

International Human Rights Day 2013

An eye on Human rights in Libya

Today the world is celebrating International Human Rights Day, a global celebration marking the 65th anniversary of the adoption of the Universal Declaration of Human Rights (**UDHR**). Lawyers for Justice in Libya (**LFJL**) wishes to mark this day by reaffirming its commitment to promoting human rights in Libya and by taking the opportunity to reflect on the past year's human rights achievements and setbacks, the current challenges and future prospects.

The past year has witnessed Libya making progress towards its democratic aspirations. Notably, the registration of voters for the Constitutional Drafting Committee (**CDC**) elections started on 1 December 2013. Furthermore, human rights have made a more positive appearance in the government's international agenda with the adoption of the United Nations (**UN**) Human Rights Council (**HRC**) resolution for assistance to Libya on human rights. This is a positive step by the Libyan government towards acknowledging the various human rights challenges facing Libya and an improvement from the 2012 resolution at the HRC that failed to include any mechanism for monitoring or reporting human rights challenges. In addition, LFJL welcomes the adaption of an Anti-Torture Law, the decisions to disband militias and the recent adaption of the Transitional Justice Law. These are valuable steps toward Libya's long-term prospects for peace, security and national reconciliation. However, a number of human rights concerns remain, and the lack of government control of security continues to present a major challenge to the protection of human rights. 'Human Rights Day is celebrated every year on the same day around the world. However, this should not be just a day for conferences and government statements. This day should be marked by a real commitment to improving the human rights situation in Libya by the government taking steps, every day of the year, to promote human rights and protect citizens against violations,' said LFJL Director Elham Saudi.

This report explores the major human rights issues in Libya over the past year, highlighting challenges, progress made, and recommendations on what could be done to help foster a democratic Libya which honours human rights. Finally, this report provides a brief overview of LFJL's upcoming projects to promote human rights in Libya.

Laws and human rights compatibility

a) *Political Isolation Law (the Isolation Law)*

On 5 May 2013 the General National Congress (**GNC**) passed the Isolation Law. The law disqualifies individuals who are deemed to have been previously associated with the Gaddafi regime from holding political or public office or posts in government. LFJL expressed its concern that the exclusion of those from holding office should not be based on the mere fact that they are associated with the previous regime, but on the basis of criminal acts proven in a court of law. LFJL warns of the arbitrary application of the law, where its vague language and its exemption from judicial review, LFJL stresses the need for the state to apply restraint and transparency in the application of the Isolation Law and reminds the state that it must only apply it to the extent consistent with its international human rights obligations. If this is not the case, this might undercut government legitimacy, undermine the rule of law and weaken efforts for national reconciliation.

Statement: [Political Isolation Law which violates human rights must be applied with restraint](#)

b) *Anti-Torture Law*

The GNC adopted the Law Criminalising Torture, Enforced Disappearances and Discrimination on 9 April 2013. This law intended to provide a legislative framework for the prohibition and criminalisation of certain human rights violations including torture and enforced disappearances. This is a valuable first-step to combat these violations. However, LFJL remains concerned that the provisions of the law do not fully conform with Libya's international obligations.

LFJL, together with a number of international Non-Governmental Organisations working on torture, highlighted shortcomings in the initial Draft Law. The first concern relates to the definition of torture in the law. Article 2 of the new law is not aligned with the definition provided under Article 1 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), to which Libya is a State Party. This results in a narrowing of the scope of its application, such as restricting torture to acts committed against detainees. Secondly, the law does not enshrine the prohibition of deporting, extraditing or transferring a person to a state where they could be subject to torture. Such shortcomings fail to provide a comprehensive anti-torture framework. LFJL recognises that there are no quick fixes and in order to progress, it recommends Libyan lawmakers to consider comparative worldwide experiences to amend the legislation.

Statement: The new Libyan Law Criminalising Torture, Enforced Disappearances and Discrimination: A first step, but more is needed.

c) *Election Law*

On 16 July 2013, the GNC adopted the law relating to the election of CDC (the **Election Law**), which outlines the rules and guidelines for electing a 60-member committee charged with drafting Libya's constitution. LFJL commended the GNC's efforts to try and achieve a diverse and inclusive Committee through the draft law. At the time, LFJL expressed its concern about the way in which representation of minorities and women was to be achieved. With the law now a reality, LFJL highlights the importance of public participation in the process, as the rights of all the Libyan people are at stake. 'The High National Election Commission (**HNEC**) still has the ability to ensure the

inclusivity of the process - if not by nominees, then by voters,' said LFJL Director Elham Saudi. LFJL is concerned with the two weeks registration period given. As at 9 December 2013, only 120,532¹ voters have registered. This highlights the challenge of securing a significant registration turnout by the initial 14 December 2013 deadline. The regular power cuts impacting on mobile networks for SMS registration, on-going security issues and bad weather conditions make low registration turnout even more likely. 'Without a strong public mandate, the elections and the Committee will lack legitimacy. It is for this reason that we call on the HNEC to prioritise public participation and to take steps towards facilitating registration further and allowing for a longer registration period,' added Saudi.

Constitutional process

Registration for the CDC elections opened on 1 December 2013 and will close on 14 December 2013. In this crucial period leading to the drafting of democratic Libya's first constitution, LFJL calls for reaffirming the rights of all groups to participate in public life. Although the adopted Election Law has its shortcomings as highlighted above, the up-coming CDC elections, which are predicted to take place early next year, are an opportunity for the Libyan government to foster public participation. LFJL highlights that it is the responsibility of the Libyan government to take stronger steps to engage with the public throughout the entire constitution-making process and to ensure that respect for human rights is enshrined. 'Transparency in the drafting process is key to creating an inclusive constitution that ensures that human dignity, equality, justice and freedom are permanently entrenched in the lives of the Libyan people,' stated Saudi. 'All groups should participate in the constitutional debate peacefully to help foster an inclusive document, and one that does not protect a certain group or promote a specific ideology, but protects all Libyans', she added.

Statement: [LFJL welcomes start of constitutional process, calls for more representation and public engagement](#)

Statement: [Nominations open for Constitutional Assembly Candidates; LFJL focuses on an inclusive and transparent election process](#)

d) Transitional Justice Law

On 8 December 2013, the GNC adopted the Transitional Justice Law which aims to promote national reconciliation. LFJL welcomes its adoption as an important step to the transition toward democracy. LFJL calls for the positive application of the law and ensuring that all of its elements are publicly accessible to all Libyans, not only in the main cities. In addition, LFJL calls for further measures including full and genuine investigation of institutions and transparency in conducting the law for a true national healing process to take place.



Photo: Zakaria Haghegh

¹HNEC,

<https://www.facebook.com/photo.php?fbid=409836632483230&set=a.381380138662213.1073741828.371312723002288&type=1&theater>

Women's rights

So far, the Libyan government has not adopted a law recognising victims of rape during conflict as victims of war crimes. A draft law has been circulated but it is still awaiting consideration by the GNC. LFJL calls for this law to be considered promptly as it would be a crucial step for victims to receive justice and for perpetrators to be brought to account.

Further, Libyan women still face challenges to participation in political life. Although women represent 49% of the Libyan population, women participation is still low. The fact that only one woman is running for normal ballot in the CDC elections shows that the quota is needed. However, the six seats quota allocated for women in the assembly has been shown to be too low given the inability of women to penetrate the general ballot. Therefore, as the Election Law already has been adopted, LFJL stresses that women need to be especially targeted in the registration process and in voting to ensure their participation and representation in the constitution making process and debate.



Women protesting in support of freedom of expression
(Photo: Zakaria Haghegh)

Furthermore, many challenges facing women stem from cultural rather than legal problems. Women still face the challenge to pass on their Libyan nationality to their children if their husbands are not Libyan.² Such restraints come from non-legislative limitations on women which are forced by institutions such as Dar Al-iftaa. On 31 March 2013, Dar Al-iftaa released *fatwa* number 1587 which called on the government to ban Libyan women from marrying foreigners.³ Most recently, on 1 December 2013 a *fatwa* has been released to ban Libyan women from travelling without a male chaperone.⁴ LFJL stresses that it is the government's duty to ensure the equal treatment of women. LFJL reminds the government that it has a special duty, in this post-conflict era, to adopt a gender perspective that includes the special needs of women during repatriation, resettlement, rehabilitation, reintegration and post-conflict reconstruction pursuant to UN Security Council Resolution 1325. Failing to do so, means failing not only to meet Libya's international obligations but also failing its female citizens.

Statement: [The International Federation for Human Rights \(FIDH\) and Lawyers for Justice in Libya \(LFJL\) urge the Libyan government to support justice for rape victims](#)

² During Rehat Watan's stop in Tubruq, Destoori Guide Huwaida Shebani visited Tubruq Hospital and had a candid conversation with a hospital patient's mother regarding citizenship and the right for equality of all nationalities in Libya. Watch video here: <http://www.youtube.com/watch?v=8lapVWyxos>

³ Ban Libyan women from marrying foreigners: Grand Mufti, <http://www.libyaherald.com/2013/03/31/ban-libyan-women-from-marrying-foreigners-grand-mufti/#axzz2my6Xk9d4>

⁴ Dar Al-ifta, <https://www.facebook.com/photo.php?fbid=640303159353114&set=a.332559480127485.94193.323591844357582&type=1&theater>

Arbitrary Detention and Torture

There are up to 8,000 conflict-related detainees currently being held in substandard conditions in detention facilities without due processes. Signs of widespread torture of detainees particularly towards migrants have been found.⁵ Torture was also practiced on women such as on human rights activist Hanan Al-Newaisery who was assaulted and beaten in front of a courthouse then kidnapped and further beaten. Widespread torture shows the dangers of perpetuating a culture which accepts these practices. LFJL stresses the need for awareness-raising to inform Libyans about the meaning of torture and its repercussions. LFJL also calls on the Libyan government to take back militia-run facilities under its control, not just nominally but practically. The conditions in which people are detained must improve to meet international human rights standards. LFJL also urges the Libyan government to pursue those responsible for these acts.

Law 38 of 2012 which grants amnesty for abuses committed in the name of the revolution does not specify whether torture and other international crimes are intended to be covered by this amnesty. Although a law criminalising torture was adopted this year (see above), Law 38 might make this law ineffective in combating torture as a result of uncertainties regarding its applicability. Lawmakers must revise Law 38 to remove this amnesty to establish beyond doubt that there is no impunity for torture or other human rights violations in Libya.

Statement: [The new Libyan Law Criminalising Torture, Enforced Disappearances and Discrimination: A first step, but more is needed](#)

Judicial system and impunity

In light of the prevailing security situation and the *de facto* authority exerted by armed militias, the Libyan judicial system remains weak. Thousands of detainees accused of having supported or fought for the former regime remain in detention – most without charge or trial. Further, the judicial system needs to break away from the rhetoric of revolutionary legitimacy and hold perpetrators to account for their actions and not based on their perceived loyalties.

Moreover, the absence of a strong and functional criminal justice system in Libya continues to allow armed non-state actors to exploit these gaps and roam unchecked. There has been a marked increase of attacks on prosecutors and judges further undermining the rule of law. This year three senior judges have been assassinated: Mohammed Naguib Huwaidi, Murad Alarouby and Humma Aljawi. The alarming rate which these attacks have taken place signify a great threat to the establishment of rule of law. LFJL calls for greater protections for the legal community who have the responsibility to rebuild Libya's fraught judicial system. LFJL also warns that if lawyers and judges are not protected it sends a message that violence is above the law. The general amnesty in Law 38 provides some level of impunity for perpetrators.

Statement: [Lawyers for Justice in Libya concerned by attacks on judges and lawyers in Libya](#)

Freedom of religion: destruction of religious and historical sites

⁵ Libya: Refugees, asylum-seekers and migrants held indefinitely in deplorable conditions, <http://www.amnesty.org/en/news/libya-refugees-asylum-seekers-and-migrants-held-indefinitely-deplorable-conditions-2013-06-20>

Attacks against religious sites and religious minorities started in October 2011, intensified in 2012 and are still on-going. Sufi religious shrines have been attacked across the country, several mosques and tombs have been destroyed. Notable attacks this year include the destruction of the Hamid Huderi Shrine in Sebha and the destruction of the Al-Andulusi Mausoleum in Tajoura, Tripoli. The government's failure to stop these attacks or to hold perpetrators accountable has led to their continuation. LFJL urges the Libyan government to honour its obligations to protect the remaining sites and to protect the rights of religious minorities if a culture that genuinely prioritises human rights is to be nurtured.



(Photo credits: Martyr's Square Media)

Statement: [LFJL condemns destruction of Hamid Huderi Shrine in Sebha](#)

Freedom of speech and assembly

Although freedom of expression and assembly has increased significantly since the revolution with hundreds of media outlets flourishing, the government's inability to ensure the safety of persons still hinders free speech. Journalists, human rights activists and judges have especially suffered with direct attacks and threats by armed groups. Article 14 of Libya's Transitional Constitutional Declaration provides that:

"Freedom of opinion and expression for individuals and groups, freedom of scientific research, freedom of communication, liberty of the press, printing, publication and mass media, freedom of movement, freedom of assembly, freedom of demonstration and freedom of peaceful strike shall be guaranteed by the State in accordance with the law."

In practice, however, the application of this provision has been absent. Attacks on journalists have continued and recent cases include the abduction of Mohammed Al-Hashim on 14 September, a freelance journalist working for Shuruq Libya. He was abducted at what had allegedly been described as a military check point. He was tortured by whipping, electric shocked, and burnt.⁶ Media buildings have also been targeted such as shots being fired at Radio Zawiya radio



Image © 2013 Essa Elhitch, Intaj, (First burials following the attacks on 16 November 2013, over 10 victims were put to rest)

⁶ Reporters Without Borders, <http://en.rsf.org/libya-grave-security-problem-01-10-2013,45266.html>

station on 29 September.⁷ Most recently, on 2 December 2013, Radwan Gheryani, the owner and manager of radio station Tripoli FM was murdered.⁸ These attacks threaten the work of media personnel and violate the right to freedom of expression and information.

Furthermore, the attacks on protestors by armed militias last month in Tripoli, Benghazi and more recently in Derna, signify a further threat to basic rights of freedom of expression and assembly. LFJL stresses that it is the responsibility of the state to disband and disarm militias from all parts of Libya. A failure to do so means that such tragic events will be used as a tool to silence opinions legitimately voiced. 'Every group has the right to express their views on any side of the political spectrum; 'Democracy protects the rights of everyone, even those who disagree with democracy,' said LFJL Director Elham Saudi. 'However, views must respect the rights of others and cannot be expressed violently,' she added. LFJL stresses that it is the duty of the government to protect the rights of those wishing to protest peacefully and hold accountable those who prevent that, whether they are official state actors or not.

Statement: [LFJL calls for government response to the deaths of unarmed protestors](#)

Internally Displaced Persons (IDPs)

For more than two years 40,000 Tawerghans have been displaced around Libya, with many being housed between five camps in Tripoli. LFJL stresses that IDPs are entitled to fundamental human rights of self-determination, freedom of expression, safety of person, justice and freedom of movement. During this time, many IDPs were subject to arbitrary and unlawful attacks. Most recently, on 16 November 2013 the Al-Fallah camp in Tripoli, which houses 1,200 displaced Tawerghans, was attacked resulting in one resident being killed and three injured.⁹

Although Tawrghan community leaders on 9 May made the decision to return home peacefully, the government did not show signs of support of their decision at the time to provide safe transit. After seven months, the GNC finally voted for a decision on 8 December 2013 to allow Tawerghan families to return home as well as the creation of a committee that will be oversee this process. LFJL acknowledges this positive step but reminds the Libyan government that such a decision must be implemented quickly whilst ensuring the safety of Tawerghan families. 'Postponing the safe implementation of this decision will result in a daily perpetuation of injustice and will hinder efforts for successful national reconciliation,' stated Saudi.

Libya has yet to sign up to key conventions such as the African Union Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa, the UN Guiding Principles on Internal Displacement and the UN Convention Relating to the Status of Refugees and its Protocol. The Libyan government must show its commitment to protecting the rights of all individuals in Libya during this pivotal phase, by signing on to these critical international treaties, and also in action and policy.

⁷ *Journalists Targeted By Armed Attacks, Abductions*, <http://en.rsf.org/libya-grave-security-problem-01-10-2013,45266.html>

⁸ *Radio Station Owner Murdered Near Tripoli*, <http://en.rsf.org/libya-radio-station-owner-murdered-near-02-12-2013,45536.html>

⁹ *Libya: Displaced Camp Residents Need Immediate Protection*, <http://www.hrw.org/news/2013/11/19/libya-displaced-camp-residents-need-immediate-protection>

Security and Militias

Militias continue to conduct violent attacks against unarmed protestors, government officials, embassies, and ministries, and practice arbitrary arrests and other crimes resulting in more instability and an increasing civilian death toll. Some militias still refuse to disarm and continued to operate without state sanction. The abduction and release of Libyan Prime Minister Ali Zeidan by armed gunmen on 10 October 2013 reflects the extent of the weakness of government authority in enshrining the rule of law.

LFJL recognises recent government efforts to disband a number of these groups across the country. However, LFJL warns that merely relocating militias, who remain fully armed, is not sufficient and not a permanent solution. It has been reported that several militias that were disbanded from Benghazi relocated to nearby Derna and continue to conduct violent attacks. As a result, the Libyan government must implement decisions 27 and 53 of the GNC across all parts of Libya and not be selective in the



Photo: Zakaria Haghegh

process. The government must also take firm steps to disarm all non-state armed entities and hold all individuals within these entities accountable for their actions. This is crucial if the upcoming process of the CDC elections is to take place safely and effectively and if the transitional justice mechanisms envisioned in the Transitional Justice Law are to be effective.

LFJL warns that it is the government's inaction on previous occasions and its half-solutions on disbanding militias that has led to the sense of impunity with which these entities now operate. Failing to disband and disarm militias from all parts of Libya means that such tragic events will be used as a tool to silence any opinions legitimately voiced.

International commitments

LFJL reminds the Libyan government of its international obligations. Following the tragedy of immigrants drowning after departing from Misrata on 3 October 2013, LFJL calls for the Libyan government to take responsibility for its weak border security. The Libyan government must enter into the UN Guiding Principles on Internal Displacement and the UN Convention Relating to the Status of Refugees and its Protocol, and enact domestic provisions to the status of refugees to help create a more legitimate framework to manage immigration. Libya has an obligation to enforce human rights if it seeks to become a country which upholds the rule of law and provide access to justice for the most vulnerable; ignoring this undermines Libya's democratic aspirations.

Conclusion

LFJL acknowledges that there are no quick fixes to the challenges Libya is facing in its path to democracy. However, the Libyan government must take into account that these challenges

interrelate and enforcing ill concerted laws in one area will have adverse consequences in another. LFJL urges lawmakers to create laws that will serve Libya's long-term stability and democratic foundations, as well as calling for a strong state to enforce them. 'On International Human Rights Day, we should be reminded of where we have been and where we never want to be again. The government should apply the law, no matter who the victim and who the perpetrator,' said LFJL Director, Elham Saudi.

Looking forward

LFJL looks forward to a busy year addressing some of these challenges through the introduction of its new key initiatives. These include:

Sawti - which means both 'my voice' and 'my vote' in Arabic, is a project which aims to raise awareness of the importance of freedom of expression and build the capacity of key stakeholders to engage on this right.

Anti-Torture initiative - In partnership with international organisations, LFJL will be launching a series of activities aimed at tackling Libya's legacy of torture.

'Every Right' In the Private Sector - is a project which intends to promote the human rights of women, particularly those relating to labour and equal treatment within the workplace.

The Strategic Litigation and Legal Advocacy Initiative- Lofty human rights ideals are too often drafted into constitutions but never integrated into the lives of ordinary people. LFJL proposes a grassroots practical initiative which will support the rule of law. This initiative will reach out to lawyers, civil society and citizens across the whole of Libya, with the goal of making human rights a tool in the hands of the people so that Libya becomes a more just and equitable society based on the rule of law.