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Preliminary note on Libya Mission

Last Update 2 February 2012

In January 2012 the International Federation for Human Rights (FIDH) went to Libya on an information gathering mission and to establish contact with the new, rapidly growing civil society in the country. The mission went to Tripoli, Misrata and Benghazi and held lengthy discussions with the representatives of the interim government, members of the National Transition Council (NTC), lawyers, journalists and representatives of human rights organisations.

During this mission FIDH assessed the complexity of the post-Qaddafi socio-political situation, especially in the east of Libya where the NTC is less popular than it was at the beginning of the revolution. The NTC is being increasingly reproached for its political incompetence and its lack of transparency, both in managing current affairs and in taking political decisions. Furthermore, the legitimacy of the NTC is being challenged as its members were appointed rather than elected.

This growing unpopularity was rather violently demonstrated on 21 January 2012 when dozens of young people stormed the NTC offices in Benghazi whilst President Abdeljelil was present, wounding several people and forcing the NTC's second in command to resign. FIDH has recommended to the interim government that a government spokesperson be appointed as soon as possible to improve communications on NTC activities. This would, at least in part, make up for accusations that the NTC lacks transparency.

FIDH is also worried about the growing disconnect between Tripoli and the Eastern part of the country, which has left the region's population feeling abandoned, frustrated and angry. This was very noticeable to international actors, especially in Benghazi.

Despite originating from the biggest city in eastern Libya, the NTC has now moved to Tripoli. International organisations, like the European Union, are mainly settled in the capital, and most projects are being planned from Tripoli. These developments are reviving the historical resentment of a population that was largely forsaken and discriminated against during the Gadaffi regime, which wilfully excluded this part of the country from all economic development and political participation for 40 years.

The interim authorities that met with FIDH have two main priorities for the first transition phase: to organise the election of a constituent assembly in June 2012, and to

disarm the militia still present throughout the country.

Concerning the elections

The NTC, which holds legislative powers, drafted a law which it opened to the public for consultation. This draft law included, inter alia, a provision that was singularly unclear in setting a quota for 10% of National Constituent Assembly representatives to be women, "unless there are not enough female candidates". However, the text adopted by the NTC on 28 January 2012 does not include this provision and makes no mention of a quota for women representatives. The new law, which the NTC has said still requires revision, stipulates that 50% of the candidates put forward by political groups must be women, but in the absence of an obligation to place women candidates at the top of candidate lists, the lack of a quota for women representatives will probably lead to an absence of women in the National Constitutive Assembly.

FIDH stresses the need to support the clear determination of the women of Libya to participate in public life, in this very patriarchal and conservative society. Along these lines, FIDH urges the NTC to revise the law to include a significant quota of women in the Constituent Assembly.

By going to the east of the country, FIDH was able to see that the organisation of national elections was not unanimously supported by all. From Misrata to Benghazi, FIDH spoke with people who said they would prefer to start with municipal elections. Groups and lists are being drawn up in that perspective. Furthermore, more and more people are saying that the best solution for the new Libya would be to form a federal state, with one army. This would mean maintaining strong local powers.

Concerning armed groups

Disarming militias and reintegrating their members into society is crucial and is often highlighted as the main challenge for the transition government. FIDH regrets that the NTC has not yet initiated any genuine dialogue with militias, who are very much in the forefront and, in fact, ensure security in the absence of police or new armed forces. The NTC argues that it wants to concentrate on militias in Misrata and Zintan, which are the strongest and least inclined to give in their arms and submit to the central government in Tripoli. The hope is that other armed groups would follow .

FIDH recalled that the problem of armed militias would not be resolved until the new authorities started working on establishing a national army (especially one in charge of border security) and training a police force in good policing practices and respect for human rights.

Further, the NTC has lost the trust of part of the population, especially militias. Bearing this in mind, FIDH recommended that the NTC consult with civil society organisations that have been working on militia demobilisation, to establish a mediation unit as a main contact with armed groups and who might convince militias to give in their arms.

The situation of migrants

In May 2011, FIDH carried out a fact-finding mission on migrants who at the height of the war were leaving Libya via Egypt. FIDH followed up with authorities on the issue of migrant workers as well as illegal migrants, especially sub-Saharan migrants remaining in the country.

Before the war there had been between one and two million migrants working in Libya; many from sub-Saharan Africa. A certain number of sub-Saharan migrants have remained in or returned to Libya, especially Tripoli. In discussions with the Ministry of Foreign Affairs, FIDH was told that the new authorities are willing to change the Gaddafi policy on migration and adopt a stricter policy on controlling migrants by sending them back before they can reach the European Union. Indeed, Libya, which is not a signatory to the

1951 UN Refugee Convention, considers undocumented migrants to be criminals and arrests them.

FIDH is also concerned about the fate of migrants, especially from sub-Saharan Africa, who are erroneously thought to be mercenaries. FIDH urges the embassies of African countries operating in Libya to do more to identify and protect their nationals and provide them with travel documents.

The authorities reminded FIDH that they have requested assistance from the international community on the very sensitive issue of managing migratory flows, as they are not able to manage this issue alone. FIDH encouraged the Libyan authorities and the European Union to move beyond discussions under the informal 5 +5 political dialogue framework; it urged the parties to promptly address the issue of migration and the situation of migrants through institutional dialogue based on respect for the human rights of migrants. FIDH calls on the NTC to ratify the 1951 Convention on the Status of Refugees, and its Protocol.

Repositioning Libya on the international scene

FIDH reminded the interim authorities of the need to reorganise the diplomatic corps and appoint new ambassadors, especially to international and regional organisations (United Nations, African Union, European Union, and Arab League). Libya has ratified most international and regional conventions (except the 1951 Convention) but has predominantly failed to enact and enforce them. Legislative reforms are urgently needed to make Libyan law conform to international law. It is also important for Libya to strengthen its capacity to produce reports for regular submission to UN treaty bodies, the African Commission for Human and Peoples' Rights and the Arab League's Arab Committee for Human Rights, by training experts to do so.

A thriving civil society

Libya is experiencing exponential growth in the number of human rights organisations and movements throughout the country. Before the revolution that led to the downfall of Muammar Gaddafi's regime, civil society did not exist and non-governmental organisations were outlawed. The only organisation that served as an interface with foreign organisations applying for permission to enter Libya was the Seif El Islam Gaddafi charity Foundation. Civil society is therefore a new concept that the Libyans need to integrate and develop.

During its mission, FIDH interviewed a dozen organizations whose very pragmatic approach is to articulate their mandate and activities around three major areas: human rights education, awakening of civic consciousness, documentation of human rights violations in view of litigation and legislative reform, and reconciliation and transitional justice.

FIDH confirmed its desire to expand its activities in support of these actors through capacity building for civil society organizations. This includes through training sessions based on experience-sharing; the participation of women in public affairs; documenting human rights violations; data security, and the protection of victims and witnesses.

Some NGOs are registering with the Ministry of Culture and Civil Society. The section in charge of civil society at the Ministry of Foreign Affairs said it was considering how best to secure the independence of the NGOs. FIDH would like to remind the Libyan authorities of the need to adopt a law on associations that is applicable to NGOs operating in Libya. Such a law must guarantee freedom of assembly and freedom to form a union, as well as the right to participate in peaceful gatherings, in compliance with international standards.

Fighting impunity

FIDH's mission noted that three months after the end of the Gaddafi regime and the end of the military operations, the courts were still not functioning. This was a consequence of their partial destruction during the conflict, difficulties in ensuring the safety of judges and prosecutors, and difficulties in meeting accused persons held in the prisons under the control of armed militias.

According to the Deputy Minister of Justice who FIDH met in Tripoli, the country's new authorities are now facing the need to strengthen the judicial structure, including building the judges' capacities, ousting corrupt or incompetent judges, computerizing the system and processing the files.

It is also essential to conduct a series of legislative reforms to repeal the special laws in force during

the reign of Gaddafi. In this regard, FIDH has reiterated the need to clearly define the mandate of the Supreme Judicial Council as its mandate and powers remain unclear. This step should be seen as a prerequisite for the integration of the concept of independence of judges in the future judicial reforms.

The capacity of the Libyan justice system to prosecute the most serious crimes will also determine the fate of Seif El Islam Gaddafi and Abdullah Al-Senussi, as the International Criminal Court issued warrants for their arrest for crimes against humanity on 27 June 2011.

The son of the fallen dictator, who was arrested at the end of 2011, is still being held by militia in Zintan. As such, the NTC currently has no control over him.

Nonetheless, the Libyan authorities repeated their determination to judge Seif El Islam in Libya. When asked what they would think if ICC judges decided that Libya was unable to judge him, the authorities said that they would do everything possible to meet the conditions required. If unable to do so, these authorities stated that they would request international support and would be willing to work with international judges, if necessary. On 23 January 2012, Libya sent a confidential report on these questions to the judges in Preliminary Chamber I. The Chamber is yet to make a decision on that submission.

Finally, FIDH is deeply concerned about potential impunity for the perpetrators of sexual crimes. It is now common knowledge that rape was widespread throughout the entire war period. This is known because detained fighters have confessed and because a group of Libyan lawyers has been working on this issue for months. FIDH is extremely worried about the stigmatisation of raped women by the Libyan society, which also makes access to the victims extremely difficult, if not impossible. Lawyers and human rights organisations are increasingly hesitant about documenting sexual crimes for fear of reprisal. Yet it is unacceptable for these crimes to be kept quiet and for the victims not to be recognised and treated as such, especially when considered from a national reconciliation perspective.
