territorial or command control over its security actors, or when armed groups are able to carry out kidnappings with impunity. It also underscores the clear lack of control, cooperation, and coordination between ministries and state security agencies in Libya.

As in the case of Anoud Al-Senussi, officials at Ministry of Justice-controlled prisons will often not release a detainee unless a family member comes to collect the inmate. This procedure is required by law for juvenile detainees, but it has also been applied in practice for adult prisoners, particularly in the case of female detainees. In many cases, individuals have been detained beyond the lawful detention period because family members were delayed in traveling to the detention facility or otherwise refused to collect them. Timely release is particularly problematic for female detainees charged with so-called moral crimes, such as premarital sex or adultery, as family members, fearing being stigmatized by association, are unwilling to turn up at the prison to collect them.

Finally, there are further challenges associated with the release of prisoners affiliated with ISIS, some of whom have few or no ties to communities in Libya. Even when determined to be innocent,

alleged ISIS fighters and female ISIS-affiliated prisoners (often the wives of the fighters, some of whom were kidnapped migrants) generally do not have anyone who can attend the prison to collect them. Since February 2017, there has been an increase in the arbitrary detention of family members of alleged ISIS fighters.⁷ In some of these cases, children are being held in detention with their mothers. Foreign embassies have showed little willingness to repatriate detainees who might be associated with ISIS or send consular assistance to the prison facility to facilitate their release. In such cases, release procedures can become a double-edged sword when individuals are detained beyond the lawfully required period in order to ensure their secure release.

Domestic Law and Standards

Despite the existence of laws on the proper management of prisons and security institutions in Libya, a highly insecure environment and the absence of the rule of law mean that legal standards are not being upheld. Libya's Prison law, Law No. 5 of 2005, begins by setting out in article 1 that "correction and rehabilitation institutions are places of reform and education aimed at correcting the behavior of persons sentenced to criminal custodial penalties and rehabilitating them so that they become good members of society." The law and its attendant executive regulations go on to refer to prisoner release in a number of places, setting out a framework for "gradual" transitional periods to prepare inmates for release, specifically "the convicted person [who] spends more than four years in the institution" (article 22), conditions for granting and revoking medical release (articles 44 and 45), and ensuring that disciplinary sanctions do not delay release where ordered (article 62).⁸

Law No. 5 and its executive regulations also set out important social welfare provisions for inmates, stating that the Ministry of Social Welfare must be informed of the names of inmates at least two months before their release so that its agencies can arrange for employment and financial assistance to ease inmates' return to the community (article 48), and that the head of the Judicial Police may also provide fixed financial grants to meet the "urgent needs" of inmates following their release (article 49). Additionally, the executive regulations detail a role for the Social Services Units in each prison to support prisoners in developing a plan for their release, meeting each prisoner one-on-one to "examine his plan in life after getting out of the institution," monitoring their situation through regular monthly visits, and coordinating with their social workers (article 125). This is the culmination of a process for the intake of prisoners that stipulates that the Social Services Unit should "conduct social research on the inmate, if necessary, to find out about his situation" (article 123). Presumably, this case file on the prisoner's social background could be updated throughout the prisoner's detention, or at least referred to upon his release.

With regard to the management of prisoner release, the executive regulations set out that inmates "shall be released before the end of office hours on the day following the end of his sentence" (articles 198 and 200). Prison directors have the discretion to recommend that the Public Prosecution service alter release orders to provide for conditional release or nonrelease, submitting details of their reasoning at least one month prior to the release date (article 202). Finally, local police stations are advised of details for any parolees who will be residing in their jurisdiction, and inmates receive a conditional release card setting out restrictions they need to comply with and notification that their release may be revoked if they violate those conditions (articles 203 and 204).



A Libyan inmate shakes hands with a man upon being released at Al-Hadaba Prison in Tripoli, Libya March 28, 2017.
(Photo by Ismail Zitouny/Reuters)

Law No. 5 of 2005 and its executive regulations thus set out a reasonably strong framework for release procedures, particularly by articulating robust social welfare obligations to ensure inmates' transition back into the community, including assisting with employment and providing financial support. However, on the issue of secure release of sensitive or high-profile detainees the law is silent. This is not surprising, given that the law was drafted during a period of stability and tight autocratic control over state security by the Gadhafi regime. In addition, the systematic coordination obligations with social welfare agencies and police as set out in the law have either collapsed or are occurring on an ad hoc basis depending on the individuals involved in each jurisdiction. In effective, the responsibility for inmate security that rests with the Judicial Police now ends at the prison gate, and no coordination strategy has been set out to ensure the safe release of detainees back into the community.

In a number of communities, however, local councils, judges, prosecutors, the Judicial Police, the regular police, armed groups, tribal elders, and family representatives have worked together to ensure the safe release of high-profile and sensitive detainees. For example, in Misrata, prisoners—including significant numbers of conflict-related detainees—have been released around the holy holiday of Eid each year since 2013, with local authorities coordinating with the Ministry of Justice and the Ministry of Defense across different security providers, tribal representatives,

and other influential figures to mark the event with a ceremony.⁹ These releases appear to have been handled without incident so far, and consideration should be given to studying and systemizing them in order to establish secure release processes that can be applied elsewhere.

International Law and Standards

There is currently a gap in international law and international standards governing the treatment of prisoners with regard to safe release procedures. The most comprehensive international standards are laid out in the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs), also known as the “Mandela Rules.” The SMRs are silent on release procedures but do contain rules to safeguard against disappearances within the system by requiring the maintenance of comprehensive information about all detainees.¹⁰ Additionally, the UN’s Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, also known as the “Bangkok Rules,” complement the SMRs and articulate standards for the pre- and post-release reintegration of female prisoners.

The two most relevant international law provisions pertaining to the release of prisoners are contained in the 1977 amendment protocol to the Geneva Conventions commonly referred to as Additional Protocol II and the 2010 UN International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). Under Additional Protocol II, a state is required to take necessary measures to ensure the safety of individuals who are released from detention in a situation characterized as a non-international armed conflict, while under the ICPPED—which Libya has never ratified—a state is obligated to take the necessary measures to enable the verification of a detainee release.

Both treaties have limited applicability in the Libyan context. As noted, the provisions in Additional Protocol II apply only in instances of non-international armed conflict between a state and dissident armed groups; it does not apply to conflict between non-state armed groups. In Libya, this means that the safety guarantees for prisoner release under the protocol may apply to government-run detention facilities, but they may not be applicable to detainees in facilities run by non-state armed groups or militias. Furthermore, because Libya is not a signatory to the ICPPED, the provisions of that treaty are not binding on the Libyan government. However, the provisions of the ICPPED can act as authoritative guiding norms in relation to Libya’s human rights treaty obligations and national laws pertaining to the treatment of prisoners.

INTERNATIONAL HUMANITARIAN LAW

The four Geneva Conventions of 1949 and the Additional Protocols of 1977 are international treaties that govern the proper treatment of individuals captured during armed conflicts. Libya is party to the Geneva Conventions and the two Additional Protocols (I and II) that are applicable to non-international armed conflicts.¹¹ According to International Committee of the Red Cross legal adviser Kathleen Law, the parties to a non-international armed conflict are, at a minimum, required to comply with Common Article 3 of the Geneva Conventions and with rules of customary international humanitarian law (IHL) that guarantee humane treatment and nondiscriminatory care to those who

find themselves in the power of the enemy.¹² However, the complex nature of Libya's conflict since 2011 makes it difficult to determine when IHL applies and between which parties.

Since 2011, there have been two major phases of non-international armed conflict in Libya.¹³ In 2011, a non-international armed conflict existed between the Gadhafi government and anti-government armed groups. Some analysts have suggested the involvement of foreign forces (initially Qatar and France, and later a coalition of NATO countries) transformed the conflict into an international armed conflict between Libya and these foreign states; this contention further complicates the matter.¹⁴ Although no precise date has been given for the cessation of the non-international armed conflict between the Gadhafi government and anti-government forces, the conflict could be considered to have ended in September 2011 when the international community recognized the Libyan National Transitional Council as the de facto government of Libya.¹⁵

Since 2014, multiple and overlapping non-international armed conflicts have arisen on a number of occasions in Libya. Following contested elections in August 2014, a faction of the outgoing General National Congress (GNC), supported by armed militias, reconstituted itself as a rival government in Tripoli to challenge the newly elected legislative body, the House of Representatives (HoR), based in the eastern city of Tobruk. Additionally, Islamist groups—most notably, Ansar al-Sharia and ISIS—took advantage of the security situation and gained control of several cities, including Benghazi and Sirte.¹⁶ In December 2015, an UN-backed Libyan Political Agreement (LPA) led to the formation of a Presidential Council and the Government of National Accord (GNA) as the sole legitimate executive authority.¹⁷ By 2017, the main parties to the conflicts included the HoR, based in the east; the GNA, in Tripoli; the Libyan National Army (LNA) and affiliated groups loyal to Field Marshal Khalifa Haftar, which back the HoR and have sought to topple the UN-backed GNA; the Libya Dawn militia, which supports the GNC; and an array of Islamist groups.¹⁸ Further waves of conflict subsequently engulfed Tripoli, with numerous militia groups fighting for control of the city in the fall of 2018, and clashes between those militias and Haftar's LNA in the spring of 2019.¹⁹

Another complicating factor to consider when evaluating how IHL may apply to the situation in Libya is that Additional Protocol II expressly applies only to armed conflicts between the state armed forces and dissident armed forces or other organized armed groups. Unlike Common Article 3, the protocol does not apply to armed conflicts occurring only between nonstate armed groups. In the Libyan context, this means Additional Protocol II would have applied to the conflict between the Gadhafi government and anti-Gadhafi forces from March 2011 to September 2011, and it may also apply to the current conflict between the GNA and anti-GNA forces. However, the protocol does not apply to armed conflict between the different armed opposition groups. It could thus be supposed that the GNA—as a successor government to the National Transitional Council—has an obligation to ensure the secure release of anti-Gadhafi forces held within its detention facilities.

But even if Additional Protocol II did apply to each of the above situations, it does not contain sufficient detail to be effective. Regarding the release of detainees, the stipulation in the protocol contains only two elements—the decision to release, and the conditions of safety for release. Importantly, the protocol does not elaborate on what the necessary measures should be to ensure the safety of persons released.²⁰

INTERNATIONAL HUMAN RIGHTS LAW

In addition to IHL, international human rights law continues to apply during an armed conflict.²¹ A number of international human rights treaties govern the treatment of persons deprived of their liberty. Treaties to which Libya is currently a party include the International Covenant on Civil and Political Rights (1966), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), and the Convention on the Rights of the Child (1989). However, these treaties are mostly concerned with the treatment of persons during detention or for the period in which a person is deprived of their liberty. There are few provisions relating to the release of such prisoners or detainees.

Only the ICPPED specifically includes provisions relating to the release of persons deprived of their liberty. As noted, Libya is not a signatory to the ICPPED; if it were, the state would be accountable under Article 21 to ensure the verifiability of the release of persons deprived of their liberty as well as an obligation to ensure the physical integrity of these persons at the time of their release. In important respects, however, Libya's Law No. 5 accords with the ICPPED, particularly in its stipulation that freed persons should be able to exercise their rights as contributing members of society.

REGIONAL HUMAN RIGHTS LAW

Libya is a state party to the African Charter on Human and Peoples' Rights and has ratified the protocol establishing the African Court for Human and Peoples' Rights, but the charter does not include any specific provisions pertaining to the release of persons deprived of their liberty.

The Special Rapporteur on Prisons and Conditions of Detention is one of the special mechanisms overseen by the African Commission on Human and Peoples' Rights. The special rapporteur is empowered to examine the situation of persons deprived of their liberty within the territories of state parties to the African Charter on Human and Peoples' Rights.²² Country visits are conducted with the consent of the member states. Since 1997, over twenty missions have been undertaken to member states, although none to Libya.²³

There are many international standards and guidelines that are binding on governments to the extent that the norms set out in them explicate the broader standards contained in human rights treaties. Yet many of these existing standards and guidelines do not include any specific provisions concerning the release of detained persons.²⁴

Comparative Case Studies

International standards are generally concerned with the pre- and post-release phases of detention. Consequently, there are very few guidelines concerning the actual release process. In the pre-release phase, international standards provide for the rehabilitation of a prisoner to enable his or her eventual reintegration into society. In the post-release phase, the growing international consensus is that the government as well as nongovernmental actors have a role to play in promoting the reintegration of former inmates into society and the reduction of recidivism.

In many countries, the government's prison management authority will issue written operating guidelines for the discharge or release of prisoners who have served their sentence or are otherwise entitled to regain their liberty. These procedures ensure the proper authorization, verification, and documentation of the release of an inmate from a government detention facility. In countries where the prison management system is nascent, weak, or developing, written discharge procedures may not be available to guide prison management officials.

In conflict-affected or postconflict countries, prisoner release is more than a technical process and can be highly political. The government may be hesitant to release political prisoners or armed opposition fighters, as it might further exacerbate or reshape the conflict. In the aftermath of a conflict, the public may be unwilling to accept offenders who have committed atrocities back into the community. Different strategies or mechanisms for managing the release of sensitive detainees have been deployed in conflict-affected countries as diverse as Afghanistan, Northern Ireland, and Timor-Leste. What lessons do these countries' experiences have for Libya?

AFGHANISTAN: POLITICAL AGREEMENT FOR PRISONER RELEASE

A political agreement is one mechanism used by governments to manage the release of prisoners. In Afghanistan, the September 2016 agreement between the Afghan government and a major militant group, Hezb-e Islami Gulbuddin, provides a useful example of how this mechanism was used to set terms for the release of sensitive prisoners from government prisons. The agreement was signed between Hezb-e Islami leader Gulbuddin Hekmatyar and Afghan President Ashraf Ghani.²⁵ Under the agreement, a joint committee was established to oversee its implementation, and an additional entity was constituted to determine the status of Hezb-e Islami prisoners and oversee their release.

The first tranche of fifty-five Hezb-e Islami prisoners were released in May 2017, followed by thirteen more prisoners later that year. Another seventy-five prisoners were released in January 2018, bringing the total to 143 prisoners released. Hezb-e Islami maintains that as many as three thousand of its members are incarcerated in Afghan prison facilities.²⁶ The Afghan government has stated that the slow release of prisoners is due to the need to properly verify and determine the status of individual detainees. The Afghan government does have a legitimate concern about the proper determination of the status of Hezb-e Islami prisoners: over the past sixteen years of the insurgency there has been movement back and forth of militants between the Taliban and Hezb-e Islami, and there is no doubt that there are incarcerated Taliban prisoners who would be eager to portray themselves as Hezb-e Islami members to avail themselves of the release deal. Furthermore, some sources have alleged that, shortly after the first tranche of prisoners were released in 2017, several narcotics traffickers from southern Afghanistan had bribed their way onto the prisoner release list.²⁷

In this case, the technical management of prisoner release is just one aspect of a process that is at its core highly political. There are many competing interest groups that have allowed the political deal to be completed but have now adopted a new tactic of slowing down the implementation of certain provisions in the deal, of which prisoner release is only one.

Prisoner releases under the Hezb-e Islami deal have so far only involved detainees at the national prison, Pul-e Charkhi, in the capital city of Kabul. Pul-e Charkhi holds criminal detainees

Hezb-e Islami has also maintained that since the agreement was signed in early 2017, a further 185 of its members have been detained—a development that partly may relate to the difficulty of determining the affiliation of insurgents taken off the battlefield.

as well as national security detainees of mid-level threat. National security detainees designated as high-level threats are held at the Parwan Justice Center (formerly Bagram), located an hour north of Kabul city. The release of Hezb-e Islami members has not yet been undertaken at the Parwan Justice Center or in the provinces. Hezb-e Islami has also maintained that since the agreement was signed in early 2017, a further 185 of its members have been detained—a development that partly may relate to

the difficulty of determining the affiliation of insurgents taken off the battlefield.²⁸

Since 2010, the Afghanistan Peace and Reconciliation Program (APRP) has paid low-level members of the Taliban to leave the insurgency and hand over their weapons. The program has provided safe houses to protect the fighters willing to lay down their arms and join the reconciliation process. Nevertheless, it has been challenging to get Taliban fighters and their families transferred to and settled in the safe houses, particularly for Taliban fighters in Pakistan.

Afghanistan is a good example of how a political agreement can provide necessary top cover to encourage broader social acceptance for the release of prisoners formerly considered a security threat to the state. The model of using safe houses, as under the APRP, is also worth considering as a protective measure for highly sensitive detainees.

Lessons for Libya: To have broad effect and legitimacy, any political agreement on the release of sensitive prisoners in Libya will first require the reestablishment of political unity across a currently fractured political landscape. Additionally, Libya should seek to draw lessons from the weaknesses of the processes in Afghanistan, particularly relating to the need for buy-in from interest groups to minimize the likelihood of delays in implementation. Libya currently has a weak national government in the west and a competing government in the east. The 2015 Libyan Political Agreement is strained, and there is widespread recognition that the current arrangement may not hold for long. Attacks by Haftar’s LNA on Tripoli, launched in the spring of 2019, threaten to unseat the UN-backed government, potentially plunging the country into further conflict and political crisis. As a result of years of instability, there is currently no disarmament, demobilization, and reintegration plan that could incorporate amnesty measures as part of a wider transitional justice process. However, there are informal prisoner releases and prisoner swaps arranged by tribal notables and power brokers in various locations involved in ongoing, local-level cease-fire and peace agreements. These influential community members could work with the Judicial Police and others on the issue of secure release, potentially supporting security arrangements and even potentially setting up safe houses or other relevant provisions.

NORTHERN IRELAND: COORDINATED MULTIAGENCY RELEASE APPROACH

Detention formed a significant part of the British government’s policy of containment in responding to the protracted conflict in Northern Ireland between 1969 and 2007, a period known as “the Troubles.” An estimated fifteen thousand alleged members of Republican paramilitary organizations—including the Irish Republican Army and its splinter groups—and as many as ten thousand

An Irish Republican Army prisoner, is welcomed by family and friends as he leaves the the Maze Prison, near Belfast, Northern Ireland, on July 28, 2000, following his release. (Photo by Peter Morrison/AP)



Loyalist paramilitaries were imprisoned during this period.²⁹

As part of the 1998 Good Friday Agreement, a decision was made to grant early release for up to five hundred paramilitary prisoners over a two-year period from 1998 to 2000. This was as an important pillar of the negotiations for the paramilitary groups, but it also created significant sensitivities at the community level, not to men-

tion huge challenges for the security agencies that would manage the release while also maintaining the fragile peace the agreement sought to foster. In total, 428 Republican and Loyalist prisoners were released, including 143 who were serving life sentences.³⁰ These men were considered terrorists—the masterminds and foot soldiers behind the bombings, mass killings, kidnappings, disappearances, and other acts of violence that characterized the Troubles.

Justice and security services in Northern Ireland adopted a multiagency partnership approach, bringing together representatives of the prison, probation, police, and prosecution services and the courts in managing each case. Additionally, where appropriate, social services—including government housing and health services agencies, local civil society groups, and nongovernmental organizations—were involved in managing the release process. This joined-up approach helped ensure that the case of each released detainee was scrutinized appropriately and that each individual was provided the required support for their safe release. In addition, it acted as a safeguard against corruption or bias by any one officer or agency. As one officer involved in the release process stated, “It created layers of responsibility, so there was less likelihood of something going wrong. There were more eyes on each case from different agencies, but crucially those agencies were also looking at each other.”³¹ This was important because many of Northern Ireland’s public agencies had suffered low public confidence as a result of long-standing inequalities in the treatment of Republican and Loyalist communities. As the detainee releases took place, these public agencies were also simultaneously undergoing their own reforms to address these real and perceived biases. Perhaps most crucially, policing underwent significant reform, including renaming the Royal Ulster Constabulary as the Police Service of Northern Ireland.

Each phase of release was considered. In advance of a prisoner’s release, a group of representatives from each agency met for a case conference during which they would share relevant information and develop a release plan. At this phase, a risk manager was assigned, usually a

probation or police officer. Any potential threats to the detainee would be discussed, including any known threats to life from other paramilitary or community groups. After that, each agency would agree to the release plan, and it would be discussed with the detainee. If a perceived danger was established, compliance orders could be proposed to the court to be included as a condition of release, and could be carried out with or without the consent of the detainee. These might include, for example, an order for a detainee to be released into a town or community where he would be less well-known, less likely to cause grievances to community members, or less likely to link up with known associates. In such cases, drawing upon the resources of the public housing executive was crucial to ensuring post-release accommodation. Nongovernmental organizations were helpful in providing practical support, such as counseling and community reintegration and job search assistance. Timing was also considered, down to the phased release of key detainees, to ensure that Republican and Loyalist prisoners, their families, and associates did not encounter one another in prison parking lots and surrounding areas.³²

This multiagency partnership approach continues to be employed by Northern Ireland's justice and security services, now formally known as Public Protection Arrangements.³³ The system is not only used in the release of conflict- and terrorism-related prisoners, but also for sensitive nonconflict-related detainees such as sex offenders and individuals involved in drug trafficking or organized crime. Similar multiagency public protection arrangement approaches have become popular across Europe in the management and supervision of terrorist offenders.³⁴

Lessons for Libya: Given Libya's fragmented justice and security landscape, a multiagency approach could encourage the necessary planning, coordination, and, most importantly, consensus for the secure release of sensitive detainees among the various groups and factions controlling the prisons. However, the multiagency approach adopted in Northern Ireland was part of a larger peace agreement and was executed several years following the implementation of cease-fire arrangements, in a time of newly established peace. As of now, there is no reform process planned in Libya. However, there is evidence that facilitating interagency action planning on specific issues, such as juvenile detention, can have positive catalytic effects on broader reform efforts.³⁵

TIMOR-LESTE: COMMUNITY RECONCILIATION

In the aftermath of conflict, a reconciliation process can support the reintegration of fighters or opposition forces into society. After twenty-four years of occupation and oppressive rule by Indonesia, Timor-Leste (East Timor) gained its independence in 2002. The Commission for Reception, Truth and Reconciliation (CAVR), mandated by the United Nations Transitional Administration in East Timor, conducted a highly successful reconciliation program to reintegrate low-level Timorese fighters, or individuals affiliated with negative elements in the conflict, into the community. The CAVR's Community Reconciliation Process (CRP) was designed to consolidate social cohesion in the aftermath of conflict.

The voluntary process was open to individual deponents who had "become estranged from their communities by committing politically-related, 'less serious' harmful acts" during the political conflicts between 1974 and 1999.³⁶ Between June 2003 and September 2004, the CRP convened panels of local community leaders chaired by a regional CAVR commissioner in each of Timor-Leste's thirteen districts. The CPR received over 1,500 applications from potential

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deponents. Under the CAVR's governing legislation, reconciliation hearings could proceed only if the Office of the Prosecutor General (OPG) agreed that the matters under consideration were "less serious;" proceedings were stopped and the matter referred back to the OPG if the deponent made admissions relating to a serious crime.³⁷

The reconciliation process was successful due to a number of factors. According to a UN Development Program report in 2004,

The CRP provided an unprecedented opportunity for many individuals to engage their communities in relation to past violations that in many senses remain "unfinished business." Once potential deponents understood what the process was intended to achieve, most saw it in their interests to participate. . . . And although attendance at the hearings varied from several dozen to many hundreds, efforts were made to ensure broad participation. The hearings were generally concluded with a social event that enabled communities to "celebrate" the reaching of reconciliation agreements and joint commitments to rebuilding the community and maintaining peaceful relations.³⁸

By providing an alternative, nonpunitive pathway to recognize past violations by enabling individuals and communities to speak openly without fear of retribution, the CPR hearings "demonstrated the potential of peaceful conflict resolution and the importance of process and agreements that respect the fundamental rights of perpetrators, as well as victims and the community at large."³⁹

Lessons for Libya: Although not specifically a prisoner release measure, the community reconciliation program in Timor-Leste is a measure worth considering and adapting in Libya. A reconciliation process that encourages community acceptance of the return of individuals associated with past conflicts can help to promote safe return. It can also facilitate a broader community reconciliation and truth-telling process to collectively acknowledge past atrocities—a critical first step in any attempt to promote social healing in the aftermath of conflict. Drawing on the Timorese example, it is important to ensure that any reconciliation process is grounded in a legislative framework that balances the aims of reconciliation with the need to ensure that serious crimes and violations of human rights are addressed. This kind of bottom-up process that builds consensus for and supplements a legal framework is absolutely essential. In Libya, mending the deep divisions and fractures in society will take careful planning and working in conjunction with each other.

Conclusion and Recommendations

Securely managing the release of high-profile detainees presents a challenge for authorities in any state. But in an unstable security environment such as Libya following the 2011 uprising, it presents severe political and operational challenges. While Libya's domestic laws provide a relatively strong framework for release procedures and social welfare support for detainees transitioning back into the community, on the issue of the secure release of sensitive or high-profile

detainees its laws are silent. There is also a concerning gap in international law and the international standards governing the treatment of prisoners with regard to safe release procedures.

The stakes for remedying these shortcomings are high: ensuring the safety of detainees in custody or during their release from detention not only affects the collective and individual rights of the detainees, it is also key to inculcating a culture of security and the rule of law for all citizens. Libya has several options for instituting improved safe-release procedures. The comparative case studies in this report illustrate safe-release procedures used in other conflict-affected countries that could be drawn upon in crafting a response to current vulnerabilities for detainees in Libya.

A pragmatic multiagency or multiparty approach to prisoner release could also help to promote the secure release of political detainees, particularly if it builds consensus and provides multidirectional oversight over different parties involved in fulfilling their obligations under the law. Consensus for release among armed groups that control the prisons or its surrounding areas is critical for the physical security of the prisoner upon his or her departure from detention facilities. Such an approach could be bolstered with a community reconciliation program designed to help political prisoners and sensitive detainees reintegrate into society. At the same time, community reconciliation can help generate public acceptance for the return of detainees and reduce the risk of revenge attacks.

Libya's Ministry of Justice and Judicial Police should consider strengthening their verification of release procedures. Furthermore, they should also consider engaging independent third parties, such as local nongovernmental organizations, to verify prisoner release and to support detainees during their return to the community.

Additionally, an independent oversight body for special detainee release could be created via legislation or as a Ministry of Justice entity. This oversight body would be responsible for ensuring implementation of these recommendations and other suggested reforms that emerge from a consultative process between the government, communities, and experts.

Finally, however, Libya's most pressing need is for a political agreement among its various armed groups and factions to reduce the level of violence and instability and to provide stable governance. With better governance and security, the government will be better able to exert greater control over its prisons. To ensure broad buy-in, a political agreement would ideally be part of a broader national reconciliation process. At the very least, beginning a dialogue for national reconciliation may kick-start a process of changing perspectives among prison guards toward conflict-related and other sensitive detainees.

Notes

1. Interview with a Misratan prosecutor, November 2012.
2. The prison was named Al-Ruwaimi during the Gadhafi regime and was renamed Al Baraka following the 2011 uprising that overthrew the Gadhafi government. The prison has recently been renamed Ain Zara B. The prison is adjacent to Ain Zara prison complex, another large facility in Tripoli's Ain Zara neighborhood.
3. Abdulkader Assad, "12 Former Inmates Killed in Tripoli One Day after Release," *Libya Observer*, June 12, 2016.
4. Interview with Hanan Salah, senior researcher for the Middle East and North Africa, Human Rights Watch, January 17, 2018.
5. BBC News, "Libya ex-spy chief's daughter Anoud al-Senussi released," September 8, 2013, www.bbc.com/news/world-middle-east-24008607.
6. Chris Stephen, "Libyan police unit admits kidnapping ex-spy chief's daughter," *Guardian*, September 5, 2013, www.theguardian.com/world/2013/sep/05/libyan-police-kidnap-senussi-daughter.
7. Interview with Hanan Salah, senior researcher for the Middle East and North Africa, Human Rights Watch, January 17, 2018.
8. Law No. 5 (2005) of 1373 on Correction and Rehabilitation Institutions, and General People's Committee Decree No. (168) of 2005 on the Executive Regulation of the Law of Rehabilitation Institutions. English and Arabic copies of the law and executive regulations can be found at "Libyan Security Legislation," Geneva Centre for Security Sector Governance, www.security-legislation.ly/node/31426.
9. See, for example, "Misratans Release Qaddafi Prisoners," *Libya Herald*, July 7, 2016, www.libyaherald.com/2016/07/07/misratans-release-qaddafi-prisoners.
10. See Rule 6 and 7 of the UN Standard Minimum Rules for the Treatment of Prisoners 2015.
11. Libya acceded to the Geneva Conventions in 1956, and to the Additional Protocol II in 1978. See International Committee of the Red Cross, Treaties, State Parties and Commentary at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=LY.
12. See International Committee of the Red Cross, "Internal conflicts or other situations of violence—what is the difference for victims?," December 10, 2012, www.icrc.org/eng/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm.
13. In Tadić, the International Criminal Tribunal for the Former Yugoslavia (ICTY) affirmed that a non-international armed conflict exists when there is "protracted armed violence between governmental authorities and organized armed groups or between such groups within a State." See Louise Arimatsu and Mohbuba Choudhury, "The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya," International Law PP 2014/01, Chatham House, March 2014, www.chathamhouse.org/publications/papers/view/198023.
14. Arimatsu and Choudhury, "The Legal Classification of the Armed Conflicts."
15. United Nations, "After Much Wrangling, General Assembly Seats National Transitional Council of Libya as Country's Representative for Sixty-Sixth Session," September 16, 2011, www.un.org/press/en/2011/ga11137.doc.htm.
16. Rule of Law in Armed Conflict Project, Geneva Academy of International Humanitarian Law and Human Rights, "Non-International Armed Conflicts in Libya," www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-libya.
17. United Nations, "Unanimously Adopting Resolution 2259 (2015), Security Council Welcomes Signing of Libyan Political Agreement on New Government for Strife-Torn Country," December 23, 2015, www.un.org/press/en/2015/sc12185.doc.htm. However, it is worth noting in this context that 1) the Libyan Political Agreement never technically went into effect because the HoR did not ratify it, and 2) that even in the absence of ratification the agreement was only intended for a two-year period, which expired in December 2017.
18. In May 2017, citing heavy losses, Ansar al-Sharia announced its dissolution. See Sari Arraf, "Libya: A Short Guide on the Conflict," Geneva Academy of International Humanitarian Law and Human Rights, June 2017, www.geneva-academy.ch/news/detail/61-libya-a-short-guide-to-the-conflict.
19. Global Conflict Tracker, Council on Foreign Relations, "Civil War in Libya," www.cfr.org/interactive/global-conflict-tracker/conflict/civil-war-libya.
20. International Committee of the Red Cross, "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977: Commentary of 1987 Persons Whose Liberty Has been Restricted, at p.1394," <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=4C2D08B777E54448C12563CD0043A314>.
21. International humanitarian law and international human rights law are two distinct but complementary bodies of law. They are both concerned with the protection of the life, health, and dignity of individuals. IHL applies in armed conflict while human rights law ap-

plies at all times, in peace and in war. Both international humanitarian law and human rights law apply in armed conflicts. The main difference in their application is that international human rights law allows a state to suspend a number of human rights if it faces a situation of emergency. IHL cannot be suspended (except as provided in Article 5 to the Fourth Geneva Convention).

22. The function of special rapporteur on prisons and conditions of detention was created during the 20th Ordinary Session of the Commission, following the Seminar on Prison Conditions in Africa (Kampala, September 19–21, 1996). See African Commission on Human and People’s Rights, Special Mechanisms, www.achpr.org/mechanisms/prisons-and-conditions-of-detention.
23. In relation to measures pertaining to the release of prisoners, the special rapporteur on prisons and conditions of detention has made a number of recommendations based on other member state country visits. It is worth noting that many of these recommendations align with provisions of Law No. 5 and its Executive Regulations, a point which should be highlighted for Libyan authorities in progressing work in this area and noting the positive legislative framework provided by domestic legislation.
24. Furthermore, the UN Standard Minimum Rules for the Treatment of Prisoners and those guidelines that do include provisions on the release of detained persons only contain rules relating to the pre- and post-release of detainees, such as preparations for release and reintegration into society after release. Notably absent is any mention of how to securely manage the release itself.
25. An agreement was reached in principle and signed by representatives of Hekmatyar and President Ghani the previous year, but was not signed by the principals until that spring of 2017 when Hekmatyar returned to Afghanistan.
26. TOLO News, “Govt Releases 75 Hizb-e-Islami Prisoners from Kabul Prison,” January 15, 2018, www.tolonews.com/afghanistan/govt-releases-75-hizb-e-islami-prisoners-kabul-prison.
27. Casey Garret Johnson, “The Political Deal with Hezb-e Islami: What It Means for Talks with the Taliban and Peace in Afghanistan,” Peaceworks no. 39, United States Institute of Peace, www.usip.org/publications/2018/07/political-deal-hezb-e-islami.
28. Johnson, “The Political Deal with Hezb-e Islami.”
29. Kieran McEvoy, *Paramilitary Imprisonment in Northern Ireland: Resistance, Management and Release* (Oxford, UK: Oxford University Press, 2001).
30. *The Guardian*, “Maze Emptied as Terrorist Prisoners Walk Free,” July 28, 2000, www.theguardian.com/uk/2000/jul/28/northernireland.
31. Interview with retired PSNI officer Stephen Cargin, January 26, 2018.
32. *The Guardian* “Maze Emptied as Terrorist Prisoners Walk Free.”
33. Public Protection Arrangements in Northern Ireland, “Introduction to PANNI,” www.publicprotectionni.com/index.php/about; Explanatory Memorandum to Criminal Justice (Northern Ireland) Order 2008, www.legislation.gov.uk/nisi/2008/1216/notes/division/7.
34. Emma Disley et al., *Using Multi Agency Public Protection Arrangements to Manage and Supervise Terrorist Offenders: Findings from an Exploratory Study* (Rand Europe, 2016).
35. For instance, the United States Institute of Peace facilitated the creation of the “Action Plan to Resolve the Issue of Juvenile Detention” in March 2018. This was an interagency initiative between the Ministry of Justice, Judicial Police, Ministry of Social Affairs, and others to take specific actions to resolve the matter. As a result of USIP’s engagement, the Ministry of Justice made progress in separating juvenile detainees from adults. The event may also have catalyzed the Ministry of Social Affairs to take over the juvenile detention facility in Tajoura from the Ministry of Justice. Also see Libya Al Ahrar TV, “Tajoura: Handover ceremony for juvenile prison to the Ministry of Social Affairs” [in Arabic], April 4, 2018, <https://bit.ly/2p1vgES>.
36. Commission for Reception, Truth, and Reconciliation Timor-Leste, “Part 9: Community Reconciliation,” *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor (CAVR)* (Dili, Timor-Leste: CAVR), 2, www.etan.org/etanpdf/2006/CAVR/09-Community-Reconciliation.pdf.
37. Piers Pigou, *The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation* (Dili, Timor-Leste: United Nations Development Programme, April 2004), 6, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.737.3841&rep=rep1&type=pdf>.
38. Pigou, *The Community Reconciliation Process*, 10.
39. Pigou, *The Community Reconciliation Process*, 11.

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