

**TRANSATLANTIC
LEADERSHIP
NETWORK**

JUDICIARY REFORM IN LIBYA

**Tuesday, May 4, 2021
Washington, D.C.**

Introduction

On May 4, 2021, the Transatlantic Leadership Network hosted a virtual conversation entitled “Judiciary Reform in Libya.” The discussion was held in Arabic and is now available with English subtitles on our [YouTube channel](#) and on our [website](#).

Participants examined the state of Judiciary in Libya, providing valuable thoughts on the best paths toward a fully independent and functional Judiciary system in a debate that took two hours. This newsletter contains some key points mentioned.

Participants included:

Dr. Al-Kouni Aboda, Senior Legislative Expert

Dr. Taha Bara, Assistant Professor, University of Tripoli; Member of Union Committee; former Spokesman for the Attorney General

Dr. Zahi Mogherbi, Professor, Emeritus of Political Science, University of Benghazi

Dr. Ali Abusedra (moderator), Research Fellow, University of Hull (UK)

Panel Conversation

Dr. Ali Abusedra

Research Fellow, University of Hull (UK)



One of the key reasons behind the February 17th Revolution was to overthrow what is known as individual totalitarian ruling. There was a need by the people to be ruled by law under a justice system that guarantees security and stability. This explains why all of the Constitutional Declaration drafts presented to the Transitional Council contained Articles with regards to judicial independence.

Are our actions and behaviors about the judicial system less than what we have pledged?

There were clear indications of judicial subservience and lack of independence throughout the period of individual totalitarian ruling, or what was known as the “September 1 Revolution,” or the period of individual (Gaddafi) ruling, in form of people’s courts, court martials,

and revolutionary courts. In short, we can say that these judicial systems were parallel, and their purpose was to assert control rather than achieve justice. This control led to the judiciary losing its status and its independence, thus causing deterioration in all areas of life.

Therefore, reform is inevitable. It must include all of the main axes associated with the judicial system in Libya, starting with the Superior Committee of Justice, where there is a need for reform in terms of composition.

When it comes to judges, excluding executive authority from composing the committee is proposed. It is preferred to have elections in between the judges from all types of courts, achieving gender equality, with other authorities consulting the committee when it comes to creating regulatory legislation.

Also, the budget is one of the things that guarantees judicial independence. Talking about this is very important to guarantee such independence. The other axis is the judicial system itself, in terms of selecting judges, training, teaching, etc., that in the case of lack of independence could be used to blackmail and depart from the principle, judicial accountability and examination, as well as court martials and their specialties.

Libya has failed in fulfilling any of its international obligations. One of the

significant international principles is that of judicial independence, which is our subject of discussion today. Having an independent judicial system is not a luxury, it's imperative to protect and respect human rights. It is also the basis of any desired civil state. Libya has joined several human rights charters, such as the Arab charter and the African Charter, but its execution and fulfillment of its obligations under these charters is far less than what is stipulated in them.

Dr. Al-Kouni Aboda

Senior Legislative Expert



Not to defend but to be fair to the previous regime, reform attempts started back in 2010, or maybe before that in 1994, when the legislator restored private law firms into the field. I believe this was an attempt towards justice reform. After that, the people's court got abolished, which formed an unusual type of judiciary.

Committees were formed in 2020, and I am honored to have had the opportunity to lead a couple of them, including The Judicial System Law Committee and Procedure Law Committee, among several other committees on criminal procedure and penal and civil law.

It started under what was called **Libya Alghad**. We worked in the Supreme Court, considered to be technocrats but had nothing to do with **Libya Alghad**. Another thing to mention is that Libya knew constitutional judiciary since it was the Kingdom.

I think Libyans must know that all citizens have the right to challenge any law that violates the constitution. This is not the product of the Gaddafi regime, it existed since the independence in 1953.

The Constitutional Declaration came with important steps: emphasis on the independence of the judicial authority, confirming the right to fair trial, and ensuring the rights to the defense. All of this was embedded in the Constitutional Declaration and therefore, I must say Libya from a purely legislative point of view, it is not lacking and rights are indeed guaranteed.

After 2011, the Ministry of Justice was excluded from composing the Superior Committee of Justice. At that time, we thought it was a positive step, but later on legislations allowing judges to participate in elections were drawn.

I think the negative impact of the past regime is not done yet; judicial bodies are still perceived as if they form the judicial authority as a whole - while judiciary is independent from all these bodies, such as Public Advocacy and Department of State issues, and Department of Law etc. We must reconsider this. The Constitution draft fixed this issue, meaning that it drew a narrow meaning of the Judiciary, only

including judges, courts, and the Public Prosecution office to some extent as it was traditionally part of the Judiciary.

After the issuance of the Constitutional Declaration, the Judiciary is no longer a subsidiary to any other authority; the Ministry of Justice has no reign over it anymore.

If we look at the internal formation of departments in The Ministry of Justice, we will find that 90% is headed by judges. The Minister of Justice is now a female judge, and most heads of departments are judges also.

The apprehension of keeping the budget of the Superior Committee of Justice under the Ministry of Justice is out of place; because the salaries of these judges are guaranteed, they now are gaining very high salaries in comparison with other employees. University professors for example, gain about half of what judges do even though we are the ones that teach them, but we deserve way less in salaries.

Dr. Taha Bara

Assistant Professor, University of Tripoli
Member of Union Committee
Fmr. Spokesman for the Attorney General



Through the previous recounting by Dr. Al-Kouni, we see that we do have enough legislation and regulation that guarantee the independence of the Judiciary. But after the 2011 Revolution, we started witnessing the usage of the term “*reformation of the Judicial system in Libya*”, used in a chaotic manner, giving notion that the judicial system is corrupt.

The bill proposed for reformation at that time states several procedures that affect judges in their personal capacity, rather than reforming or developing a legislative system. The Superior Committee of Justice could not enact the bill as it was inapplicable with so much retaliation towards the judicial system. The judicial system was carrying more than it could bear; it carried all of the security and the legislative issues.

Public prosecution is a judicial authority that is part of the Superior Committee of Justice, in addition to other bodies such as the department of lawsuits, department of law, and the department of public advocacy. The Public Prosecution in Libya is operating well, but it needs improvement. It is not perfect in Libya and it is not perfect in other countries as well.

I have worked in difficult situations in the Public Prosecution. We had to work more than what the law assigned us with. We had to conduct criminal investigations on our own and to inspect crimes scenes to prepare case files. We made up cases out of nothing; our jobs became like police officers. We take in

reports and open investigations, gather evidence, and refer to court. Crime rates were increasing in quality and in quantity.

The tasks entrusted to the Public Prosecutor's Office exceeded its capabilities. The Public Prosecution is blamed by society - the society thinks that the Public Prosecutor's Office is responsible for implementing law or applying it. That is not true. The Public Prosecution is a judicial authority that is assisted by law enforcement officers in securing or enforcing its orders.

This is a big problem in Libya due to the lack of a Ministry of Internal Affairs that can enforce the Judiciary rulings, whether they were subpoenas or arrests. In addition, the international community is refusing to deal with the Judicial system in Libya due to the political situation and because we don't have full control over all detention centers. Doors have been closing little by little in dealing with the Interpol or other Public Prosecutor Offices in other countries since 2012, and now they are completely shut. Therefore, I don't recommend applying reform in its general meaning, but I recommend developing the Judiciary and its components, revitalizing it, starting from the academic preparation in the Schools of Law, and later at the Higher Judicial Institute. During the working stage, Judges need more training and intense technical training.

Today Public Prosecutor's Office faces a huge problem: specialization. Many members of the Public Prosecution are

working on medical liability cases and in 7 or 8 months they'll be working in financial crimes, then housing and utilities and so on. The specialization issue today is vital. We have so many financial cases before the Public Prosecutor's Office, and the judges now need to be specialized and trained to investigate. We are finding it difficult to investigate, to collect evidence and take witness statements since crimes in Libya are now organized and committed by educated white collar people, particularly in respect to banking and financial crimes.

Dr. Zahi Mogherbi

Professor Emeritus of Political Science,
University of Benghazi



I think one of the most important issues we must focus on when speaking about independence and Judiciary reformation is the principle of separation of powers, as well as the relationship between the Judiciary and the Legislative and Executive authorities, that guarantees the independence of that authority to achieve Justice and the Rule of Law.

But the problem in the independence issue is not just a matter of legislation. We might have the written texts, but

alongside practice, there is a huge issue we are facing in general but especially between officials and elites - the culture of lawfulness that is absent to a large extent in Libya, even between government officials. They ignore legal provisions, they ignore judicial rulings, they ignore constitutions and laws, and only respect the law if it suits their intentions. If it doesn't suit them, they will no longer respect it and they will fight it.

Let me give you an example; it's a little bit old, but it shows how the culture of lawfulness have been lacking for a very long time. You all remember the case of the Executive Council in Tripoli 1954, that was dissolved by a royal decree. And when the Federal Supreme Court ruled that the decree is unconstitutional and reinstated the Executive Council, the government enforced that ruling which is one of the pros of that regime. Yet the riots that were out at the time cheering "Down with justice". The culture of lawfulness is very important, and we must shed light on it. As Dr. Taha mentioned, it is in our nature to personalize everything. That is a huge problem.

I was hoping Dr. Hadi would be with us because I have an important question regarding the constitution that I wished to ask him. In the Draft Constitution, Article 109 mentions the case of a disagreement between the head of the executive authority and the legislative authority. The article states: "*Procedures for dissolving the legislative authority: The President of the Republic, based on good reasons related to obstructing the*

State's public policy, development plan, or disrupting the budget without real justifications, or violating the provisions of the constitution, may present the dissolution of the Senate or the House of Representatives (Hor) in a public referendum."

They disagreed on matters of public policy; the President proposed a budget that the Hor refused. Let's go to a referendum and make the public decide whether the Head of State or the House is right. But what are the conditions listed? The first condition "*The President of the Republic must refer the reasons and justifications to the Constitutional Court; to give its advisory opinion regarding the severity or propriety of the reasons, or violations to the provisions of the constitution.*"

I believe this is a huge mistake. The Constitutional Court has nothing to do with public policy. The disagreement between the executive and the legislative authority in regard to public policies such as implementing a certain economic plan or a security plan in one way or another, shouldn't be the Constitutional Court's problem. The Constitutional Court only rules on the constitutionality or the legality of laws and regulations issued by the HoR.

But in this case, there were no laws or regulations issued; the parties are still disagreeing on a public policy issue. I don't think the Constitutional Court should interfere in such cases.

The Panel



Clockwise from top left: Dr. Ali Abusedra, Dr. Zahi Mogherbi, Dr. Taha Bara, Dr. Al-Kouni Aboda

About the Transatlantic Leadership Network

We are a nonpartisan international network of practitioners, private sector leaders and policy analysts dedicated to strengthening and reorienting transatlantic relations to the rapidly changing dynamics of a globalizing world. Through field activities, “policy rides,” foresight initiatives, futures scenarios, seminars, conferences, and policy briefs, we engage government officials, parliamentarians, journalists, business executives, scholars, and other thought leaders on contemporary challenges to the United States, Europe, the Middle East, and the Gulf.

The Transatlantic Leadership Network is a Washington, D.C. 501(c)3 nonprofit corporation.

About the "Next Generation: Emergent Leaders in Libya" Platform

The “Next Generation: Emergent Leaders in Libya” platform support efforts toward institution-building and reconciliation in Libya. It aims to inspire larger civic participation in Libyan communities and create a network of young emerging leaders committed to work to support, develop and promote: collective action and teamwork; reconciliation within the country; reparations for victims of war; and building of the Libyan national identity.

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