



Libya: law(s) and disorder

by Florence Gaub

With Libya descending deeper into violence, and now run by two governments and several hundred thousand militiamen, the country's situation is dire. The proposals for its salvation are equally bleak: currently they range from direct foreign military intervention to the delivery of arms to bolster rival factions.

Seemingly split between Islamists and secular forces, between Tripoli and Tobruk, and between east and west, Libya appears close to political bankruptcy. Its internecine struggles, however, are less to do with ideology or geography: they are, to a large extent, about power. In other words, who will run Libya in the future – and who might be permanently excluded.

Legalising exclusion

At the heart of the current political turmoil lies a law which was adopted in May 2013 by the General National Congress (GNC). The Political Isolation Law (PIL) – or 'deqaddafication law', as it is also known – bans anyone who held official positions under the previous regime between September 1969 and late October 2011 from public life. Professions which are now blocked to these individuals exist in virtually every government institution, but the law also bars them from leadership positions beyond the state sector, such as in the media, political parties or universities. In the armed forces, it discharges any person who ever served in a position of command.

Such laws which exclude certain people from state institutions are often implemented in societies emerging from profound political or regime change: Germany after the end of Nazi rule, South Africa following the collapse of apartheid, and post-Saddam Hussein Iraq all passed legislation to this effect. In theory, lustration laws are designed to bring a country to terms with years of authoritarianism by creating a legal basis for reconciliation and establishing a transparent and just political system.

In the case of Libya, however, the PIL has instilled a culture of vengeance, fostered substantial political instability, and caused the collapse of several state institutions. It has also been misused to facilitate human rights abuses and hinder the democratic process.

Legal points of contention

As far as lustration laws go, the Libyan PIL is one of the most extreme examples. For a start, it does not differentiate between those individuals who committed human rights violations and those who merely worked in administrative roles. As such, it goes against all legal principles by applying collective punishment rather than allowing for alleged crimes to be dealt with on a case-by-case basis.

The law also does not distinguish between those who at some point chose to oppose the regime and those who never did. As it extends to the end of October 2011, it criminalises both General Haftar,

the Tobruk-affiliated leader of a loose nationalist alliance (who went into exile in 1990 following several years in Chadian captivity), and Mohamed Magarief, the first permanent chairman of the GNC (who defected from his post as ambassador to India in 1981 to found an opposition party).

It also penalises individuals who switched sides early in the revolution, such as Mustafa Abdel Jalil – minister of justice under Qaddafi and chairman of the National Transition Council (NTC), he was the first official to resign during the conflict – and Mahmoud Jibril, head of the National Planning Council under Qaddafi, interim prime minister following the fall of the regime and now head of the largest political party, The National Forces Alliance.

Finally, the law also disqualifies anyone who adopted a ‘hostile position’ towards the 2011 revolution, ‘glorified’ the Qaddafi’s rule or ‘used religion’ to support the regime. With regard to the latter points, it not only restricts freedom of expression, it also creates broad, sweeping conditions for the potential exclusion from public life.

Practical points of contention

In countries with small populations like Libya, effective political leadership – scarce to begin with – is particularly hard to find following regime change. Depleting the pool of potential workers through a law like the PIL – more than one third of state employees stand to lose their jobs – therefore risks effectively hollowing out state institutions. In practical terms, this loss would be unsustainable. In the armed forces, for instance, law-makers had trouble replacing the chief of staff, General Mangoush, as his successor was not allowed to have had any command experience. This is absurd given that in most countries such a post must be filled a highly-experienced officer.

While the exact figures are unknown, it is believed that the PIL, if applied to the letter, will affect some 500,000 people at least. To put the law into perspective, 3% of Germany’s post-1945 population were touched by denazification measures (and half of these people were granted amnesty within a few years), and 5.4% of Iraqis were affected by deBaathification.

Deqaddafication, however, will have an impact on 8% of the wage-earning population. Given that 75%–80% of jobs in Libya are government positions, this law effectively condemns the individuals in question to a life of poverty. In a patriarchal

society like Libya’s, where on average five individuals depend on one wage earner, this means that more than a third of society (some 2.5 million people) will feel the knock-on effects of the law.

A closer look at secular grouping in Tobruk (Operation Dignity and the House of Representatives) and the Islamist camp in Tripoli (Operation Libya Dawn and the General National Congress) reveals that the two competing sides are divided by more than just ideology. The former group largely consists of individuals who will be affected by the PIL regardless of their actions during the Qaddafi era. The latter, meanwhile, is mostly made up of political actors who emerged after the ousting of Qaddafi, including various militias and Islamist forces.

The PIL, therefore, is set to create a large pool of potential spoilers – all willing, and able, to throw a spanner in the works of the new system.

Other ways to go

Transitional justice does not have to be draconian. Examples from elsewhere show that other options are available in the pursuit of a new, just political order. Systems where individuals can choose between resignation or confessing to past deeds (as in Hungary), where a ‘second-chance’ principle is applied following an admission of guilt (as in Poland), or where amnesty is granted upon a full disclosure of any crimes committed (as in South Africa) have all proven to be less disruptive to the functioning of a state.

Although the Tobruk-based House of Representatives revoked the PIL in February this year, it did so without offering any alternative solutions of how to ensure political transition. Simply repealing the law is not enough: Libya needs to come to terms with its past through some form of due process. This does not mean, however, that the management and efficiency of an already struggling state should suffer further, nor does it require swathes of the population to be punished collectively on the basis of association alone.

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