

Trial by Error: Justice in Post Qadhafi Libya International Crisis Group 17 April 2013 There are many necessary cures to Libya's pervasive insecurity, but few more urgent than repairing its judicial system. Qadhafi-era victims, distrusting an apparatus they view as a relic, take matters in their hands; some armed groups, sceptical of the state's ability to carry out justice, arbitrarily detain, torture or assassinate presumed Qadhafi loyalists; others, taking advantage of disorder, do violence for political or criminal aims. All this triggers more grievances, further undermining confidence in the state. Breaking this cycle requires multi-pronged action: delivering justice to former regime victims by reforming the judiciary and kick-starting transitional justice; screening out ex-regime loyalists guilty of crimes while avoiding witch-hunts; and reining in armed groups, including those operating under a state umbrella. Unless there is a clear message – the justice system is being reformed; no violence or abuse, done in the past by Qadhafi-era officials or in the present by armed groups will be tolerated – there is a real risk of escalating targeted assassinations, urban violence and communal conflicts.

It has been well over a year since Qadhafi's regime was ousted and still there is no functioning court system in many parts of the country, while armed groups continue to run prisons and enforce their own forms of justice. (...)

The situation has been complicated by the proliferation of armed groups. Distrustful of the Qadhafi-era judiciary and police, frustrated by the slow pace of trials against former officials, facing state security forces in disarray and emboldened by their new power, so-called revolutionary brigades – and, at times, criminal gangs posing as such – have been operating above the law, hindering the work of investigators and judges. They all at once assume the roles of police, prosecutors, judges and jailers. Armed brigades create investigation and arrest units; draft lists of wanted individuals; set up checkpoints or force their way into people's homes to capture presumed outlaws or people suspected of aiding the former regime; and, in some cases, run their own detention facilities in their own headquarters, isolated farms or commandeered former state buildings. Thousands of individuals are in their hands, outside the official legal framework and without benefit of judicial review or basic due process. Assassinations and growing attacks against government security forces have further darkened the picture. (...)

Underlying this state of affairs are two conflicting views of both the source of the problem and the nature of its remedy. Some – Prime Minister Ali Zeidan's government among them – view the armed groups as a principal cause of growing violence; they advocate their disbandment or absorption into the official security apparatus and the transfer of detainees under their control to the state judiciary. Others, including the brigades themselves, view the armed groups' activity as necessary in light of defective state institutions and continued sway of Qadhafi-era officials. These competing narratives translate into divergent approaches to the judiciary: between the government's cautious approach to weeding out former officials on a case-by-case basis and the brigades' call for root-and-branch dismissal of all presumed loyalists. To many Libyans, frustrated by how little appears to have changed, the latter view undoubtedly carries appeal.

(...)

Given this, it is a credit to Zeidan's government, appointed in November 2012, that it is trying to buck the tide. He and his justice minister have announced a policy of zero-tolerance toward arbitrary detention or revenge assassinations and made it a priority to transfer into state custody thousands of arbitrarily detained individuals. State security forces have emptied several illegal detention centres in the capital and the legislature passed a law criminalising torture and abductions.

It is very much a work in progress, though, and the balance of power does not clearly tilt toward the government. If not carefully managed, and in particular if legitimate grievances regarding the sluggish pace of justice for Qadhafi-era crimes are not addressed, a confrontational approach toward the brigades could well backfire. There is evidence already: the justice ministry and prime minister's office have come under attack, and armed groups threaten to take over prisons currently under government control.

Getting this right will entail a form of political multi-tasking. The government will have to provide visible signs that it is addressing shortcomings inherited from the past in order to restore confidence in the justice system and security forces. Criminal prosecutions against high-ranking Qadhafi-era officials are an important step, but they will not suffice; what is needed is a more comprehensive transitional justice process that, in addition to criminal trials, includes appropriate vetting mechanisms for former regime loyalists and truth commissions. At the same time, armed groups – even those hailed as heroes of the uprising – will need to be held accountable for their actions as well; justice for victims of yesterday's crimes must go hand-in-hand with justice for victims of today's. (...)

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