

DISCUSSION PAPER 23-007

Citizen State and Community Relations in Building Local Governance

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FOREWORD

At the end of 2021, the World Bank commissioned the United Nations Development Programme (UNDP) and the United States Institute of Peace (USIP) to research and write an advisory paper on the relationship between the citizen and the state in Libya.

It is acknowledged that almost two years have passed since the writing of the paper; however, USIP and UNDP believe that it is still relevant to the current social and political climate in Libya. Libya largely still faces the same challenges today as it did almost two years ago.

2021–Present

In March 2021, there seemed to be major improvements in Libya’s political situation. Following the UN-led Libyan Political Dialogue Forum, the Government of National Unity (GNU) was approved by the country’s legislature, the House of Representatives (HoR), as Libya’s sole government.¹ This was seen as a positive step, as it reunited Libya’s split government and would allow for the greater dispensing of government services to the Libyan people. However, shortly after the GNU took office in Tripoli, the political differences in the country resurfaced once again. One year later, in March 2022, these differences culminated with the eastern-based HoR withdrawing confidence in the GNU and appointing Fathi Bashagha as the new prime minister.²

The political nuances in the new Libyan split are different from those witnessed from 2014 to 2021 between the previously UN-backed Government of National Accord (GNA) and the eastern-based interim government. However, the reality on the ground is almost identical when it comes to citizens’ access to state services. The GNU has taken the place of the GNA, and the Osama Hamada–led government has taken the place of the previous interim government.

¹ Embassy of Libya, “On the Approval of the Government of Libyan National Unity,” Embassy News, Washington, DC, March 10, 2021, www.embassyoflibyadc.org/news/on-the-approval-of-the-government-of-libyan-national-unity.

² Al Jazeera, “Libya Parliament Approves New Government as Crisis Escalates,” *AlJazeera News*, March 1, 2021, www.aljazeera.com/news/2022/3/1/libya-parliament-approves-new-government-as-crisis-escalates.

Due to the unfortunate identical nature and limited change in Libya's situation, the following paper still provides valuable insight into the relationship between the Libyan state and its citizens.

INTRODUCTION

Since the revolution in 2011 and the toppling of the long-standing regime of Muammar Gaddafi, Libya has experienced various degrees of political instability and conflict. A succession of internationally supported "transitions" have failed to bring the Libyan people a functioning state with a clear social contract based on a shared vision for the nation. Elites' power struggles have dominated state-building priorities, leaving limited resources and support for comprehensive national reconciliation efforts despite limited, interrupted, and imperfect legislative and executive action. Inadequate means of addressing forty years of dictatorship, the fissures in society, and the resulting crimes, atrocities, and injustices have left thousands without peace or justice.

The armed conflict between revolutionary forces and the regime of Muammar Gaddafi lasted more than eight months. It caused and exacerbated deep wounds and fierce divides within Libyan society. Amid the fighting, the first transitional body, the National Transitional Council (NTC), was established in February 2011. Based on the Constitutional Declaration issued in August of 2011, the NTC became the highest authority in the country, enjoying both legislative and executive powers.³ Following largely free and fair elections, in July 2012, the General National Congress (GNC) was formed.⁴ It elected a president and selected a government. However, during the subsequent period, forming effective state institutions, including adequate justice mechanisms, proved unsuccessful. The GNC failed to establish credible institutions and was fraught with toxic power struggles.

With the fall of the Gaddafi regime, conflicts (violent and otherwise) over available state assets and budgets fueled competition between communal groups and within communities, forging

³ Azza K. Maghur, "A Legal Look into the Libyan Supreme Court Ruling," Atlantic Council (blog), December 8, 2014, www.atlanticcouncil.org/blogs/menasource/a-legal-look-into-the-libyan-supreme-court-ruling/.

⁴ Maghur, "Libyan Supreme Court Ruling."

“supralocal alliances.”⁵ In 2014, the coalescence of these coalitions into two opposing camps led to a second civil war.⁶ The fragmentation of Libyan society deepened, and state institutions, including the GNC, fell into further disorder and paralysis.

The second civil war ostensibly ended in December 2015 with the signing of the Libyan Political Agreement (LPA) in Skhirat, Morocco. Among other things, it established a presidency council (PC) mandated to form a new GNA, solidified the legitimacy of members of the HoR elected in 2014, and allowed for members of the GNC to maintain some authority through the High Council of State (HCS). It also provided a legal framework and a roadmap (with timelines) for another transitional process.

Despite national and international efforts to realize the goals of the LPA, it failed to be fully executed. After facing years of obstacles to implementation, in 2019, the United Nations Support Mission in Libya (UNSMIL) planned a National Conference to help heal political divisions and unify the country. However, in April, just before the launch of the conference, a military operation, led by the Libyan Arab Armed Forces (LAAF), was launched toward greater Tripoli and at forces aligned with the GNA, sparking a protracted armed conflict. The further deteriorating security situation and political fallout created new impediments to the transition.

Amid the conflict between the LAAF and GNA (and aligned forces), the United Nations and the international community invested in new efforts to bring about a negotiated political and security solution involving Libyan stakeholders, the permanent five members of the Security Council, and other interested state parties. Briefing the Security Council on July 29, 2019, the UN Special Representative of the Secretary-General (SRSG) proposed a three-step initiative to end the conflict, which involved: (a) the establishment of a truce between the parties; (b) convening an international meeting in preparation for a Libyan meeting; and (c) convening an intra-Libyan dialogue. Subsequently, consultations and a ministerial meeting on Libya took place on the margins of the UN General Assembly, and, under the auspices of the “Berlin Process,” a series of high-level meetings of concerned countries were convened to enable a rapprochement of views regarding the

⁵ Wolfram Lacher, *Libya's Fragmentation: Structure and Process in Violent Conflict* (London: I. B. Tauris, Bloomsbury Publishing, 2020), 8.

⁶ Lacher, *Libya's Fragmentation*.

implementation of the arms embargo, a ceasefire, and the resumption of the political dialogue, among other issues.

Thereafter, there was a rapid advancement of activities under the auspices of the intra-Libyan dialogue, around three main tracks outlined by the SRSG: (a) security/military, (b) political, and (c) economic. Ahead of the international Berlin Conference, progress was made on both the economic and political talks. At the time of the Berlin Conference, on January 19, further commitments were made by the international community around six baskets of support:

1. cessation of hostilities and a permanent ceasefire;
2. implementation of the arms embargo;
3. return to the political process;
4. security sector reform;
5. economic reform; and
6. transitional justice upholding international humanitarian and human rights law (including reconciliation).

Following the Berlin conference, the Security Council endorsed the Conference Conclusions and UNSMIL-related Operationalization Paper. For their part, the international parties in the Berlin process continued engagement through follow-up committees grouped around the aforementioned six baskets. The UN continued to facilitate the intra-Libyan dialogue with support to the 5 + 5 Joint Military Commission (JMC), the Libyan Political Forum, and the Libyan Economic Dialogue.

Somewhat abruptly, on June 3, 2020, with considerable support from Turkey, forces aligned with the GNA pushed the LAAF out of Tripoli's international airport. The next day, the government announced that it had regained full control of the capital and had taken back the strategically critical town of Tarhouna, 90 km to the southeast (where numerous allegations of atrocities and war crimes are now being investigated both nationally and internationally). Following the LAAF withdrawal from the west, the front line moved to central Libya in the Sirte-Jufra corridor. After weeks of

a de facto truce, the GNA and LAAF signed a ceasefire agreement on October 23, 2020, within the framework of JMC, facilitated by the United Nations. The agreement provided for the withdrawal of all military units and armed groups from the front lines and the departure of all mercenaries and foreign fighters from the entire Libyan territory.⁷ LAAF and GNA military installations have remained along the Sirte-Jufra lines.

Following the ceasefire agreement, Libyan parties have achieved further progress on security, economic, and political talks. Most of the engagement has been within the framework of the Berlin Process. Significantly, beginning in October 2020, on the political track, the United Nations supported the Libyan Political Dialogue Forum (LPDF), which thus far has included a series of virtual meetings and two in-person conferences in Tunis and Geneva.

In its November meeting in Tunis, the LPDF adopted a political roadmap that set the date for presidential and parliamentary elections on December 24, 2021. The roadmap for “The Preparatory Phase for a Comprehensive Solution” complemented the LPA and set general principles and objectives guiding the next phase of the transition under unified institutions.⁸ Thereafter, in February 2021, the LPDF selected an executive authority to oversee the interim period until the national elections. The executive included a presidency council with Mohamed Yunus Menfi (east) as its chairman and Musa Koni (south) and Abdullah al-Lafi (west) as vice chairmen. The prime minister selected was Mr. Abdul Hamid Dabaiba. On March 15, 2021, the HoR approved the new GNU, assembled by the prime minister as part of what has been described as a *muhasasa* power-sharing arrangement where the governmental positions were assigned to factions based on local and regional origins and alliances.⁹

⁷ United Nations Support Mission in Libya (UNSMIL), “United Nations Welcomes the JMC’s Signing of Action Plan for the Withdrawal of Mercenaries, Foreign Fighters and Foreign Forces,” October 2021, <https://unsmil.unmissions.org/united-nations-welcomes-jmc%E2%80%99s-signing-action-plan-withdrawal-mercenaries-foreign-fighters-and>.

⁸ UNSMIL, “United Nations Welcomes.”

⁹ Emadeddin Badi, *Muhasasa, Militias and Meddling Foreign Actors: The Challenges Facing Libya’s New Government*, Global Initiative against Transnational Organized Crime, 2021, <https://globalinitiative.net/analysis/libya-new-government/>.

The latest armed conflicts in and around Tripoli in 2019 and 2020 as well as the COVID-19 pandemic have aggravated humanitarian suffering and created new conflict fissures in Libya. Meanwhile, the country has also suffered from increased volatility from the media rhetoric linked to the political and social divisions as well as the impact of COVID-19. In addition to incitements toward violence, hate speech, and increased stigmatization, Libya has been distressed by an “infodemic”¹⁰—an overabundance of information, some accurate and some not, that makes it hard for people to find trustworthy sources and reliable guidance when they need it. In the context of COVID-19, the infodemic is exacerbated and in many areas propagated by the interconnected way that information is disseminated and consumed through social media platforms and other channels.

Within the context set out here, Libya can be characterized as having high levels of human insecurity. State failure has been brought on by divisive power struggles amid hybrid “state” institutions and an unsettled social contract between the state and its citizens. Instead of clear, cooperative relationships between the public and private sector and civil society, murky and corrupt ad hoc arrangements have dominated the security, political, justice, and service delivery ecosystems. In Libya’s cyclical conflict and postconflict periods, horizontal local social cohesion efforts have progressed consistently due to a rich tradition of mediating arrangements to stop hostilities and peacefully coexist. However, without the vertical elements of a functioning social contract, the absence of the state action required to fully implement the terms of these locally led reconciliation agreements between warring parties has left communities and individuals without justice or lasting peace.

Despite many unresolved issues, there is positive momentum for lasting peace and stability brought about by the recent ceasefire, political settlements, and approval of the new government in early March 2021, as well as international and national efforts for economic and legislative reforms. This paper aims to assess the present challenges for good local governance as perceived by Libyan citizens and institutional actors. Through this lens, recommendations are offered for immediate, short-, and medium-term initiatives that can support the improvement of citizen relations with the three traditional arms of the state—the legislative, executive, and judicial branches.

¹⁰ PAHO, WHO, *Understanding the Infodemic and Misinformation in the Fight against COVID-19*, 2020, https://iris.paho.org/bitstream/handle/10665.2/52052/Factsheet-infodemic_eng.pdf.

METHODOLOGY

This paper approaches the subject of citizen state and community relations in building local governance by looking at the conditions in 2021 within the three “arms” of the state and determining how this transition can best break Libya’s cycles of instability by addressing the immediate, short-, and medium-term needs of all people in Libya. Information was gathered from key informant interviews (KIIs) to determine technical issues according to institutional actors in the legislative, executive, and judicial branches. Long-form discussions were conducted with citizen focus groups from across Libya to get perspectives from individuals and communities. The KIIs and focus group discussions (FGDs)¹¹ were carried out over three months alongside desk research to survey news articles, literature, and reports relevant to the topic.

All key informants were selected based on predetermined criteria, which set out the requirements for specialized knowledge of the political, legal, economic, and/or social complexities in their respective regions. Eight KIIs were conducted in total. Researchers conducted four FGDs, which aimed to collect information on the average citizens’ perceptions regarding local state governance. Focus group participants were chosen as representatives of their local communities and voices for civil society in their region. The groups were assembled to represent the three historic regions of Libya (Tripolitania, Cyrenaica, and the Fezzan), with one additional focus group of participants from across the country. The groups were asked the same series of questions, divided into three one-hour sessions dedicated to each branch of the state.

Facilitators of the KIIs and FGDs deployed a conversational style intended to gather in-depth qualitative information about the professional experience of informants and the regular experiences of citizens as they had interacted with the legislative, executive, and judicial branches. The 23 respondents spoke for over 45 hours in the KIIs and FGDs during the main consultations as well as in follow-up conversations with researchers. The respondents were 38 percent women, and they included a diverse geographic (origin of the family) as well as ethnic representation.

¹¹ Focus groups were held in February, March, and April 2021 in east, western, and southern Libya.

THE LEGISLATURE AND DELEGATES' CONTACT WITH CONSTITUENTS: AD HOC AND UNDER-RESOURCED

The present research has shown that citizen-state relationships with the Libyan legislatures—the GNC and the HoR—have suffered from many political and practical challenges. One major category of concerns voiced by respondents was the wholly inadequate representative legitimacy. Overall, since 2011, political compromises and corrupted processes have left citizens feeling completely disenfranchised. For the HoR, at the outset, flawed elections troubled citizens. Thereafter, internationally supported political compromises only deepened distrust. Considering all of this, respondents also felt utterly disconnected from their representatives due to broken or nonexistent means of communication and engagement.

Other challenges mentioned included the unsafe environment for members of parliament (MPs). Incidents such as kidnappings and death threats have brought salience to the outright hostile political environment for HoR members in many parts of the country. As a practical matter, this has drastically reduced the ability of members to perform their duties effectively. Security challenges forced many HoR members to leave Tobruk (the seat of the HoR), reducing even further the few communication channels available to the citizenry. This was seen as part of the east-west divide, eventually resulting in the number of MPs unable to attend the HoR sessions entirely exceeding those attending by a factor of at least five.

Inadequate Representative Legitimacy

Following the 2011 revolution, the Gaddafi regime was replaced by the NTC, which acted as Libya's first postrevolution legislature, with its executive office as government. In 2012, the NTC held elections for Libya's first democratically elected legislature—the GNC. It had 200 members, 120 independents, and 80 from a party-list system.¹² The 2012 elections saw a large voter turnout,

¹² Margaret Coker, "Libya Election Panel Battles Ghosts," *Wall Street Journal*, June 22, 2012, www.wsj.com/articles/SB10001424052702303444204577462401509471274.

with some 1.7 million voters (52 percent of all eligible voters¹³) casting their ballot.¹⁴ Respondents in the present research agreed that the enthusiastic political participation at the time was perceived to give the GNC a strong sense of representation and legitimacy.

However, support for the GNC began to collapse in 2013. As revolutionary alliances broke down, they failed to provide security and uphold the rule of law. Local and regional conflicts created space for powerful and violent militia and extremist groups around the country. Some fissures were brought to bear and exacerbated by the introduction and adoption of the controversial Law No. 13 (2013) *On Administrative and Political Isolation* (the Political Isolation Law). The legislation was a wide-encompassing lustration law, which was heavily criticized as being too vague and a violation of due process norms.¹⁵ Its implementation heavily impacted the GNC's legitimacy.¹⁶

As a practical matter, the enactment of the *Political Isolation Law* removed 40 members of the GNC,¹⁷ including its president, Mohamed Magarief. These members were replaced with the runner-up from each district from the 2012 election; this often meant the appointment of members with fiercely competing ideologies. The wholesale implementation of a lustration law without fact-finding procedures changed the political makeup of the GNC. The *Political Isolation Law* and the new members it enabled were the subject of widespread protests across Libya. Eventually, the unrest led to new elections held in June 2014 for a new legislative body—the HoR.

The HoR saw a much lower voter turnout. Approximately 630,000 of the 1.5 million registered voters cast their ballots; this total was out of an estimated 3.4 million eligible voters.¹⁸ The poor

¹³ Election Guide Democracy Assistance & Election News, “Election for Libyan Council of Deputies,” International Foundation for Electoral Systems, July 7, 2012, www.electionguide.org/elections/id/1635/.

¹⁴ Al Arabiya, “Libya Increases Level of Security Alert to Highest ahead of Upcoming Elections,” *Al Arabiya with Reuters*, July 4, 2012, <https://english.alarabiya.net/articles/2012%2F07%2F04%2F224466>.

¹⁵ Roman David and Houda Mzioudet, “Personnel Change or Personal Change? Rethinking Libya’s Political Isolation Law,” Brookings Doha Center—Stanford University Project on Arab Transitions, March 2014, www.brookings.edu/wp-content/uploads/2016/06/Lustration-in-Libya-English.pdf.

¹⁶ David and Mzioudet, “Personnel Change or Personal Change?”

¹⁷ Amirah Fernandez Haizam, “Libya and the Problematic Political Isolation Law,” Real Instituto Elcano, June 20, 2013, www.realinstitutoelcano.org/wps/portal/rielcano_en/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/mediterranean+arab+world/ari20-2013-amirah-fernandez-libia-ley-aislamiento-politico.

¹⁸ Election Guide Democracy Assistance & Election News, “Election for Libyan Council of Deputies,” International Foundation for Electoral Systems, June 25, 2014, www.electionguide.org/elections/id/2798/.

participation led to challenges to the HoR's legitimacy as a national representative body. Violence at polling stations and boycotts by groups such as the Amazigh (a large ethnic minority in Libya of around 600,000¹⁹) only compounded the problems.²⁰ Only 188 of 200 legislative seats were filled. Due to these vacancies, entire cities like Derna, Jado, and Zawara were left with no representation in the Libyan legislature.

In 2014, the HoR announced that it would relocate to Tobruk (already under the control of Khalifa Haftar's armed group, now the LAAF). Many members opposed the move and brought a case to the supreme court, claiming it violated the February Constitutional Declaration. The court found that amendments to the declaration, which enabled the June 2014 HoR elections, were invalid.²¹ Thus, they held also that the parliamentary body itself was illegitimate. This decision led the GNC to continue as a legislature, with a "Government of National Salvation" answering to it. Both were based in Tripoli, ultimately leading to a political split in the country.

Amid this turmoil over the legislature, in 2015, the United Nations, with support from the international community, tried to mend the political divides by brokering the LPA, creating a new government, and forming other institutions (a nine-member presidency council, the HCS from the old GNC, and the GNA to be approved by the HoR—itsself recognized as the sole legislature).²² These bodies were composed of members from the authorities in Tripoli and the HoR, with the aim of creating a consensus between the opposing factions. Members of the LPA bodies included the chairman of the presidency council (Fayez Al-Sarajj, HoR member for Tripoli), head of the HCS (Abdulrahman Swehli, HoR member for Misrata), and the minister of interior (Fathi Bashagha, HoR member for Misrata).²³ These former HoR members were not replaced, and thus their parliamentary seats became vacant. This left their constituencies without representation.

¹⁹ Karlos Zurutuza, "Libya's Berbers Fear Ethnic Conflict," *Aljazeera News*, January 6, 2015, www.aljazeera.com/news/2015/1/6/libyas-berbers-fear-ethnic-conflict.

²⁰ Temehu, "Libyan House of Representatives," 2014, www.temehu.com/house-of-representatives.htm.

²¹ Wolfram Lacher, *Elite Bargains and Political Deals Project: Libya Case Study* (Berlin: Stabilisation Unit, February 2018), 11, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766034/Libya_case_study.pdf.

²² *Encyclopaedia Britannica*, "Attempt at Unity: Government of National Accord," Britannica Online, 2018, www.britannica.com/place/Libya/Attempt-at-unity-Government-of-National-Accord.

²³ Temehu, "Government of National Accord (GNA)," 2017, www.temehu.com/gna.htm.

Focus group respondents spoke of the previously referenced unrest and political shake-ups, explaining how they led to feelings of inadequate representation. Although the GNC was seen to enjoy greater legitimacy, citizens complained of a lack of mechanisms to facilitate communication with communities.²⁴ This was attributed to a culture of political and legislative exclusion and civic apathy/ignorance on the part of the legislatures and the citizenry, respectively.²⁵ As mentioned earlier, issues of representation were further exacerbated by the *Political Isolation Law*; many citizens saw their elected representatives removed without an opportunity to choose a replacement.

Both the GNC and the HoR suffered from limited interaction between members and their constituents. Respondents were unanimous that members of both legislative bodies were perceived as “distant” (literally and figuratively). For example, residents of Sebha complained that their MPs had seen their election as an opportunity to leave the city. One resident mentioned that it was easier to contact his representatives while he was traveling to Tunisia for work.²⁶ These complaints were echoed by a resident of Tobruk, who lamented that despite living five minutes from the HoR building, he still had no access to his MP.²⁷

Residents of Benghazi also complained of the lack of connection they had with their MPs. They cited threats to personal security (discussed further in the next section) as additional reasons why representatives could not access constituents.²⁸ Moreover, one HoR member from Benghazi explained how families from his district were displaced and spread around the country.²⁹ He has had great difficulty meeting and communicating with them.³⁰ The member told of how he hosted many in his apartment in Misrata, where he was also displaced to.³¹

The HoR members interviewed blamed the lack of operational resources as one major reason for their inability to connect with citizens. The MP from Tripoli told researchers that moving the HoR Seat from Benghazi to Tobruk caused great difficulties. Officials failed to realize the limited

²⁴ Interview with Tripoli residents, April 5, 2021.

²⁵ Interview with Tripoli residents, April 5, 2021.

²⁶ Interview with residents of the Fezzan region, March 20, 2021.

²⁷ Interview with residents from across Libya, March 21, 2021.

²⁸ Interview with residents from Benghazi, March 25, 2021.

²⁹ HoR member from Benghazi, March 6, 2021.

³⁰ HoR member from Benghazi, March 6, 2021.

³¹ HoR member from Benghazi, March 6, 2021.

capacities at the Tobruk facilities and within the municipality as a host of the national legislature. The HoR has been conducting sessions in a hotel built in the 1970s. It is not at all equipped to support the work of a parliament and staff. However, this is a marked improvement from the original setting—a ship docked at the port.³²

Tobruk is a traditional and conservative town of 120,000 people³³; much of the local administration is controlled by tribal influences. The city lacks modern amenities and important resources like office facilities and local staff to support the HoR. Respondents explained that it was hard for MPs and staff to conduct the most basic tasks without resources for daily operations.

The disconnect with citizens has increased perceptions that the HoR is plagued by corruption and cronyism. Several residents perceived that the salaries of MPs were too high and that this was contributing to corruption.³⁴ The MP for Tripoli voiced a similar sentiment, stating that it would be more beneficial to reduce salaries and use the funds for services and facilities. The HoR respondents explained that were already using their own resources to meet citizens and quell frustrations over the disconnect with representatives. From this, we can conclude that support and reforms are needed in the coming period to ensure greater connectivity between legislators and their constituents.

Insecurity and East-West Divide

The HoR was originally meant to be hosted in Benghazi. However, due to “Operation Dignity” conducted in Benghazi by Khalifa Haftar and his forces in 2014, the MPs decided to relocate the legislature to Tobruk. Many members opposed the move on the grounds that Tobruk was a military stronghold for Haftar and an unsafe location for some individuals.³⁵ Ultimately, the opposing MPs received threats from Haftar’s forces and were forced to flee. This meant they could no longer represent their constituents in the HoR. In July 2019, these threats to HoR members would go a

³² Tim Whewell, “Libya’s Government Holed Up in a 1970s Hotel,” *BBC News*, October 16, 2014, www.bbc.com/news/magazine-29603393.

³³ Whewell, “Libya’s Government.”

³⁴ Focus group discussion, Western Libya, April 5, 2021.

³⁵ HoR member from Benghazi, March 6, 2021.

step further with the kidnapping (and presumed killing) of Benghazi HoR member Seham Sergiwa.³⁶

The MP from Benghazi told how he has been unable to visit his district and conduct his duties due to Haftar's military presence.³⁷ According to him, as long as Haftar and his forces are present in the east, those opposing him are not safe in the area. The MP made the point that he and other displaced representatives from the east and south are disadvantaged in comparison with their western colleagues who can freely work in their districts. Talks with other members from past UNDP research have shown other eastern members displaced outside of the country altogether.

An HoR member from Tripoli stated that he could not perform his duties from Tobruk. Being a representative from Tripoli, he faced many political challenges. He was initially one of the members opposing the relocation, but eventually he decided to join the HoR sessions.³⁸ After years of challenging circumstances, with Haftar's assault on Tripoli in 2019, the MP felt that the risk to his personal safety was too great.³⁹ He, along with several other members, relocated to Tripoli and established a parallel legislature from there.⁴⁰

Despite all the challenges he faced, the MP from Tripoli claimed to be extremely resourceful, leveraging strong relationships with many of his community leaders as well as powerful actors within state institutions in the capitol. Nonetheless, his representation has been ad hoc and inconsistent, crippled by political and security concerns that have prevented him from representing his constituents in the internationally recognized parliament. Similar struggles were highlighted by the HoR member from Benghazi, who explained how the presidency council never formally acknowledged boycotting MPs meeting in Tripoli.⁴¹

³⁶ Jason Burke, "Abducted Libyan MP's Relatives in US Sound Alarm over Torture Fears," *The Guardian*, July 31, 2019, www.theguardian.com/world/2019/jul/31/abducted-libyan-mp-seham-sergiwa-torture-fears.

³⁷ HoR member from Benghazi, March 6, 2021.

³⁸ HoR member from Tripoli, March 3, 2021.

³⁹ HoR member from Tripoli, March 3, 2021.

⁴⁰ Sami Zaptia, "Anti Tripoli War HoR Members Hold Tripoli Session," *Libya Herald*, May 2, 2019, www.libyaherald.com/2019/05/02/anti-tripoli-war-HoR-members-hold-tripoli-session/.

⁴¹ HoR member from Benghazi, March 6, 2021.

RECOMMENDATIONS

Based on the previous observations, the following actions are recommended:

Immediate:

- HoR adopts instructions requiring MPs to allocate time (e.g., once a week) for in-person or virtual conferencing directly with constituents.

Short-Term:

- Improve transparency through easily accessible published decisions and legislation as well as regular broadcasting of procedures by live streaming and/or televising sessions.
- Help create clear expectations with citizenry through urgent, well-resourced public information campaigns to clarify the roles and responsibilities of MPs and the ways citizens can and should engage.

Medium-Term:

- Ensure budgets are allocated and facilities provided for MP district offices to increase their presence for constituents.
- Continue and expand public information programs to raise awareness of MPs' roles, civic duties, and methods of engagement in the legislative and oversight processes.
- Establish and promote formal civil society and citizen advocacy in the legislative process through accessible mechanisms such as online portals. Public information campaigns targeting each district should help educate users.
- Help establish normative behavioral change to regularize and legalize dissent as the only way for peaceful compromise on common visions for the state. Secure the ability for public critique—constructive or otherwise—protected by armed forces and other authorities.

COMMUNITY APPEALS TO THE EXECUTIVE FOR IMPROVED SERVICES: BEYOND PROTEST

A functioning executive branch responsive to the needs of citizens is crucial for Libya's transition. Historically, Libya has not relied much on private-sector service delivery. Therefore, whether and how the executive branch functions to provide public goods directly impacts citizens' trust and confidence in the state. The day-to-day impact of local service delivery, particularly in a crisis environment, makes it the most salient element of the social contract.

FGD participants spoke extensively about their dissatisfaction with government services. In Libya's postconflict and pandemic-afflicted environment, failures to improve service delivery are much more than a matter of inconvenience. Moreover, the damage and deterioration of vital infrastructure has prevented citizens from pursuing livelihood opportunities that could free these individuals from their reliance on public-sector handouts, often as part of the endemic corruption and the attraction of armed groups to young men.

Despite these frustrations, one of the most important findings of the present research was that 100 percent of focus group and interview respondents voiced a notable shift from high levels of cynicism one year ago about the potential for effective executive governance to great optimism for the work of the GNU and the outcomes of the upcoming elections. To capitalize on this opportunity for widespread public support, the GNU and its successors need to address a number of daunting issues in a systematic way that ensures sustainable development.

Struggles of the GNA

The struggles for effective central executive governance are illustrated, in part, by the very practical challenges faced by the presidency council and the GNA immediately following their establishment in December 2015. Officials were significantly delayed from taking office in Tripoli due to real security threats.⁴² Upon their arrival in the areas, they were restricted to residing on the Abu Sitta

⁴² Amara Hani, "Libya's U.N.-Backed Presidential Council Reaches Tripoli by Ship," *Reuters*, March 30, 2016, www.reuters.com/article/us-libya-security-politics/libyas-u-n-backed-presidential-council-reaches-tripoli-by-ship-idUSKCN0WW1CG.

naval base, being unable to exert full control of the capital (though they were able to work from the government offices from March 2016 on).⁴³ Over time, the inability of the GNA to answer the most basic public demands for services led to extreme dissatisfaction and distrust.

Beyond the practical constraints and failures to provide tangible results for the public, the political struggles of the GNA severely inhibited it from the start. As noted previously, under the terms of the United Nations–brokered LPA, it needed approval by the HoR.⁴⁴ However, while approving the presidency council, the parliament never accepted the new government. The GNA, therefore, faced constant challenges to its legitimacy as the national governing body.⁴⁵ The LPA provided for the GNA to exist for one year, with a possible extension of one year. However, it, too, continued in place until the swearing-in of the GNU in 2021.⁴⁶

With the HoR’s rejection of the GNA, the Interim National Government (ING), located in Bayda and led by Abdullah Al-Thani, continued to operate in the east of the country. Although not recognized by the international community, the ING was the so-called executive branch for the east with institutional connections and loyalties within the HoR. Despite limited funding, services, and recognition, the ING still proved to be a major divisive force for politics and efforts for good governance in Libya.⁴⁷

Various local protest movements sprang up as public services declined. *Ghaddab Fezzan* (Fezzan Anger) was possibly the most significant of these in 2018–2019 (successfully demanding a visit by Prime Minister Serraj to Fezzan in December 2018 after closing down oil production at Sharara).⁴⁸ Most recently, Libya saw mass protests, allegedly led by *Harak al-Shabaab* (a community-based

⁴³ Miriam Dalli, “UN-Backed Libyan Government ‘Leaves Much to Be Desired,’ Vella Warns,” *MaltaToday*, July 7, 2016.

⁴⁴ *Encyclopaedia Britannica*, “Attempt at Unity.”

⁴⁵ Fadel Lamem and Karim Mezran, “Libya and the HoR Vote: What May Come Next,” Atlantic Council, *MENASource*, August 24, 2016, www.atlanticcouncil.org/blogs/menasource/libya-and-the-hor-vote-what-may-come-next/.

⁴⁶ Similarly, under the Election Law of 2014, the HoR’s term of office should have ended in October 2015, and it was not empowered to extend its term; nevertheless, it has continued in place since June 2014, and its term under the LPA was specified as extending until the end of the transitional period.

⁴⁷ Hadi Fornaji, “Thinni Spurns Calls for Political Dialogue, Says ‘Military Solution’ Is Only Answer to Libya Crisis,” *Libya Herald*, April 8, 2017. www.libyaherald.com/2017/04/08/thinni-spurns-calls-for-political-dialogue-says-military-solution-is-only-answer-to-libya-crisis/.

⁴⁸ Ayman Al Warfalli, “Tribesmen Stage Protest at Libya’s El Sharara Oilfield,” Reuters, October 28, 2018, www.reuters.com/article/us-libya-oil/tribesmen-stage-protest-at-libyas-el-sharara-oilfield-idUSKCN1N20MV.

youth organization), erupting in August 2020 in Tripoli, Misrata, and Zawiya over worsening living conditions.⁴⁹ In September 2020, similar protests erupted in the east over the same issues. In Benghazi, the protests ended with ING buildings in the city being set on fire.⁵⁰ The eastern protests, including one in al-Marj (a major stronghold for Haftar),⁵¹ were repressed by open gunfire, leading to several civilian casualties.⁵² These incidents prompted the resignation of all ministers of the ING (though in practice they remained in office).⁵³

Protests like these have been a regular and increasing occurrence in Libya since 2011. Despite the country's wealth, resources rarely materialize into public goods for citizens. With limited options, community leaders appeal in an ad hoc manner directly to local councils for needed services. This decentralized chaotic atomization has left some municipal councils and municipalities to operate like city-states (e.g., Misrata). Council members and other municipal officials use informal networks to fund one-off initiatives.

The system is broken, and this was voiced by all interview and focus group respondents. In the context of the present research, citizens were clear about their expectations for executive performance. They also explained in detail the level of service they anticipate from a competent government. To this point, the respondents' dissatisfaction was palpable, as were their demands for improved engagement and formal channels of consultation to improve the situation.

Service Delivery Failures

Ultimately, all the respondents agreed that public services in Libya were worn down and dilapidated. According to them, this was because “the ones in power were serving their personal

⁴⁹ Human Rights Watch, “Libya: Armed Groups Violently Quell Protest,” HRW.org, September 10, 2020, www.hrw.org/news/2020/09/10/libya-armed-groups-violently-quell-protests#.

⁵⁰ Al Jazeera, “Protesters Set Government Building on Fire in Eastern Libya,” *Aljazeera News*, September 13, 2020, www.aljazeera.com/news/2020/9/13/protesters-set-government-building-on-fire-in-eastern-libya.

⁵¹ Reuters, “Protesters Set Government Building on Fire in Eastern Libya,” September 13, 2020, www.reuters.com/article/us-libya-security-idUSKBN2640D8.

⁵² Abdul Kader Assad, “Haftar’s Forces Open Fire on Protesters in Al-Marj, East Libya,” *The Libya Observer*, September 13, 2020, <https://libyaobserver.ly/news/haftars-forces-open-fire-protesters-al-marj-east-libya#:~:text=Forces%20loyal%20to%20warlord>.

⁵³ Al Jazeera, “Libya’s Eastern-Based Government Resigns amid Protests,” September 14, 2020, www.aljazeera.com/-news/2020/9/14/libyas-eastern-based-government-resigns-amid-protests.

interests,” with no one being held accountable for their actions. Citizens’ trust in the GNA and municipal councils has been tracked by UNDP in a sample of cities since 2016. By 2020, the polling data indicated that citizens’ trust in the GNA had increased in some parts of the west (e.g., Gharyan and Kikla), declined in others (e.g., Tripoli), and was not measurably changed in the south or east. Trust in municipal councils had risen significantly in Benghazi, declined significantly in Bani Walid, and was not significantly changed elsewhere. However, during this period, most cities had seen significant increases in trust, followed by relapses (or in some cases declines followed by recovery).

Perceptions of performance also varied sharply. The GNA’s performance was rated significantly higher in 2020 than in 2016 in Gharyan and Kikla, with no significant change elsewhere, though there had been sharp rises and falls in intermediate rounds of polling. Municipal council performance ratings showed significant increases in Bayda, Tripoli, and Kufra, and a significant decline in Bani Walid, with no significant changes in other locations between those two dates (though significant variations—in both directions—had been observed in intervening rounds in some places).

In Tripoli, a slight decrease in trust and satisfaction levels over the GNA performance was noted to be “most serious . . . among less educated and lower-income population, which could be due to the disproportionate effect of the conflict on this segment of the population.”⁵⁴

This bleak situation continued until February 2021, which was when the GNU was established and took power. It, unlike the GNA, received full support from the HoR and was sworn in in March 2021,⁵⁵ giving the GNU and its mandate the much-needed legitimacy that was lacking with the GNA. It must now not take this mandate for granted, as its term in office is regulated by the skepticism and distrust the Libyan people have toward their government, as well as being limited to the promise of national elections being held in December 2021. Therefore, it must work effectively and efficiently to regain the public’s trust and ultimately ease the living conditions of the Libyan people. To do so, it must address some of the most immediate problems faced in key sectors.

⁵⁴ Al Jazeera, “Libya’s Eastern-Based Government,” 2020.

⁵⁵ Al Jazeera, “‘One and United’: Libya Interim Government Sworn In,” *Aljazeera News*, March 15, 2021, www.aljazeera.com/news/2021/3/15/libya-interim-government-sworn-in-replacing-rival-administration.

Health

The public health system in Libya was poor prior to COVID-19, hampered by years of neglect, conflict, and political divisions. A lack of primary healthcare facilities, as well as doctors and nurses who fled after 2012, characterized the landscape.⁵⁶ Mental and psychosocial support has been severely lacking, especially important in a conflict-affected country.⁵⁷ From April 2019 to March 2020 alone, there were 62 attacks on public health facilities, and one-fifth of the hospitals and primary health facilities were closed.⁵⁸ Hospitals and doctors in the south were particularly noteworthy sectors that were suffering. High fuel prices, which end up affecting many of the other services, also hamper the ability of people to transport themselves to access healthcare centers.

COVID-19 has hit Libya particularly hard, with reported cases of around 167,000 and 2,800 deaths across the country.⁵⁹ This is further exacerbated by the lack of medical equipment and services, added to the shortage of qualified medical staff. One respondent from the western Libya focus group told a tragic story about her uncle's death from COVID-19 due to neglect at the public health institution. She mentions how her uncle could not get the lifesaving care he needed because there were not enough healthcare workers, and the ones available were too afraid of COVID-19 to provide adequate care. Further, one surveyed respondent reported that the facility that her uncle was in did not have the proper equipment to treat him; tragically enough, they were also not allowed to visit him. His phone was taken away, and they later learned that he couldn't find anyone to take him to the toilet. Many of those interviewed spoke of the limited oxygen supply in Libya, which most blamed on the endemic corruption throughout the sector. Respondents explained that inadequate care in public health hospitals and clinics forced people to turn to the limited private

⁵⁶ Alexandra Saieh, "Hope for Libya's Healthcare after Ten Years of Conflict," Norwegian Refugee Council, April 30, 2021, www.nrc.no/perspectives/2021/hope-for-libyas-healthcare-after-ten-years-of-conflict/.

⁵⁷ United Nations Support Mission in Libya (UNSMIL), "Mental Health and Psychosocial Support Programme in Libya: 'Building Back Better,'" September 16, 2013, <https://unsmil.unmissions.org/mental-health-and-psychosocial-support-programme-libya-%E2%80%9Cbuilding-back-better%E2%80%9D>.

⁵⁸ International Rescue Committee, "COVID-19 Could Decimate Libya, Warns IRC," International Rescue Committee, March 25, 2020, www.rescue.org/press-release/covid-19-could-decimate-libya-warns-irc.

⁵⁹ Al Jazeera, "Libya Kicks Off Delayed COVID-19 Vaccination Drive," *Aljazeera News*, April 10, 2021, www.aljazeera.com/news/2021/4/10/libya-launches-covid-19-vaccination-drive-after-delays.

healthcare facilities. However, they noted that these services are prohibitively expensive for most people.

Respondents from Bani Walid, Tobruk, and Sirte spoke in detail about the deteriorated health sector. Respondents spoke of how none of the emergency funds budgeted to fight the virus seemed to have reached their cities. Hospitals and schools lacked masks and other personal protective equipment. In Tobruk, one participant explained that there had been zero public initiatives from the government since the start of the pandemic; volunteers, private doctors, and civil society were the only actors present. All respondents agreed that hospital staff had little to no training on how to treat COVID-19 and that practices in facilities were not in line with the international best practices that had been emerging periodically over the past year.

In rural areas, particularly in southern Libya, the situation is even worse, as there is an accumulation of years of neglect from the central government. In the Shaati area, one respondent from the southern focus group explained that all “hospitals lack medical staff and specialized doctors; even the paramedics are incompetent.” People are forced to travel for treatment, but this has become problematic, with movements being limited during times of conflict and now due to public health measures to combat the pandemic.

Electricity

Electricity has been a persistent problem in Libya. During the summer months, many areas, especially the south, have gone sometimes for days without power. When asked, focus group participants all expressed their extreme dissatisfaction with the lack of electricity. One respondent attributed the only slight improvement of electricity services in Sebha to international aid.

Another respondent from Tripoli stated that recently, the number of power cuts had declined; however, he recalled that during the previous summer, he had suffered 12- to 14-hour power cuts every day. One respondent mentioned that when there are power cuts, the price of diesel (used for generators for those who can afford them) rises from 0.15 Libyan Dinars (LYD) to 2.0 LYD per liter, and even then, the respondent would have to wait a day or two to receive the diesel from Zawiyah. During these power cuts, many of the respondents reported that they were unable to conduct any

business, that they in fact could not invite any clients to their offices. “From the coffee machine to the printers, everything is not working.”⁶⁰

Education

In discussing service delivery, focus group participants pointed to major deficiencies within the educational system. Some spoke about children dropping out because they no longer have access to schools. They complained about the damaged and dilapidated facilities, without equipment and inoperable plumbing doors and windows, air conditioners, and so on. They also spoke of problems with teachers’ salaries. Teachers are not paid enough, particularly when compared to other civil service positions.

Respondents from Benghazi, Bani Walid, and Sebha spoke of teachers as friends and family demotivated due to little or no pay; this has led to a “brain drain” in education as educators take jobs abroad.⁶¹ According to Reuters, monthly salaries range from 500 to 850 LYD in state-run schools (\$360–\$610 at the official exchange rate, much less on the parallel market) and have not risen significantly since before the uprising that overthrew former leader Muammar Gaddafi in 2011. Schools are run down, and teachers do not receive health insurance or bonuses.⁶²

The recent escalation of violence in and around Tripoli has also taken a devastating toll on children’s education, with five schools destroyed and 210 schools shuttered, pushing more than 115,000 children out of school in the Ain-Zara, Abu Salim, and Souq al Jum’aa areas.⁶³ On January 3, 2020, four schools came under attack in the Souq al Jum’aa locality, east of Tripoli, causing extensive damage and affecting nearly 3,000 students.⁶⁴ This is just the most recent violent conflict that has led to the destruction of primary-school facilities. However, there are similar stories across

⁶⁰ Interview with Tripoli residents, April 5, 2021.

⁶¹ General discussion with Libyan residents, March 21, 2021.

⁶² Ayman Al-Warfalli and Ahmed Elumami, “Libyan Schools Shut as Teachers on Swollen Payroll Demand Better Wages,” Reuters, October 24, 2019, www.reuters.com/article/us-libya-security-schools-idUSKBN1X31LQ.

⁶³ UNICEF, “Fighting in and around Tripoli Shuts 210 Schools, Depriving over 115,000 Children of Their Education,” January 6, 2020, www.unicef.org/press-releases/fighting-and-around-tripoli-shuts-210-schools-depriving-over-115000-children-their.

⁶⁴ UNICEF, “Fighting in and around Tripoli.”

the country in cities like Benghazi, Sirte, Sebha, Derna, Murzuq, Kufra, and many more. The damage that took place years ago has not been repaired, and students are paying the price.

In 2018, Osman Abd al Jalil, the minister of education, said that “a general lack of funding and teacher training are also hindering the progress of education.”⁶⁵ However, escalating violence, he acknowledged, was the main concern, “especially in the south and east.”

Failure to Execute Budgets and Endemic Corruption

Many governmental services suffer insufficient funding. Budgets have at times been allocated to secure basic services; however, “large amounts of those budgets disappear before they are transmitted to municipalities.”⁶⁶ FGD participants in the east were particularly vocal about the limited budgets and government failures to repair and improve local infrastructure in line with public priorities. A respondent from Bayda gave the example of road repairs. He explained, “Budget allocations are not enough; contractors use cheap asphalt, and the road is destroyed each time it rains.”

All residents in the FGDs complained of widespread corruption within ministries and other public services institutions. One civil servant from Benghazi spoke of his experience with the ubiquitous culture of corruption in the energy sector. He told a story of being repeatedly approached to accept bribes. When he reported the situation to his superiors, they warned him of the consequences of his refusal.⁶⁷ For the other participants in this discussion, stories like this were seen as typical of the regular bribery and intimidation faced by many public servants.

Breakdowns in Security and the Effects on Service Delivery

Breakdowns in security are another major contributing factor to the service-sector failures. It has become the norm for armed groups to use/disrupt public national services as a bargaining chip against the national authorities, essentially holding the government hostage until demands are met.

⁶⁵ Fanack, “Education under Attack in Libya’s War,” October 8, 2016, <https://fanack.com/society/education/education-under-attack-in-libya/>.

⁶⁶ Hend R. Irhiam et al., *The Long Road to Inclusive Institutions in Libya: A Sourcebook of Challenges and Needs* (Washington, DC: International Bank for Reconstruction and Development/The World Bank, 2023), 49–56.

⁶⁷ Interview with residents from east Libya, March 25, 2021.

Such actions not only cause the executive to appear weak but, in the context of internal armed conflict, they may amount to war crimes under international law.⁶⁸ For instance, armed groups in Tripoli regularly have pressured employees of the General Electric Company of Libya (GECOL) to divert electricity to geographic areas they control. At the same time, other areas have gone days without power.

Other examples of weaponizing public services include forced closures of the Great Man-Made River (GMMR). The blockages were traced to the southern town of Shwearif. Two groups claimed responsibility, one demanding that prisoners be released from eastern Libya, and the other, prisoners from the west.⁶⁹ Meanwhile, the mayor of the town explained to media outlets and the UN that the decision was made after a breakdown in talks between the GNA and armed groups responsible for kidnapping a Shwearif local while he was in western Libya.⁷⁰ Whatever the motivations, the closures of the GMMR caused water shortages for approximately 3 million people across (north) western Libya.

Demands for a Voice

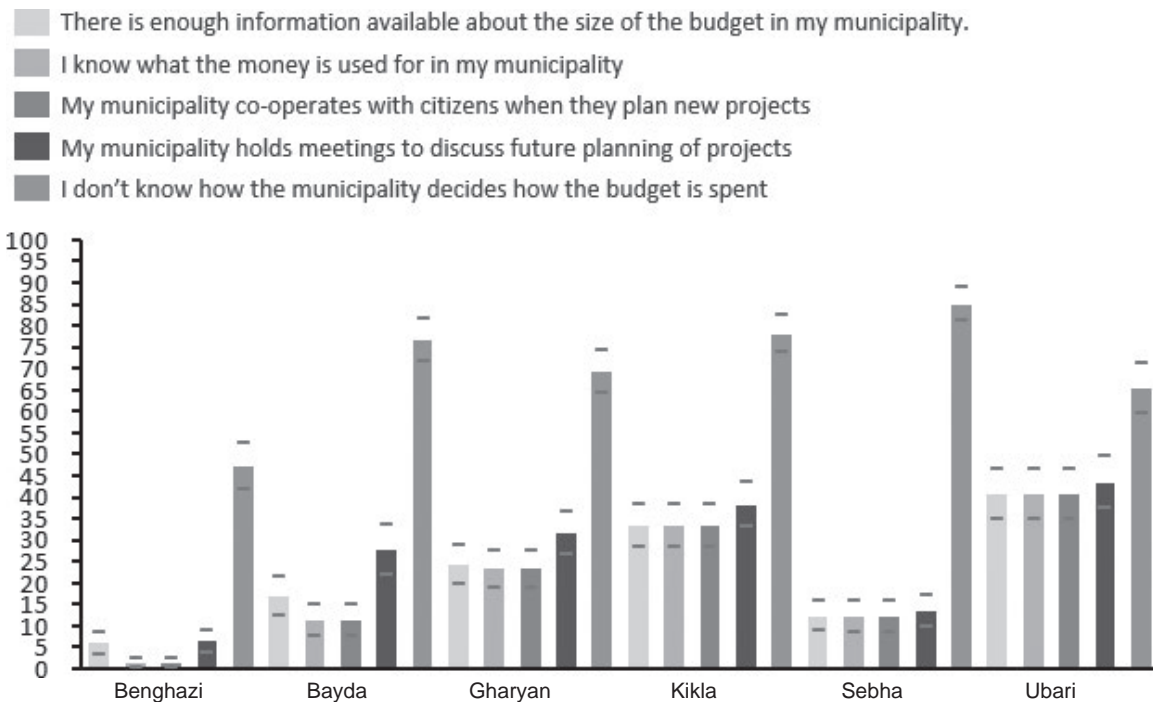
In the face of overwhelming insecurity, distrust, and dissatisfaction related to services from the central executive authorities, respondents proposed that the Libyan executive support systematic means of engagement with citizens. Approximately 80 percent of respondents recommended formal channels for consultation with citizens and/or capable listening on a regular basis to ensure that local voices are heard with regard to service-sector needs, preferences, and priorities. Unfortunately, the lack of traditions of structured advocacy or lobbying has cloaked anything other than mass action in suspicions of corruption.

Executive communication about actions, policies, or results is also weak. Citizens feel that they lack information about how decisions are made or resources used.

⁶⁸ Ahmed Elumami, “Libyan Gunmen Halt Water Pipeline to Besieged Tripoli,” Reuters, May 20, 2019, www.reuters.com/article/us-libya-security/libyan-gunmen-halt-water-pipeline-to-besieged-tripoli-idUSKCN1SQ2B0.

⁶⁹ Libya Review, “Mayor of Al-Shwearif: We Closed the Man Made River,” April 8, 2020, <https://libyareview.com/1601/exclusive-mayor-of-al-shwearif-we-closed-the-man-made-river/>.

⁷⁰ Libya Review, “Mayor of Al-Shwearif.”



The share of respondents who agree or strongly agree with five statements about their engagement with municipal planning, June 2020 UNDP SFL perception survey of 2,100 households. Source: UNDP Libya, 2020. Perception Survey for the Stabilization Facility for Libya.

Better “broadcast” communication by the executive (providing credible information to citizens on a shared basis) might help to address this deficiency.

Specific services, all of which are in theory managed by national ministries rather than municipal councils, have opened up different avenues for citizens to interact with state service providers. However, where the service provider is unable to meet what are perceived as reasonable demands, this exacerbates anger. In the absence of formal procedures and mechanisms for engagement with the executive, citizens have been left feeling that their only avenue for improving access to services is protest or self-help action in the form of threats and intimidation.

RECOMMENDATIONS

Based on the observations made in the previous sections, the following actions are recommended:

Immediate:

- Concretely unify technical and administrative staff within key financial institutions, such as the National Oil Corporation, Central Bank of Libya, and ministries of planning, finance, and economy. These financial institutions should prioritize allocations to priority sectors and facilitate unified technical and administrative functions and staffing for institutions to combat crises; for example, ministries of health, justice, and the interior.
- Mandate periodic visits by central government authorities to communities, with a focus on the most historically marginalized areas.

Short-Term:

- Activate viable plans for short-, medium-, and long-term reliable solutions for Libya's energy crisis.
- Ensure that public-servant salaries in the health and education sectors meet local living standards.
- Help establish and promote unifying symbols for public services that signify the mutual obligations of the Libyan social contract. Showcasing the greater endeavor behind service delivery can help combat notions of patronage, "handouts," and a rentier state.

Medium-Term:

- Establish and consolidate programs to secure vital national and local infrastructure and the staff operating it.
- Create and launch programs to increase transparency and accountability (beyond merely auditing).
- Support the least wealthy and educated to be part of inclusive governance and reconciliation programs. Dialogue is one option; providing sustainable mechanisms for people to collaborate on priority projects as fellow Libyans is another.

CITIZENS' ACCESS TO JUSTICE: UNINHIBITED IN PRINCIPLE, UNPREDICTABLE IN PRACTICE

The judiciary in Libya has been relatively insulated from the broader political rifts between other state institutions. However, it is clear that citizens are still in desperate need of an improved rule of law and justice services. This section focuses on assessing the access to functioning courts for local-level legal transactional services and dispute resolution. Respondents unanimously conveyed a sentiment that rule of law and justice services in Libya have not met the minimum standards for being “accessible and responsive to the needs and rights of all individuals” in a way that would build trust and promote “social cohesion and economic prosperity.”⁷¹ That said, interviewees and discussion groups claimed there were little to no socioeconomic barriers to accessing the civil, commercial, and personal status courts. They claimed that women, minorities, and other marginalized groups were treated the same within the civil court system. In this sense, according to the respondents, “access” was equally limited for all.

All respondents cited lack of security as the main obstacle to the delivery of rule of law and justice services since 2011. The criminal courts were seen as the most problematic. Since 2011, formal criminal justice at the local level has been largely abandoned. State-run investigations, prosecutions, and punishment systems are broken down due to the surrender of security institutions to nonstate and “hybrid” armed actors.⁷² Local judges as well as appellate-level councillors have been incapacitated and influenced by threats from armed factions and other powerful pressure groups.

In the face of such dire security challenges and the breakdown of criminal justice, it was at times difficult for respondents to focus on other problems, particularly those affecting civil, commercial, and personal status legal services. However, it was widely reported that corruption and

⁷¹ UN General Assembly, *Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, A/RES/67/1, 2012.

⁷² See Emadeddin Badi, *Exploring Armed Groups in Libya: Perspectives on Security Sector Reform in a Hybrid Environment* (Geneva: DCAF, 2020), www.dcaf.ch/sites/default/files/publications/documents/ExploringArmedGroupsInLibya_0.pdf; Tim Eaton, “The Libyan Arab Armed Forces: A Hybrid Armed Actor?,” *War on the Rocks*, January 27, 2021, <https://warontherocks.com/2021/01/the-libyan-arab-armed-forces-a-hybrid-armed-actor/>; and Frederic Wehrey, *The Four Dimensions of Security Sector Reform Challenges*, Centre for Security Governance (Ontario, Canada) eSeminar, 2014.

limited resources for training and improving facilities were the biggest problems, as well as the lack of suitable conditions inside courts and other limited resources (human and material). Weak capacities of personnel, including lawyers and judges, were identified as the biggest causes of long delays in cases.

Legal Frameworks

The struggles to draft and adopt a new constitution in postrevolutionary Libya have been at the heart of challenges to the democratic transition to a functioning state. At the time of this writing, there have been renewed efforts among scholars and legal committees of the HoR, the HCS, and the UN-supported LPDF to achieve progress on the constitutional project and galvanize the gains and momentum toward peace and stability. Much of the support for a constitution is linked to political commitments to national elections held on December 24, 2021.

Until a new constitution is approved, the 2011 Constitutional Declaration is the underlying basis for the legal frameworks in Libya. It states in its Article 34 that “documents and laws of a constitutional character which were in force before this Declaration shall be repealed.”⁷³ However, its Article 35 also states that “existing legislation shall remain in force” as long as it is not inconsistent with the declaration.⁷⁴

The Libyan legal system is influenced by Islamic law as well as by European Continental legal models, particularly the Italian and French systems.⁷⁵ The criminal law is based on the Italian penal code, and the civil law is based on the French system.⁷⁶ Historically, separate Islamic judges applied sharia law in religious courts.⁷⁷ However, in 1973, secular judges were empowered to incorporate the relevant Islamic principles into their judgments and decisions.⁷⁸

⁷³ Constitute Project, *Libya’s Constitution of 2011*, Oxford University Press, www.constituteproject.org/constitution/Libya_2012.

⁷⁴ Constitute Project, *Libya’s Constitution of 2011*.

⁷⁵ John L. S. Simpkins, *Libya’s Legal System and Legal Research* (New York: New York University Law School and Hauser Global Law School Program, 2008), www.nyulawglobal.org/globalex/Libya.html.

⁷⁶ UNDP key informant interview #1: Derna criminal court judge, FGD#3 East on March 25, 2021.

⁷⁷ Simpkins, *Libya’s Legal System*.

⁷⁸ Simpkins, *Libya’s Legal System*; see also UNDP key informant interview #1: Derna criminal court judge.

All respondents in the present research (experts and laypersons) agreed that the laws in Libya were generally compatible with people’s needs, especially in commercial and personal status cases, including marriage, divorce, child custody, and inheritance. A number of interviewees, however, particularly legal experts, noted that the Italian (criminal) and French (civil) legal models had not been updated to fit with modern developments. A judge from Derna noted that Europe regularly updates its penal and civil codes, particularly referencing the reforms starting in the 1990s. He complained that Libya was still using antiquated legal principles, some dating as far back as 1902: “Europe overhauled its Penal Codes and Civil Codes in 1990s and at other times, but Libya is still using laws from models written as far back as 1902.”⁷⁹ He noted particularly that “crimes and sentencing are not updated to fit the violations and theories of punishment of today.”⁸⁰

Despite the incredible challenges for rule of law and justice services, it is important to note that improving the legal frameworks themselves was seen as a low priority. Respondents were more focused on practical, tangible, and immediate concerns. Overwhelmingly, they prioritized the need to enforce existing criminal laws and use current legislation to compensate individuals and families for the extensive damages suffered due to years of war and violence.

Structure of the Libyan Courts

Law No. 87 of 1973,⁸¹ the same law that merged the sharia and secular systems, outlines the court structure in Libya generally as it exists today.⁸² The system includes, at the lowest level, *summary courts*, which have merged with the previous *Courts of Remote Areas*, established originally through Law No. 55 of 1971. These summary courts can be found in all substantial population centers (small towns and large cities) and have jurisdiction over minor (local) disputes. They sit beneath the *courts*

⁷⁹ Key informant interview #1: Derna criminal court judge.

⁸⁰ Key informant interview #1: Derna criminal court judge.

⁸¹ For all direct references to Libyan Laws, see “English Translation of Law No. (87) of 1973 on Unifying the Judiciary, Revolutionary Command Council of Libya.”

⁸² The broader structure and competence of the entire judiciary is set out in Law No. 6 of 2006 on the justice system, as amended by Law No. 4 of 2011 and Law No. 14 of 2013, among others. For more on this, see International Commission of Jurists (ICJ), “Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality,” July 2016, <https://icj2.wpenginepowered.com/wp-content/uploads/2016/07/Libya-Challenges-the-Judiciary-Publications-Reports-Thematic-report-2016-ENG.pdf>.

of first instance, which have been established by decree in all major towns and cities. The courts have competence to hear criminal, civil, and commercial matters as well as personal status affairs; the division of the subject matter courts varies in each jurisdiction. The lower trial courts are within the appellate authority of *courts of appeal* in the following cities:⁸³

- Tobruk
- Bayda
- Benghazi
- Sebha
- Misrata
- Al-Khoms
- Zawiya
- Gharyan

Additionally, appellate courts have been established by decree in the following areas, but they are currently closed:

- Derna
- Tripoli (Gaser Bin Gashir)

The highest judicial authority is the Supreme Court. Although not prescribed explicitly by law, the Supreme Court rules on constitutional cases, including challenges to legislation and executive action.⁸⁴ Based on Law No. 6 of 1982 on “Reorganising the Supreme Court,” it also settles conflicts of rulings and jurisdiction. Today, the court has separate five-judge chambers for constitutional, criminal, civil and commercial, administrative, and sharia matters.⁸⁵ Interview respondents noted

⁸³ Key informant interview #1: Derna criminal court judge.

⁸⁴ International Commission of Jurists (ICJ), *Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality* (Geneva, July 2016), www.refworld.org/pdfid/57ee8f9f4.pdf.

⁸⁵ Simpkins, *Libya's Legal System*.

proudly that despite decades of challenges to the rule of law, the postcolonial court system has operated under the same Supreme Court uninterrupted since 1953.

Access to Justice

It is within the previously described legal frameworks and court system that rule of law and justice services are meant to be provided to citizens. The challenges to service delivery and entry points for improvement in the short, medium, and long term are assessed here within the normative scaffold of the United Nations General Assembly Declaration of the “High-level Meeting on the Rule of Law at the National and International Levels,” which reaffirmed “the principle of good governance” and committed to the “effective, just, non-discriminatory and equitable delivery of public services pertaining to the rule of law, including criminal, civil and administrative justice, commercial dispute settlement and legal aid.”⁸⁶ Collectively, the services reviewed are referred to as “rule of law and justice” services with a focus on the formal transactional and dispute resolution support provided by the state in local courts.

When discussing “access” to rule of law and justice services, all respondents were emphatic that citizens—rich or poor, men and women, minorities, and other marginalized groups—were equally able to submit claims and use the services within the court system. A judge from Derna stated, “In principle traditionally marginalized citizens, like women and minorities, can have justice—yes they can.”⁸⁷ He explained that there are nominal fees to file claims, but these costs are to deter frivolous filings and applications. A lawyer from the Lawsuits Authority also claimed that there are no obstacles for equal “access to justice.”⁸⁸ It was clear, however, from the discussions, that access issues must be understood within the context of local conflict dynamics, which may prevent movement and pose threats to particular groups wishing to seek justice from the courts.

Despite these findings, it should be noted that the present research did not specifically target perceptions of minorities regarding access to justice. One Amazigh focus group participant spoke in

⁸⁶ UN General Assembly, 2012. A/RES/67/1.

⁸⁷ Key informant interview #1: Derna criminal court judge.

⁸⁸ Key informant interview #5: lawyer from the State Lawsuits Authority, March 10, 2021.

detail about feelings of marginalization under the law. However, these concerns were most notably felt within the context of representation by the legislative bodies. The discriminatory policies excluding the rights of the Amazigh, Tuareg, and Tebu are well documented. Under the Gaddafi regime, human rights violations against these groups ranged from banning the use of their language to prohibiting the celebration of cultural festivals.⁸⁹ Efforts and steps have been taken by Libyan authorities since 2011 to advance the legal protections for minorities, but the echoes of past injustices still impact the daily lives of many Amazigh, Tuaregh, and Tebu.

Security Challenges

Beyond inequality, respondents were clear that the main challenges for stable and effective rule of law and justice services in Libya are linked to the breakdown in security. As the revolution progressed and thereafter, the already fragile Libyan security and justice system fractured along various lines of allegiance.⁹⁰ The violence has directly and indirectly affected court staff, causing closures and the collapse of effective civilian criminal justice systems.

According to a legal expert from Benghazi, the chaos and conflict following 2011 hampered access to justice and made the “culture of going to courts nonexistent.” A number of international organizations have reported how violence led to court closures throughout Libya, including facilities in Tripoli, Sebha, Sirte, Derna, and Benghazi, which all ceased their activities in 2014.⁹¹ The judge interviewed from Derna spoke of the challenges of court closures in 2014, which did not open again until 2019. The lawyer from the State Lawsuits Department in Sebha spoke extensively of the challenges of court closures repeatedly since 2014 and again in 2016, reopening only fully in 2019. “The cycles of closing and reopening courts in Sabha brought many challenges,” she explained, “especially with the accumulation of cases over the years.”⁹²

⁸⁹ Minority Rights Group International, “World Directory of Minorities and Indigenous Peoples—Libya: Imazighen,” July 2018, www.refworld.org/docid/5b9fb61e7.html.

⁹⁰ Fiona Mangan and Christina Murtaugh, “Security and Justice in Post Revolution Libya: Where to Turn?,” *Peaceworks* no. 100 (Washington, DC: US Institute of Peace, 2014).

⁹¹ See United Nations General Assembly Human Rights Council, Working Group on the Universal Periodic Review, Thirty-sixth session, 2020, *Compilation on Libya, Report of the Office of the High Commissioner for Human Rights, A/HRC/WG.6/36/LBY/2*. See also Mangan and Murtaugh, “Security and Justice.”

⁹² Key informant interview #5: lawyer from the State Lawsuits Authority.

Security challenges for criminal courts were seen as the biggest problem. Some 90 percent of respondents agreed that the issues for the rule of law and justice within criminal proceedings revealed a complete absence of state authority. One respondent from Bani Walid noted the complete absence of law enforcement in his area. “It’s like the judiciary doesn’t exist,” he proclaimed. The interviews revealed that investigations, prosecutions, and punishment systems are broken due to the surrender of security institutions to nonstate and “hybrid” armed actors. Moreover, in many parts of Libya, the jurisdiction of civilian criminal courts has been subject to improper intrusions by “military” tribunals.⁹³

Moreover, violence directed toward judiciary staff has crippled the system. Local judges as well as appellate-level counselors have been incapacitated and influenced by threats from armed factions and other powerful pressure groups. The lawyer from the Sebha Lawsuits Authority mentioned a number of frightening situations in her city. She explained how prosecutors and other lawyers have been threatened and kidnapped for challenging the “Special Deterrence Force” (SDF). The SDF is a Tripoli-based “hybrid” armed group that has been ostensibly integrated into the Libyan ministry but is not under its effective control, as it retains an independent chain of command.⁹⁴ In Sebha, access to rule of law and justice services has been limited in part because the SDF is tasked to secure the courts.

The 2020 Universal Periodic Review by the Office of the High Commissioner for Human Rights reported seven paramilitary assaults on public prosecution offices and Libyan courts; nine abductions of judicial personnel who were subjected to inhumane treatment in connection with their work on criminal cases; three members of the judiciary killed; and one judge who survived an assassination attempt.⁹⁵ The report goes on to explain that “the Public Prosecution is unable to arrest

⁹³ Key informant interview #1: Derna criminal court judge.

⁹⁴ Human Rights Council Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at Its Eighty-First Session, 17–26 April 2018: Opinion No. 39/2018 *Concerning Abdu Ahmed Abdel Salam (Libya)*, A/HRC/WGAD/2018/39.

⁹⁵ United Nations General Assembly Human Rights Council. Working Group on the Universal Periodic Review, Thirty-sixth session, 2020, *Joint report from the Libya Platform: Libya’s Universal Periodic Review Human Rights Situation in Libya (JSI UPR36)*.

suspects or provide any guarantees for victims and witnesses” and “militia targeting and control over the judiciary has rendered it largely unable to deliver justice.”

The respondents also confirmed that in many parts of Libya, the absence of effective rule of law services, particularly criminal justice mechanisms, has caused tribal actors to fill the void. One focus group participant explained the tribal systems as “unjust” because they only seek to achieve reconciliation between groups, and they disregard the pain and losses of the individual. While customary dispute resolution practices are part of Libyan cultural norms, some tribal justice was characterized as unfairly hierarchical, discriminatory, and patriarchal.

Importantly, however, Anderson noted that customary practices that maintain cultural values but bypass elitist tribal politics include “smaller-scale networks of family [which] do not necessarily contradict and, in certain historical circumstances, may even complement those [state] institutions.”⁹⁶ Respondents from the south and east explained that customary tribal interventions have been very important since 2011.⁹⁷ Wisemen’s/social councils have often ended cycles of revenge by lowering tensions and comprehensively resolving communal disputes in the absence of law and order from the state. One focus group participant from Sebha explained how elders peacefully apprehend criminal suspects from their own tribes/clans and hand them over to neutral (nonstate) parties.⁹⁸

Corruption and Limited Resources

Other challenges to rule of law and justice services included corruption and severely limited resources. These two issues interact as the overall culture of corruption in Libya impacts the resourcing, which in turn gives motivation for bribery and other forms of corruption. The court facilities were seen as particularly lacking. Finally, both institutional informants and focus group participants complained that judges, lawyers, and other judiciary personnel were desperately in need of training.

⁹⁶ Lisa Anderson, “Tribe and State: The Libyan Anomalies,” in *Tribes and State Formation in the Middle East*, ed. Philip S. Khoury and Joseph Kostiner (Berkeley: University of California Press 1991), 228.

⁹⁷ Interview with residents from south Libya, March 20, 2021; interview with residents from across Libya, March 21, 2021.

⁹⁸ Interview with residents from south Libya, March 20, 2021.

One lawyer from Benghazi explained that corruption in the judiciary has been present in Libya for decades. He said it was almost a cliché to see the accumulated wealth of judges once they retire. As a lawyer, he noted the common strategy of researching a presiding judge’s case history to note “controversial” commercial cases they decided.⁹⁹ Additionally, a lawyer from Sebha expressed her distrust of the system. She estimated that “70 percent of judges and court personnel were corrupt.” She told a personal story of how naive and shocked she felt to learn of the bribes taken by a judge that she had known well for years.¹⁰⁰

Respondents all agreed that the court facilities were extremely limited. One focus group participant stated, in reference to the facilities in Sabha, “We can’t even call it a court.”¹⁰¹ The lawyers and judges interviewed explained that most appellate courts also need refurbishments and repairs. A respondent from Bani Walid complained that the courts of first instance were not fairly distributed; he felt the long distances citizens must travel is an additional way of “halting justice.”¹⁰²

Respondents also pointed to the need for continued legal education. Many (jurists and citizens) spoke about the need for judges to receive specialized training for particular areas of the law. The lawyer from the Lawsuits Department in Sebha spoke in detail about how court personnel, including herself, needed professional development to improve their work.¹⁰³

Respondents all attributed long delays, particularly for civil, commercial, and personal status claims, to the issues of corruption and resourcing. Focus group participants from Sebha complained about how long even simple transactions took. They were frustrated that simple filings related to probate cases or marriage licenses took far too long. A citizen from Bani Walid explained that he once spent a week trying to certify the signature on a document. “The process should only take three minutes,” he exclaimed. Others mentioned that litigation in relatively straightforward civil cases can sit for years without a verdict. They assumed that the extended delays were more likely cases of corrupt judicial practices.

⁹⁹ Key informant interview #2: Benghazi lawyer, March 3, 2021.

¹⁰⁰ Interview with residents from south Libya, March 20, 2021.

¹⁰¹ Interview with residents from south Libya, March 20, 2021.

¹⁰² Interview with residents from across Libya, March 21, 2021.

¹⁰³ Key informant interview #5: lawyer from the State Lawsuits Authority.

RECOMMENDATIONS

Based on the previous observations, the following actions are recommended:

Immediate:

- Ensure the security of judiciary staff, and provide enforcement mechanisms for judicial rulings.

Short-Term:

- Begin training programs for the judiciary.
- Begin programs in schools and public spaces to raise legal awareness (legal literacy) among the population. This should include awareness of universal principles of human rights, particularly as they are linked to Libya's international obligations.

Medium-Term:

- Activate programs for investigating corruption within the judiciary. Ensure accountability.
- Create linkages with special committees in the legislature as part of programs to reform and update laws, ensuring that they are fit for purpose in the modern world.
- Make continued legal education and training of the judiciary systematic, with dedicated budget allocations.

CONCLUSION

Since 2011, the Libyan people have been plagued by violence and instability as well as cycles of disappointing failure at recovery and transition to a functioning state. Protracted political struggles among powerful elites have prevented progress. Insecurity, corruption, and ineptitude as well as a damaged and dilapidated infrastructure have strained the ability of public institutions to serve citizens.

Constituencies have felt that Libyan legislatures have not represented the will of the people. Constitutional irregularities and controversial legislation, voter boycotts, and failed political

compromises have poisoned the foundational structures of parliamentary bodies. Violence and intimidation have left some MPs disconnected from their constituents, and others from the legislative house itself. The public has no means of communication with their supposed representatives.

Meanwhile, the Libyan executive branch has not fared any better. It, too, is beset with issues of perceived illegitimacy and poor performance and security. Since the 2014 division, competition between rival executives has left no central authority to service the whole of the country. Libyans have resented the government for failing to provide the most urgent and basic necessities such as security, reliable electricity, and access to quality health care.

While the Libyan judiciary has largely been unaffected by the political chaos, it has lacked the ability to provide the rule of law and justice services that citizens demand, particularly in a postconflict environment. The Libyan legal frameworks required comprehensive reform prior to the 2011 revolution, as the laws are outdated and unfit for the modern world. Other issues highlighted by citizens were corruption and the lack of judicial enforcement mechanisms. Citizens have felt that there are no options but to take the law into their own hands or seek alternative dispute mechanisms, such as tribal justice. This only serves to erode the little legitimacy the judiciary enjoyed.

Despite the dysfunctionality of the state, the Libyan people still have hope for reform and change. The recent appointment of the GNU and the reunification of state institutions are green shoots of hope. Yet the GNU, with its limited mandate, needs to act rapidly and efficiently to rebuild trust. While not the main focus of this paper, clearly, the highest priority for all respondents was unified state action (alongside international support) to address challenges of security sector reform and development alongside urgent programs aimed at the disarmament, demobilization, and reintegration (DDR) of armed groups. Acknowledging that several actors are working to improve security conditions, the recommendations here aim mostly to assist planning in other sectors to support the legislative, executive, and judicial branches to rebuild the broken relationships with the citizens and communities.

