

LIBYA: THE CONTROL OF LAWYERS BY THE STATE

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1. THE CONTEXT: LIBYA'S LEGAL SYSTEM

In the aftermath of the September 1969 military coup led by Mu'ammarr al-Qaddafi and other young officers, Libya was declared an "Independent, Socialist, Democratic Arab Republic".¹

Qaddafi and his group formed a Revolutionary Command Council (RCC), which was vested with all Legislative, Executive, and Judicial powers according to the Provisional Constitutional Declaration announced on September 11, 1969.

That document served as a power-base for the regime until March 2, 1977, when Qaddafi announced the "Declaration of People's Authority"- a type of political structure founded on his "Green Book", which called for a new "Universal Theory" that is supposed to provide a substitute for and inherit both capitalism and communism.

The Constitution:

The Provisional Constitutional Declaration, was for a long time the only official document specifying the constitutional set-up of the country. It has never been repealed officially, though on March 2, 1977, Qaddafi announced the "Declaration of People's Authority". Accordingly, these two documents could be viewed as the constitutional literature available for study. However it is important to note that some Libyan jurists argue that the philosophy of their system rejects the principle calling for codification of constitutions².

The earlier document stated that " Power vested on its [Libya] People,who are an integral part of the Arab Nation, their goal being to achieve a comprehensive Arab unity"-Article 6.I. It was stated that private houses enjoy sanctity and should not be entered or searched except in cases provided for by law (Article 12). Nonretroactivity of law,the principle of personal liability, presumption of innocence, the right to provide the accused with all means of defence, and the prohibition of torture, bodily, or mental injury, were provided for (Law No. 6/1982). The RCC,as mentioned earlier,vested itself with power of legislation,

¹ Article (1) of the "Provisional Constitutional Declaration" issued by RCC on Sept. 11, 1969.

² See Abu Touta, Abderrahman Moammed "Protection of Human Rights In Libyan Procedural Law and its Applications." A paper submitted to "Conference on the Protection of Human Rights in Codes of Criminal Procedure of the Arab World" Arranged by the International Institute for Criminal Studies-Seracuse Ital, and the Egyptian Society of Criminal Law . Cairo Dec.16-20, 1989.p.3

sovereignty, and head of state. Its acts were made completely immune and could not be contested before any judicial tribunal (Article 18). It also stated that it should remain in force until a permanent constitution is passed and that it could only be abrogated or amended by the RCC itself.

Since it was never abrogated or amended, the plight of this document, seen in the light of the subsequent developments, is still unknown and open to juristic controversy.

The other document, the " Declaration of the People's Authority" did not refer to " Provisional Constitutional Declaration". Instead, it tried to provide for a new and different political order. It is seen as an introduction to the "Green Book", which is supposed to be the grand reference for all jurisprudential and philosophical issues. The consists of a preamble and four sections³. The first section stated that direct popular authority is the base of power in the country and that people exercise their authority through "People's Conferences", "People's Committees", trade unions, trade union federations, and professional associations, all of which meet at the "General People's Conference". The second section provided that "Quran should be the law of the Libyan Arab Society" and that, according to the Green Book, Quran and custom should be the foundations of the Libyan legal system.

By Law No.6/1982, the Libyan Supreme Court was denied the power to decide on matters of constitutionality of laws and so no judicial power has to question any legislation.

The Rights of the Accused in Libyan Procedural Laws:

International Law consistently made it clear that the protection of the rights of accused persons needs inter alia that the law enforcement authorities be qualified, well-defined, monitored, and independent of interest. The reason is that these law enforcement authorities , whether termed police or otherwise, greatly affect the status of Human Rights in the absence of checks and balances that tend to limit their powers.

To achieve those ends, the Guidelines for the Effective Implementation of the Code of Conduct for the Law enforcement Officials adopted by UN Economic and Social Council (Resolution 1989/61), stipulated in Article 2 of its General Principles that " In order to achieve the aims and objectives set out in article 1 of the Code of Conduct and its Commentaries, the definition of 'law enforcement officials' shall be given the widest possible interpretation."

³ Abu Touta p.4

Article (1) of the Code of Conduct for Law Enforcement officials adopted by UN General Assembly -Resolution 34/169, defined the term " Law Enforcement Officials" as to include " a-all officers of the law, whether appointed or elected { b- whether uniformed or not}, who exercise police powers, especially powers of arrest or detention"

Caracas Declaration adopted by UN General Assembly -Resolution 35/171 made it mandatory that "Member states should ensure that those responsible for the functioning of the criminal justice system at all levels should be properly qualified for their tasks and should perform them in a manner which is independent of personal or group interest."

As will be noticed from the following discussion, it is evident that the Libyan government is acting in complete neglect to those principles . Police force is established in a way as to incorporate political supporters of the regime who lack any sort of training. Furthermore Libyan law endowed policemen with vast powers which are left virtually unchecked by judicial supervision.

To illustrate these accusations let us explore Libyan law and try to determine our accusations on the light of abovementioned principles.

Article (13) of the Libyan Code of Criminal Procedure (CCP) stipulated that the police corporation should consist of the following:

"i] Policemen, including, police officers, Guardsmen Force, and Municipality Guardsmen.
ii]Heads and mayors of townships (Secretaries of People's Committees in Townships), and Sheikhs of villages, should enjoy the powers of a police commissioner."

It should be noted that the above article made the composition of the police force as wide as to include people who are not members of any regular force. Secretaries of People's Committees and Sheikhs are members of the ruling organization and therefore they are not expected to have the theoretical neutrality or training of a police force. This poses a genuine threat to the rights of accused persons if we keep in mind the wide powers vested on the police force which will be discussed latter, specially if the offence in question has a political or a tribal bearing.

Law No. 6/1972 the " Police Corporation Act", placed the police force under the administrative control of the Ministry of Justice and the direct supervision of the Public Prosecution.

The police (within the wide meaning referred to above) has power to arrest any person against whom there is strong evidence (Article 24 CCP). The definition of what constitutes strong evidence, is left to the discretion of the individual policeman. No warrant of arrest is needed from a judge or office of Public

Prosecutor to carry out that arrest (Article 25 (a), (b) CCP). Police can even search the person of an accused and /or his dwelling (Articles 35, 36, 37 and 38), and seize any documents, weapons, instruments, or any other objects which he might deem necessary for the disclosure of the facts of any particular offence (Article 43 (a), (c)). No warrant is needed to take these measures.

Besides these wide powers, which do not conform with international standards Libyan law tends to protect the police against prosecution by the public. A permit from the minister of justice must be obtained prior to the commencement of any proceedings against a police officer (Article 102, CCP). No remedy is provided for by law against acts or forbearance of a policeman done in excess of his powers. Investigation should be conducted by the Public Prosecution as a general rule, but judges may be authorized to carry out on ad hoc basis an investigation or a magisterial inquiry (Article 127 CCP).

If a case is transferred for magisterial inquiry, upon an application being filed by the accused or Public Prosecution to the competent court, the authority initially investigating the case should refrain from taking any further measures with respect to that case.

Police can initiate any proceedings, such as investigation, arrest and search, without prior authorization (Articles 24, 31, 36, 37, and 38 CCP). According to Article 107, an Investigator (policeman or member of Public Prosecution) is empowered to issue an order of arrest addressed to any person to arrest an accused. This wide power seems to be slightly limited by Article 111, which states the conditions under which that power should be exercised:

- " a) If the accused person, although duly summoned, did not present himself before the investigator.
- b) If there is reasonable fear that the accused person will flee, even if he hadn't been summoned before.
- c) If the accused is caught in flagrante delicto. "

Article 115 of the CCP empowered the Public Prosecution, inquiring magistrate, divisional court magistrate, or the competent court to issue decrees for the preventive detention of any accused person. Such decrees are not subject to appeal and the accused person cannot claim any compensation or other remedy if his innocence is later proved. But if such accused person is sentenced to imprisonment, the period he spent under preventive detention should be deduced from the period to which he sentenced (Article 441 CCP).

Bail is provided for in Article 126, which also prevented the imposition of excessive bail.

The right to be confronted by prosecution witnesses and to cross examine them is granted to the accused by Article 249 of the CCP.

Although Article 241 provided for the right to a public hearing, that right is restricted by an overriding clause: "except in cases involving morality or public order". No clear definition to 'public order' is offered by the law. The same Article made it a condition that a verdict should only be passed publicly.

For some undisclosed reason, and in contravention to one of the most well known fundamental rights, the Libyan CCP stipulated that default decrees in criminal cases and decrees in felony cases are not subject to appeal. As a general rule, Libyan law overlooks the right of appeal and only one chance of appeal is usually allo

The Courts in Libya

Although Qaddafi stated in his public speeches since 1988 that special courts will be abolished, yet they continue to exist and to perform the role assigned to them by the political organization⁵. The regime continues to neglect the International Law in this important area i.e. the independence of the judiciary. Basic principles on the Independence of the Judiciary adopted by UN on May 24, 1989 Stated that " 5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedure. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals."

In 1980 Qaddafi's regime set up "Revolutionary Courts" staffed by militant supporters with no legal training . Those courts tried people who were suspected of economic profiteering and did not follow any pre-determined procedures. Their hearings were carried by TV and other mass media, and the accuseds were denied the right to legal representation. Although those courts passed moral sanctions only , they enjoyed full powers of interrogation and inquiry. In many instances those courts acted in excess of their mandates and passed harsh sentences against individuals who were political opponents rather than economic profiteers. In 1986 some fundamentalists, including soldiers were publicly executed after they had been convicted for treason by a 'revolutionary

⁴--See, al-Haggani, Ahmed al-Sadik "Human Rights in the Codes of Criminal Procedure---Libyan Legislation". A paper submitted to conference on the " Defence of Human Rights in the Codes of Criminal Procedure in the Arab World" Cairo, Egypt Dec. 1989, Vol.2.

⁵ See amnesty international's " prisoner concerns in the light of recent legal reforms" June 1991 p.10

court'. The same year 35 people were tried by one of those courts in Benghazi, charged by murder of some members of Revolutionary Committees. On February 17, 1987 six men were hanged and three soldiers were shot dead by firing squads in Benghazi after summary trials by those courts.⁶

On June 1989, the "General People's Conference" (GPC) issued a document defined as the "Great Green Charter of Human Rights in the Era of the Masses". This document and the circumstances under which it was issued will be discussed later. What is important here is that a special "People's Court" was created to enforce that document, by virtue of a law passed by (GPC) on May 12, 1989. According to Article (1), that court was established "...to consolidate freedom, do equity to the wronged, forbid arbitrariness and tyranny, and strengthen the foundations of justice and peace". Article 9 empowered the court to be the only tribunal with jurisdiction to decide on cases involving decisions and proceedings that violate freedoms of the citizen or his basic Fundamental Rights. Panels of that court were established according to the jurisdictional division of the country. It was staffed by laymen from among the members of the "Revolutionary Committees".

Such a political tribunal was endowed with wide powers usually reserved for the top of the hierarchy of every judicial system. "Revolutionary Committees" are a subordinate affiliate of the (GPC), and it is left for the members of those Committees (who are accountable to the committees) to supervise the decisions of the whole political mechanism!.

As referred to earlier, the Libyan Supreme Court was denied the power to determine matters relating to the constitutionality of laws, by law No. 6/1982 and therefore the custodian of Fundamental Rights of citizens is the abovementioned "People's Court". If we recall that there is no constitution other than the "Green Book", then the state of lawlessness is obviously clear.

2. THE EROSION OF THE INDEPENDENCE OF THE LEGAL PROFESSION

For many years the Libyan Bar Association retained a relatively independent status. It enjoyed membership in some regional and international organizations, such as the Arab Lawyers' Union and the International Association of Democratic Lawyers. In the absence of any human rights organization in Libya, it tried to play that role and defend victims of persecution. On January 7, 1981, Qaddafi repealed the Libyan Advocacy Act (Law No. 82/1975), thereby launching an unprecedented campaign which deprived the Libyan Bar of any independence. In his statement announcing the

⁶ See Amnesty International's Annual reports 1986 and 1987.

event, Qaddafi accused Libyan lawyers of seeking their private interests and accumulation of money which "do not conform with the socialist transformation of the country". Instead, Law No. 4/1981 was introduced. This law was composed of two distinct parts. The first part (8 Articles) dealt with interim measures and the second part (124 Articles) dealt with the formation of a Bar Association. This law was termed as " Popular Advocacy Administration Act", also known as " Autonomous Administration of the Bar Act." Article 7 of the first part stated that a provisional committee should be formed by the Secretary of Justice at the General People's Committee (minister of Justice). That provisional committee should call for the meetings of the "Basic Professional Conferences", that is, all the lawyers within a district court's jurisdiction. It should also determine the date of the first session of each of those Basic Conferences, the date of convening of the first "General Professional Conference", (that is, all the lawyers in the country) , and to call upon that general conference to choose the members of its "Secretariat."

Article (3) of the second part, stated that " The citizens of Libyan Arab Jamahiriya, shall enjoy and without charge, the right to a defence counsel in criminal cases before all types of courts in the country." This right is limited to Libyan citizens and for criminal cases only. Article (4) stated that " Aliens (other than Arabs) shall enjoy the right to a defence counsel upon their payment of fees prescribed by this law and its Executing Regulations". Arab nationals are granted the right of free legal defence, by Article (5) but subject to mutual treatment by their countries to the Libyans. This privilege for Libyan citizens had been one of the main targets of the regime, but as will be seen later, it was done at the expense both of the independence of the legal profession and the quality of legal services it could provide.

However it should be emphasized that this attitude towards granting free legal services to all citizens facing criminal proceedings is a positive one and should be highly welcomed. It accords with the general directives of international law and the growing claim for making legal assistance available and a government duty⁷. In some other states varying attempts had been made to attain the same and under different jurisprudential grounds.

a. Control of the Bar by the State

To effectuate that strategy, the regime literally 'confiscated' the legal profession.

Article (9) stated that " A Bar Admission Committee should be formed every year and be presided over by the Secretary of

⁷ See UN Basic Principles on the Role of Lawyers.

Justice at the secretariat of the General People's Committee {Minister of Justice} . The Council of Ministers can veto Bar Admission decisions taken in accordance with Article (9) above . That veto was made subject to appeal within 60 days to the competent administrative panel at a court of appeal (Article 13). However this government right to veto Bar admission decisions , should be evaluated in a more global level i.e. the overall government tendency here is to have strong control over the Bar, while modern international law tends to offer it an increasingly autonomous status. The limitations and qualifications made to the exercise of this right by other citizens whether Arabs or no-Arabs is a direct contravention to Article 2 of the Basic Principles on the Role of Lawyers, adopted by the UN which stated that "Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction without distinction of any kind, such as discrimination based on race, color, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status."⁸

Under Article 24 the legal profession could only be practiced through jointly owned law firms. Any practice other than through jointly owned firms was made illegal. Further restrictions were stipulated in Articles 25, 26, and 29 as explained below.

Article 25 stated that " The manner by which jointly owned law firms shall be established and how they shall carry out their administrative or financial work is subject to the decisions of the Basic Professional Conferences according to the procedure laid down by the Executing Regulations annexed to this law".

Article 26 made it clear that "Any law firm shall consist of at least five licensed lawyers and shall include lawyers entitled to appear before all courts including the Supreme Court.No lawyer shall change the office at which he works except for genuine causes and subject to the approval of the Basic Professional Conference." Arbitrariness is clearly evident; even if lip service is paid to the fact that only five lawyers should practice the profession jointly,they are not allowed to choose their colleagues. Their financial and administrative work, together with their right to change their offices, were controlled by the relevant unit of the ruling political organization. It doesn't need any stretch of imagination to think about the difficulties arising from a situation where only four lawyers exist in a certain place or if no lawyer having the right to appear before the Supreme Court is available which is quite likely to happen since the law itself made that appearance subject to various qualifications.

⁸ Underlining is ours.

Article 29 described what the authors of the law meant by autonomous administration of the Bar. It stated that " Lawyers offices shall be managed autonomously by all lawyers working therein and they shall select from among them a secretary and a treasurer to run the office in accordance with the Executing Regulations annexed to this law." From the forms to be used in office work to reception of clients, those Regulations tried to cater to the finest details, leaving no room for uniqueness or uncontrolled transaction. Article 31 emphasized what had been provided for by those regulations and stated that " All law firms shall comply with and use records and forms drawn by the General Professional Conference.."

Even the fidelity relationship known to characterize the legal profession and the right of both sides to choose and trust each other had been denied. Article 30 stated that " A power of attorney given to a lawyer at an office shall be deemed a power of attorney to all lawyers working at that office, jointly and severally."

In many respects, the abovementioned articles do seem at variance with the international law. Basic UN Principles on the Role of Lawyers emphasized this principle of fidelity. Article 1 of those Principles stated that "All persons are entitled to call on the assistance of lawyer of their own choice to protect and establish their rights and to defend them in all stages of criminal proceedings." The same Principle was repeated in mandatory terms in Article 5 which made it a duty on the governments to " .. ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence."

Furthermore the practical implications of those limitations were also numerous. At the beginning some lawyers faced great hardships in trying to readjust themselves to the new system. Many of them who were practicing independently before were randomly lumped up with others about whom they knew little before or with whom they only maintained competitive relations. Some lawyers were forced to abandon the profession and seek other jobs because, in the townships they used to live, they couldn't meet all the conditions set for the establishment of the law firms, especially those relating to the number and quality i.e. that at least one lawyer were to be from among those entitled to appear before all courts including the Supreme Court.

A lawyer from Sabha testified that he and two of his colleagues were forced to accept a partner who was a well-known supporter of Qaddafi with whom he enjoys a kinship. Two lawyers in a al-Zawiya in the western coast claimed that they were forced to abandon the profession and worked as secondary school teachers because they were afraid from the renege of one authoritative person whom they refused to defend on charges regarding

squandering public funds.

A leading figure in the Bar Association of Benghazi mentioned that the law opened the doors wide for corruption and bribery since people used to pay huge amounts of money to members of the BPC so that their cases could be assigned to definite firms or a certain lawyer at a firm.⁹

Article 82 stated that " Lawyers in the Great Socialist Libyan Arab Jamahiriya, shall enjoy a Bar association with a corporate status and head office in Tripoli.

The Secretariat of the General Professional Conference shall be responsible for the steering of all affairs related to the legal profession. It should be selected according to the provisions of this law and its Executing Regulations.

The Secretariat of the Professional Conference shall be composed of a Secretary and twelve other members to be selected and act according to the provisions of this law and its Executing Regulations."

It is clear from the above text that there is no Bar association but a branch of the ruling political organization. It is not just a matter of coincidence that the authors of this law used the term "selected" instead of "elected". In a one-party system like the one prevailing in Libya, there is no room for a free election. The General Professional Conference, which is an integral part of the General People's Conference, selects a Secretariat which is labelled as the Bar Association for the purposes of external use and display to the community.

Article 84 made it even more clear by stating that " The Secretary of the General Professional Conference represents the Bar Association locally and internationally and in cases of his absence the Deputy Secretary General shall assume all his powers."

That General Professional Conference is supposed to be composed of all licensed lawyers in the country, as stated in Article 85. But because of its political nature, the usual formalities relating to quorum are forfeited. Article 88 stipulated that the meetings of the General Professional Conference shall be valid whatever the number of participants, if the meeting is held at time and in the place specified in a previously notified written invitation. In fact, the question of quorum is solved that same way for all lower and higher structures of the ruling General

⁹ Due to fear of persecution, the lawyers referred to requested that their names be withheld.

People's Conference.

To guarantee the subordination of the Bar Association to the political organization, Article 107 provided that the financial resources of the Bar Association shall consist, inter alia, of what is allocated to it from public funds as a reward for free legal defence enjoyed by citizens, and funds for the subsidization of trade union activity.

It is important to note that when this law was first drafted, it didn't contain any provisions about a Bar association, but after many acts of protest by Bar associations and Bar societies worldwide, and especially by Arab Lawyers Union, a delegation of which met Qaddafi personally, that he ordered the inclusion of a Bar Association in the final draft of the law.

International law made it mandatory that Bar associations be independent and autonomous. Article 24 of the UN Basic Principles on the Independence of Lawyers stated that " Lawyers shall be entitled to form and join self- governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference."

b. Financial and Administrative Control

The individual lawyer has no right whatsoever to assess the value of his work in terms of fees. Besides the pre-set schedules specifying the rates to be charged, Article 32 stated that " Notwithstanding the provisions of Article 49 the secretary of the law firm shall be responsible for the assessment of fees, after consulting the lawyer who assumes the particular case, and in doing so he shall comply with the minimum/ maximum limits set in Article 50 hereafter." In all cases fees are payable only if the court which dealt with the particular case decides their payment.

The financial resources of a law firm were further and clearly specified by Article 33 to include the following:

- a) Fees charged to persons who do not enjoy free legal defence.
- b) Fees allotted by court decree in civil suits.
- c) Allocations to the firm made by the General Professional Conference.

The legal profession is transformed into a governmental or at least a quasi-governmental agency. Article 35 states that " Any law firm shall be entitled to a minimum income a decision for which shall be taken by the General Professional Conference and shall be divided among the individual lawyers according to the roll, after deduction of tax and other expenditure ...". Lawyers

are not free to dispense of their income, because Article 34 stated that " The revenues of a law firm shall be deposited in a bank, and disbursement shall be subject to negotiable instruments to be issued jointly by the secretary and treasurer of the firm in accordance with the principles and conditions set provided for in the Executing Regulations annexed to this law." The said regulations impose as many restrictions upon the disbursement of those revenues as to transform lawyers to a wage earning group. Government payment of a minimum amount of money to every law firm is justified by the burden of free legal representation imposed on the law profession. However equitable a justification it may be, it does not recognize the effort exerted by the individual lawyer since the remuneration is divided according to the roll and not according to effort or creativity.

A lawyer from Serte said that he was forced to terminate the education of his elder son who had been studying abroad for years because he could no longer afford to send him money.

Applications for money transfer for medication outside the country used to take months and may be rejected at the end; another lawyer added.

International law prohibited such harassment and economic pressure. Article 16 of UN Basic Principles on the Role of Lawyers stipulated that: "Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hinderance, harassment, or improper interference ; (b)(c) shall not suffer or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."¹⁰

Independence of the legal profession is provided for in clear and unambiguous terms by international law that it could be argued that the Libyan regime is deliberately ignoring its principles. Article 24 of the UN Basic Principles on the Role of Lawyers stated that "Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be selected by its members and shall exercise its functions without external interference."

c. Disciplinary Measures Against Lawyers

Article (45) stated that : " Except in cases of flagrante delicto ,the Public Prosecution shall inform the Secretariat of the Basic Professional Conference before interrogating a lawyer.

¹⁰ Underlining is ours.

In cases of flagrante delicto, the Public Prosecution shall upon its arrest or detention of a lawyer, notify the Secretariat of the Basic Professional Conference within 24 hours from that arrest and the Secretary of the Basic Professional Conference or his appointed deputy shall witness the interrogation. In all cases a lawyer shall not be interrogated except with the prior cognizance of the Public Prosecution."

Although this same law provided for the formation of a Bar Association as will be discussed below, it allocated the rights of the Bar Association to the unit of the ruling political organization. This marginalization of the Bar Association places lawyers under the constant check of the political organs of the regime without any opportunities to resort to an independent body of their own choice, contravening an increasingly observed universal principle. The Article is also obscure. It provides for unspecified cases where lawyers can be interrogated but with the prior notification of the Public Prosecution. Interrogated by whom, and for what type of action, are questions left unanswered. Article 46 stipulated that " Except in cases involving contempt of court, provided for in the Pleading Act or the Code of Criminal Procedure, a lawyer shall not be subject to arrest or detention for defamation, libel or slander for oral or written statements made by him during his exercise of the profession. In those cases a record containing the set of facts that occurred shall be made and a copy of it shall be passed to the Secretariat of the Basic Professional Conference."

It is obvious that the law, while it tried to comply with professional standards by providing for immunity of acts and statements done in the lawful scope of the profession, reserved some undefined punishments or threats by stating that those acts be recorded and a copy of such record be passed to a political organization. However, Article 47 do not provide a sufficient remedy for that threat by stating that " Any act done against a lawyer during his practice to the profession shall be deemed an act against a judge and be punishable as such." Although this may provide protection from attacks by the public, it will not avail the lawyer from harassment by government or its agencies.

Disciplinary measures against lawyers are not the jurisdiction of their voluntarily chosen Bar association, but of an ad hoc committee to be chosen every year by the Secretariat of the Basic Professional Conference. That committee is to be composed of three licensed lawyers eligible to appear before Courts of Appeal at least, and shall be presided over by the most senior, according to the roll. Two other reserve members shall be selected and decisions shall not be taken by this committee unless all its members are present. But upon their presence decisions shall be taken by majority --Article 69. It is not clear how those two reserve members should be selected and whether they have the

right to participate in the meetings of the committee or not. This committee has full judicial powers, including the right to conduct a proper hearing and pass sentences. The punishments such a disciplinary committee is empowered to impose include, warning, reproach, debarring for not less than three months and not more than three years, and dismissal from the roll. A lawyer can be subjected to these penalties even if his activities the profession if what he had done while practicing fall within the jurisdiction of the discipline committee.

The UN Basic Principles on the Independence of Lawyers clearly emphasized the need for neutrality in cases invoking disciplinary measures against lawyers. Article 28 of those principles stipulated that " Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to independent judicial review."

Lawyers are exposed to all forms of harassment and persecution without any protection. It seems that the international standards set by the UN and other international organizations such as the ICJ or regional organizations such as the Arab Lawyers Union, in which Libyan Bar Association enjoys membership, did not mean much to the authors of this law.

International law is also neglected in this important area. It seems that the authors of the law had been deliberately acting contrary to the principles of international law since ignorance of that law could neither be presumed nor does it constitute a valid excuse. Article 23 of the UN Basic Principles on the Role of Lawyers stated that " Lawyers like other citizens are entitled to freedom of expression, belief, association, and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and the protection of human rights and to join form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful membership in a local organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession."

d. Lawyers Barred from Establishing Independent International Contacts

Libyan lawyers are not only denied the right to form an independent Bar association in accordance with internationally observed principles now adopted by UN, but they are strictly forbidden from establishing any contacts with the international professional community. Article 114 stated that: " No lawyer or lawyers shall establish any contacts , direct or indirect, with any other party regarding the profession, save through the Bar

Association. Any contravention to this principle shall be subject to disciplinary measures."¹¹ Therefore if lawyer, for instance, applied for a membership in the International Bar Association (IBA) without the permission of the Bar Association, faces the risk of punishment which may extend to debarring.¹² This contradicts Article 23 of the UN Basic Principles on the Role of Lawyers which states that " Lawyers like other citizens are entitled to the freedom of expression, belief, association, and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization...."

3. ATTEMPTS AT REFORM

Two factors collaborated to compel the Libyan leadership to introduce some reforms. On the one hand, economic crisis increased as the regime tried to control all spheres of economic activity, from import and export to retail. Direct and indirect embargo imposed by Western governments and multinationals contributed to a sharp decrease in oil revenues, therefore forcing the regime to withdraw its earlier policies of subsidization. On the other hand, the continued harassment of the opposition groups led to a situation of internal political unrest, especially if we remember that the regime reserved no enemies left or right.

Those two factors reached their climax towards the end of eighties. The response of the regime was manifold, and it is still trying to introduce certain reforms the depth or superficiality of which is open to question.

a. 1989: Unfulfilled Promises

¹¹-See " Basic Principles on the Role of Lawyers" The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. pp.124-130.The reason why this law is not discussed fully on the light of those principles is that it could be argued that the said conference and UN adoption to its principles took place eight years after the proclamation of the law in question.

¹² See Article 24 of the UN Basic principles quoted earlier.

In June 1989, The General People's Conference was called upon to convene an extraordinary session to discuss and approve a document termed " The great Green Document for Human Rights in the Era of the Masses." That call was preceded by a wide spread call for freedom led by Qaddafi himself, who bulldozed one of the central prisons and ordered the release of some 400 political detainees. In a speech reported by Tripoli Tv on May 3 1989, Qaddafi announced the end of the " liquidation policy" which just two years before he described in an interview conducted by same TV in May 23, 1987 as " very useful lessons". All special courts and special Prosecutors were abolished, save for the "Permanent Revolutionary Court" which was said to be reserved to check the conduct of the " Revolutionary Committees". Qaddafi also announced that the death penalty will be abolished and at the same time acknowledged the UN Secretary General that Libya would soon complete the necessary procedures for the ratification of the Optional Protocol to the International Covenant on Civil and Political Rights and the UN Convention against Torture.

To the disappointment of the international human rights community, this optimistic turmoil yielded very little.

As many as 90 political detainees were not covered by Qaddafi's amnesty and so remained in prison. Qaddafi said that those were " traitors" and " agents of foreign countries". Special courts and special prosecutors continued but with less powers.

The great Green Document which was eventually adopted by the extraordinary session of GPC, contained many laudable phrases which were not capable of being translated into tangible rights.

As pointed out by Dirk Vandewalle, it contained for instance, "no permission to form opposition groups, no freedom of religion or of expression."¹³

Although Article 6 of that document allowed the creation of professional associations, Law 78/1973 was not amended or repealed. Accordingly, any independent criticism of the government may be labeled as treasonous.

"Article 11 , for example, calls private property 'sacred' [moqaddasa] and ' protected' but concludes that it can be circumscribed by the 'public interest' without specifying what the public interest entails. Furthermore, Article 25 specifying that every member of the Jamahiriya must defend his or her country 'until death' and Article 26 stating that all 'acts

¹³ See Dirk Vandewalle " Qadhafi's 'prestroika' :Economic and Political Liberalization in Libya" The Middle East Journal -Spring 1991 Volume 45 No.2 pp.223-224.

contrary to the principles and rights of the {Green Document} are not allowed, create gray areas that can be labeled as treasonous behavior by the government if it so desires".¹⁴

b. 1990: Lawyers Permitted Individual Practice

Increasing international, regional and local concern about human rights' record of the Libyan government and especially with regard to the independence of the legal profession as an essential element of promoting those rights, yielded some fruit in the Spring of 1990. As expected, the response of the government was only limited and partial and fell short of guaranteeing complete independence of the legal profession. The amendment introduced that year to Libyan bar law, was only an attempt to make two extremes co-exist. It tried to permit for free practice but with no independent bar on one hand and to preserve the 'popular Advocacy' with its state controlled bar. As will be discussed later, the natural consequences of such an attempt were manifold, among which the continuation of state control over the bar is the most seriously legitimized one. It should be added that this was the second major yet **unsuccessful** attempt by the Libyan government to abide itself with international standards.

This second major attempt at reform occurred in April 1990 when a law was passed amending the 1981 " Autonomous Administration of the Bar Act"... Law of Reorganization of the Legal Profession in the Great Jamahiriya [Law No.10/1990]:

The preamble of this new law stated that it is promulgated by the General People's Conference "in furtherance of the decisions taken by the Basic People's Conferences, in their second session for the year 1989, which were codified by the joint general meeting of People's Conferences, People's Committees, Trade Unions, Trade Union Federations, and Professional Associations."

This preamble is intended to show that the law was approved by the highest popular and trade union movement and effectuated by the Legislative Authority.

This law is composed of nine Articles, the first of which states that " Individual lawyers may practice the legal profession through individually owned offices or through jointly owned firms subject to the conditions and specifications set forth by this law and its Regulations and without prejudice to the provisions of Law No.87/1971 regarding the Administration of Justice and Law No. 4/1981 concerning the establishment of Popular Advocacy and the Autonomous Administration of the Bar."

Instead of repealing the 1981 law discussed earlier, as a natural and wise response to the growing local and international concern, the Libyan legislator created a dual advocacy system. Some

¹⁴ Dirk supra p.224

lawyers are allowed to establish their own free business through firms or otherwise. Others are to continue along the lines set by the 1981 law but by their free will. At first this may seem equitable and even democratic, but if examined on the light of precedents established by the same regime it can be seen that this law is just another manoeuvre. If lawyers are emancipated from all those chains contained in the 1981 law, it is unlikely that any of them will choose to perform the profession according to that law. Some moral or other extra-legal force must be exerted to show that the model Qaddafi tried to create is not completely utopian or coercive. This is not just a logical inference but it is what some Libyan lawyers said in an interview I conducted with them at the Arab Lawyers Union premises in Cairo, March 1991. They testified that lawyers who chose the free practice model are stigmatized as not 'revolutionary enough', and 'profit seekers'. Another aspect of this law is that it does not allow the lawyers who choose to practice freely to have their own Bar Association.

Article 2 of this law, in some absurd manner, gave the Libyan citizen the right to hire a lawyer from among those practicing freely and at the same time be entitled to the free legal defence provided for in the 1981 Act. Therefore an accused person can enjoy both rights and simultaneously. According to Article 3, a lawyer is not allowed to combine both types of practice. And the fees chargeable by those who practice freely should be charged " without exploitation and subject to the limits and standards specified in law"-Article 4. Articles 5, 6, 7, and 8, Dealt with the social security, roll and the publication of the law. Article 9 provided for the annulment of Article 29 of the 1981 Act which restricted the practice to jointly owned firms only.

c. Practical Effects

This idiosyncratic attempt at reform produced some odd results. While lawyers were allowed to practice either way, that choice was only structural. At least nine lawyers were dismissed from the membership of the political organization for choosing to practice freely. Private practitioners are not allotted any companies, which is particularly important since the economy is government controlled in all its spheres. Free practice meant deprivation of a lucrative source of income.

To maintain good living standards some lawyers chose to associate themselves with the ruling political organization so that they could achieve some 'status' and receive allocations. Some chose to hire foreign lawyers, mainly Egyptian and Sudanese against relatively small wages and manage to covert the proceeds of their firms to their personal interests thereby establishing a form of servitude. More than 200 lawyers from Egypt and Sudan work under such circumstances and submit to that exploitation since they can

still earn more in Libya than they could in the competitive market at home.

Libyan law graduates, especially from Western schools tend to seek jobs at different government departments to avoid practical difficulties mentioned above.¹⁵

4. CONCLUSIONS AND RECOMMENDATIONS

Libyan state control over the bar is only one facet of state control over different aspects of life. It is one expression of the absence of fundamental rights, democracy, and lack of respect for the country's international obligations. The independence of the law profession is of particular importance since lawyers are presumed by international law to be the custodians of fundamental rights.¹⁶ Furthermore, in a country like Libya where no traditions of independent human rights groups exist, the bar association is by its very nature the only resort available to the people who seek protection from government's abuse of power.

The international human rights community and regional organizations such as the Arab Lawyers' Union, The Arab Organization for Human Rights and the African Commission on Human and People's rights, can play a vital role by continued persuasion and pressure on the Libyan government to bring itself in conformity with international standards.

Legal aid organized by consultation between the government and a free bar constitutes the best alternative to state control over the bar. It is an alternative that preserves the interests of the people and the lawyers at the same time an alternative that maintains the integrity and the public status of the legal profession together with its competitive and creative characteristics.

However little it may seem, the response of the Libyan regime to calls for respect of human rights, including a free Bar, is still encouraging. It reveals that by continuous pressure and appreciation to what so ever small improvements the Libyan regime may adopt, it may be persuaded, instigated or even compelled to respect its international obligations and observe the principles of Human Rights.¹⁷

¹⁵ Interview with a bar leader from Benghazi.

¹⁶ See the preamble of the UN Basic Principles on the Independence of Lawyers.

¹⁷ Translation of all legal material from Arabic to English is the responsibility of the writer.