Libya: The Control of Lawyers by The State

Adam Abdelmoula*

I. THE CONTEXT: LIBYA’S LEGAL SYSTEM

In the aftermath of the September 1969 military coup led by Mu’ammar 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, according to the Provisional Constitutional Declaration announced on September 11, 1969, was vested with all Legislative, Executive, and Judicial powers.

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

A. The Constitution

The Provisional Constitutional Declaration of 1969 was for a long time the only official document specifying the country’s constitutional set-up. It has never been repealed officially, even after the announcement of the second document, the “Declaration of the People’s Authority.”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 does not recognize the principle calling for codification of constitutions. 2

The Provisional Constitutional Declaration states that “[p]ower vested on [Libya’s] People, who are an integral part of the Arab Na-

1. Article 1 of the “Provisional Constitutional Declaration” issued by RCC on Sept. 11, 1969.
tion," and has as its goal the achievement of a "comprehensive Arab unity." It was stated that private houses enjoy sanctity and should not be entered or searched, except in cases provided for by the law. Non-retroactivity of laws, the principle of personal liability, presumption of innocence, the right to be provided by all means of defense including a defense counsel, and the prohibition of torture, bodily, or mental injury, were provided for by Law No. 6/1982. The RCC, as mentioned earlier, vested itself with the legislative power together with sovereignty and head of state powers. Its acts were immunized and could not be contested before any judicial tribunal. The Declaration also states that its provisions 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"—made no reference to its predecessor, the Provisional Constitutional Declaration. Instead, it attempted 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. It consists of a preamble and four sections. The first section states 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 provides that the "Quran should be the law of the Libyan Arab Society" and that, according to the "Green Book," the Quran and custom should be the foundations of the Libyan legal system.

Pursuant to Law No. 6/1982, the Libyan Supreme Court was denied the right to determine matters involving constitutionality of laws. Thus no judicial authority is empowered to examine the constitutionality or unconstitutionality of any legislation in Libya.

3. Article 6.l.
4. Article 12.
5. Article 18.
6. Abu Touta supra note 2.
B. The Rights of the Accused in Libyan Procedural Laws

International law has consistently stipulated that the protection of the rights of accused persons requires that law enforcement authorities be qualified, well-defined, monitored and independent of interest. These checks and balances are desired to ensure accountability of law enforcement officials.

To achieve those ends, the Guidelines for the Effective Implementation of the Code of Conduct for the Law Enforcement Officials, adopted by the United Nations Economic and Social Council (Resolution 1989/61), stipulate that “the definition of ‘law enforcement officials’ shall be given the widest possible interpretation.”7 The Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly (Resolution 34/169), defines the term “law enforcement officials” to include “all officers of the law, whether appointed or elected (whether uniformed or not), who exercise police powers, especially powers of arrest or detention.”8 The Caracas Declaration, adopted by UN General Assembly (Resolution 35/171), also obliges member states to actively 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.”

The practice of the Libyan government contravenes these internationally established principles. The Libyan police force has become an institution for political supporters of the regime who lack any training. Furthermore, policemen are given vast powers which are left virtually unchecked by judicial supervision.

Article 13 of the Libyan Code of Criminal Procedure (CCP) stipulates 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.”

Accordingly the composition of the police force has been broadened to include persons who are not members of any regular law enforcement body. Secretaries of People’s Committees and Sheikhs are members of the ruling organization and therefore do not have the neutrality or training. This poses a genuine threat to the rights of accused persons if we keep in mind the wide powers vested on the police.

7. Article 2.
force, which will be discussed later, especially if the offense in question has a political or a tribal bearing.

Law No. 6/1972, known as The Police Corporation Act, places the police force under the administrative control of the Ministry of Justice and the direct supervision of the Public Prosecution. This widely defined police force has the power to arrest any person against whom there is "strong evidence." 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 the Office of Public Prosecutor. Police, without a warrant, can even search the person of an accused and/or his dwelling, and seize any documents, weapons, instruments, or any other objects which he might deem necessary for the disclosure of the facts of any particular offense.

Besides these wide powers, which do not conform with international standards, Libyan law tends to protect the police against prosecution by the public. Permission from the Minister of Justice must be obtained prior to the commencement of any proceedings against a police officer. No law provides a remedy for acts or forbearance of a policeman done in excess of his powers.

According to the Libyan law, an investigation is to be conducted by the Public Prosecutor as a general rule, but judges may be authorized to carry out investigations or magisterial inquiries on an ad hoc basis. If a case is transferred for investigation or inquiry by a magistrate, upon an application being filed by the accused or Public Prosecutor 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 proceeding, such as investigation, arrest or search, without prior authorization. A policeman or Public Prosecutor 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 of the CCP, which sets out the conditions under which that power should be exercised. It confines these vast powers to cases in

9. Article 24 CCP.
10. Article 25 (a), (b) CCP.
11. Articles 35, 36, 37 and 38 CCP.
12. Article 43 (a), (c) CCP.
13. Article 102 CCP.
14. Article 127 CCP.
15. Articles 24, 31, 36, 37, and 38 CCP.
16. Article 107 CCP.
which the accused person, although duly summoned, did not present himself before the investigator; if there is a reasonable fear that the accused person will flee, even though he or she hadn’t been summoned before; or if the accused is caught flagrante delicto, that is, in the very act of committing the crime.

The Public Prosecutor, the Magistrate of Inquiry, the Divisional Court magistrate, or a competent court is empowered 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 established later. But if such an accused is sentenced to imprisonment, the period he/she spends in detention can be deducted from the sentencing period.

Bail is provided for in Article 126 of the CCP, which prevents 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, and although Article 241 provides 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 makes it a requirement 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 stipulates that default decrees in criminal cases and decrees in felony cases are not subject to appeal. As a general rule, Libyan law tends to overlook the right of appeal and only one chance of appeal is usually allowed.

C. The Courts in Libya

Although Qaddafi has stated publicly since 1988 that special courts will be abolished, they continue to exist and to perform the role assigned to them by the political organization or in other words by him personally. The regime continues to ignore the international provisions in this important area of judicial independence. The basic Princi-

---

17. Article 115 CCP.
18. Article 441 CCP.
21. Id.
ples on the Independence of the Judiciary adopted by the United Nations on May 24, 1989 state that "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." 22

In 1980, Qaddafi’s regime set up "Revolutionary Courts" staffed by militant supporters without legal training. Those courts convicted people charged of economic profiteering without any predetermined procedures. The accused were denied the right to legal representation. Although those courts were only empowered to pass moral sanctions, they enjoyed full powers of interrogation and inquiry, and in some instances, exceeded their powers and passed harsh sentences against individuals accused of political dissent. In 1986, some Islamic fundamentalists, consisting of both in-service soldiers and civilians, were publicly executed after being convicted of treason by a "revolutionary court." The same year thirty-five people were tried by one of those courts in Benghazi, for the murders of members of Revolutionary Committees and received varying sentences. Following another similar trial on February 17, 1987, six men were hanged and three soldiers were shot dead by firing squads in Benghazi. 23

In June 1989, the General People’s Conference (GPC) issued a document named the "Great Green Charter of Human Rights in the Era of the Masses." A special People’s Court was created to enforce that document by virtue of a law passed by the GPC on May 12, 1989. It was claimed that the court was established to consolidate freedom; do equity to the wronged; forbid arbitrariness and tyranny; and strengthen the foundations of justice and peace. 24 It was empowered to be the only tribunal having powers to decide on cases involving the violation of basic fundamental rights. 25 Panels of that court were established according to the jurisdictional division of the country. They were staffed by laypersons from among the members of the Revolutionary Committees.

Such a political tribunal was endowed with the wide powers usually reserved for the court of last resort in most judicial systems. The Revolutionary Committees are a subordinate affiliate of the GPC, and it

is left for the members of those Committees—who are accountable to
the GPC—to supervise the decisions of the whole political machinery.

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 only custodian of the enforcement
of fundamental rights is this People’s Court.

II. THE EROSION OF THE INDEPENDENCE OF THE LEGAL PROFESSION

A prominent Libyan lawyer highlighted the history of the
profession and the impact of the 1969 coup when he said:26

Before Qaddafi's takeover in 1969 there was a very small number
of lawyers in Libya. They were working with the few foreign com-
panies that existed in the country at that time and generally no law-
yers were allowed to appear in the traditional courts of the time
which were presided over by tribal notables and not by judges.
The situation was totally different from that of a modern society
with a judicial organ. This was among the reasons that induced the
lawyers, together with other educated denominations of the soci-
ey, to welcome the change that occurred on the dawn of Septem-
ber 1, 1969. The new regime declared Libya to be a Republic in-
stead of the Kingdom of the al-Sanousi family, which continued in
power only through the institutionalization of ignorance, illiteracy,
and poverty. That government was a puppet of the colonial forces
and when the new regime declared Socialism and Arab unity,
which were the passwords of that time, it was greeted cheerfully
by the entire nationalist movement in the country. Those political
ideals were also coupled with assurances that the fundamental
rights of the people will be respected.

He added:

Both the Bar Association and individual lawyers played an important
role in the legal policy of the new regime. Nevertheless, the Bar
Association maintained its independence and it adopted general
policies directed towards establishing institutions of freedom and
providing political prisoners and persons charged with serious off-
senses with the required legal aid. A committee for legal aid was
formed under the supervision of the Bar Association to regulate the
legal aid and, besides litigation, that committee succeeded in in-
stances to provide recourse to individuals and groups by writing
memoranda and petitions to the judicial or governmental author-

26. All names withheld. Interviews were conducted in March 1991.
involved.

The lawyer further described the Libyan Bar Association in that time to be "the place to which many wronged people resorted in search of protection from government abuse of power."

About the relationship between the Libyan Bar Association and the Libyan government prior to 1981, he said:

[It was generally good and the government used to ask about the opinion of the Bar Association in all matters relating to fundamental rights. That opinion was usually taken into consideration in the enactment of laws or administrative decrees affecting the rights of the citizens.]

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 managed to play that role and defended victims of persecution. On January 7, 1981, Qaddafi repealed the Libyan Advocacy Act (Law No. 82/1975), thereby paving the way for an unprecedented campaign that culminated in the complete liquidation of the Association if not the legal profession itself.

In his statement announcing the event, Qaddafi accused Libyan lawyers of seeking to further their private interests and the accumulation of money which, as he said, do not conform with the socialist transformation of the country. Law No. 4/1981 was introduced. It is composed of two distinct parts. The first part consists of eight Articles dealing with interim measures; and the second part consists of 124 Articles dealing with the formation of a Bar Association. It states that a provisional committee would be formed by the Secretary of Justice at the General People's Committee (Minister of Justice). That provisional committee would call the meetings of the "Basic Professional Conferences" for all the lawyers within a district court's jurisdiction. It also would determine the date of the first session of each of those Basic Conferences, the date of convening of the first General Professional Conference, and call upon that conference to choose the members of its "Secretariat."

27. Id.
28. This law was termed as "Popular Advocacy Administration Act," and is also known as "Autonomous Administration of the Bar Act."
Article 3 of the second part states that “[t]he citizens of Libyan Arab Jamahiriya shall enjoy and without charge the right to a defense counsel in criminal cases before all types of courts in the country.” This right is limited to Libyan citizens in criminal cases only. Article 4 states that “[a]llies (other than Arabs) shall enjoy the right to a defense counsel upon their payment of fees prescribed by this law and its Executing Regulations.” Arab nationals are granted the right of free legal defense by Article 5, but are subject to reciprocal treatment by their countries toward Libyan citizens.

The limitations and qualifications of legal representation for aliens constitute a direct contravention to Article 2 of the Basic Principles on the Role of Lawyers, adopted by the United Nations, which states that

> [g]overnments 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.\(^{30}\)

A. **Control of the Bar by the State**

A prominent Libyan lawyer described the introduction of this law as

> [A]n unprecedented coup that confiscated the profession and destroyed the mutual respect that the Libyan lawyers and government used to exchange for a very long time. Instead a new era of terror and submission was introduced. The lawyers had no say in what happened to them and what happened affected every lawyer’s life. They were also completely demoralized by unfair accusations which portrayed them as economic profiteers. This seriously damaged the public image of lawyers, an image which we fought for and established.\(^{31}\)

Article 9 states that “[a] Bar Admission Committee should be formed every year and be presided over by the Secretary of 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 this Article. That veto was made subject to appeal within 60 days to the competent administrative panel at a court of ap-

---

30. Emphasis added.
peal (Article 13). This government power to veto Bar admission must be evaluated in its broader context of a government tendency toward retaining strong control over the Bar.

Under Article 24 the legal profession can only be practiced through jointly owned law firms. Any other form of practice was made illegal. Further restrictions were stipulated. Article 25 states that "[t]he 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 "[a]ny 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 practices except for genuine causes and subject to the approval of the Basic Professional Conference." A Libyan lawyer responded to a question about the practical effects of the imposition of such a provision. He said:

This Article stated one of the most difficult conditions we faced. The number of lawyers entitled to appear before the Supreme court is limited compared with the number of those entitled to appear before lower courts. It gave this category of lawyers an indirect preference and they had to decide whom they accept. In many places this condition of having lawyers entitled to appear before all courts could not be fulfilled. The government tried to solve this paradox by making premature promotions to lawyers so that the model it laid could function. Those promotions were influenced by political factors and not by professional capabilities.\textsuperscript{32}

Even if lip service is paid to the condition 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, are controlled by the relevant unit of the ruling political organization. It does not need any stretch of imagination to think about the difficulties arising from a situation where only four lawyers exist in a certain place or where no lawyer having the right to appear before the Supreme Court is available, a situation quite likely to happen since the law itself made that type of appearance subject to numerous qualifications. The government had to respond to the problems it had created by making "premature promotions."

\textsuperscript{32} Supra note 26.
Article 29 describes what the authors of the law meant by the autonomous administration of the Bar. It states that "[L]awyers 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 the reception of clients, those Regulations tried to cater to the finest details, leaving no room for uniqueness or uncontrolled transactions. Article 31 states that "[A]ll law firms shall comply with and use records and forms drawn by the General Professional Conference."

A Libyan lawyer described this as "excessive bureaucracy." He also said,

[w]e spent a lot of time to adapt ourselves to the new formalities. Many clients found some questions contained in those forms as expository and they were afraid to give their real answers because they feared that they may be used by the government against them. Others were sensitive towards being interviewed with firm members other than their previous lawyer.

Even the fidelity relationship of lawyer and client or attorney-client privilege known to characterize the legal profession and the right of both sides to voluntarily choose and trust one another had been denied. Article 30 states 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 above-referenced articles are at odds with international law. Article 1 of the UN Basic Principles on the Role of Lawyers emphasizes the principle of fidelity. It states that "[a]ll persons are entitled to call on the assistance of a lawyer of their own choice to protect and establish their rights and to defend them in all stages of criminal proceedings."

Article 5 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 offense."

33. Article 29, Basic Principles on the Role of Lawyers.
34. Supra note 26.
35. Article 30, Basic Principles.
36. Article 1, Basic Principles.
37. Article 5, Basic Principles.
The practical implications of those limitations were also numerous. At the beginning some lawyers faced great hardships adjusting to the new system. Many practitioners were randomly lumped with others about whom they knew little or with whom they only maintained competitive relations. Some lawyers were forced to abandon the profession and seek other jobs because they couldn't meet the conditions, especially those relating to the number and quality of partners.

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

Article 82 states 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 shall 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 perform their duties according to the provisions of this law and its Executing Regulations.]

A lawyer supportive of the government commented on this Article by saying:

We do not have a system of elections. We do not believe in elections and our system completely rejects this idea. It gorges the will of the people and our political theory is based on this fact. . . . .

[The General Professional conference which consists of the deputys of the various Basic Professional Conference selects the Committee known to the people else where as the Executive committee of the Bar Association. We do not have electoral lists and competition; the Committee is selected unanimously. It is usually agreed upon between the General Professional Conference and the Secretariat of the General People's Conference Council of Ministers before the date of the meeting.]

It is clear from the above 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

38. Article 82, Basic Principles.
“elected.” It is a manifestation of the one-party system prevailing in the
country. The General Professional Conference, which is an integral part
of the General People’s Conference, selects a Secretariat which is la-
belled as the Bar Association for the purposes of external use and dis-
play 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 Sec-
retary General shall assume all his powers.”

That General Professional Conference is supposed to be com-
posed of all licensed lawyers in the country, as stated in Article 85.
However, because of its political nature, the usual formalities relating to
quorum are forfeited. Article 88 stipulates that the meetings of the
General Professional Conference shall be valid regardless of the num-
ber of participants, if the meeting is held on time and at the place spec-
ified 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 People’s Conference.

To guarantee the subordination of the Bar Association to the politi-
cal organization, Article 107 provides 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 defense enjoyed by citizens, and
other public funds to subsidize trade union activity.

International law requires that Bar associations be independent and
autonomous. Article 24 of the UN Basic Principles on the Independence
of Lawyers states that “[L]awyers shall be entitled to form and join self-
governing professional associations to represent their interests, pro-
mote their continuing education and training and protect their profes-
sional integrity. The executive body of the professional associations
shall be elected by its members and shall exercise its functions without
external interference.”

When this law was first drafted, it contained no provisions about a
Bar association, but after protest by Bar associations, especially by the
Arab Lawyers Union, a delegation of which met Qaddafi personally,
Qaddafi ordered the inclusion of “some form of a Bar Association in
the final draft of the law.”

40. Article 84, Basic Principles.
41. Minutes of the meeting of the Arab Lawyers Union delegation with Qaddafi
are available at the Arab Lawyers Union archives in Cairo.
B. Financial and Administrative Control

The individual lawyer has no right whatsoever to assess the value of his work in terms of fees. There are preset schedules specifying the rates to be charged. Article 32 states that, "[N]otwithstanding 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 enumerated by Article 33 to include only the following:

a) fees charged to persons who do not enjoy free legal defense.
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 government or at least a quasi-government 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 own income because Article 34 requires that the revenues of a law firm should be deposited in a bank, and disbursement made subject to negotiable instruments to be issued jointly by the secretary and treasurer of the firm in accordance with the principles and conditions provided for in the Executing Regulations annexed to the law. The 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 legal 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.

C. Criminal and Disciplinary Measures Against Lawyers

Article 45 requires that, except in cases of flagrante delicto, the Public Prosecutor should inform the Secretariat of the Basic Professional Conference before interrogating a lawyer. In cases of flagrante delicto,
HeinOnline -- 17 J. Legal Prof. 69 1992

the Public Prosecutor, upon its arrest or detention of a lawyer, should 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 has to witness the interrogation. In all cases a lawyer may not be interrogated except with the prior cognizance of the Public Prosecutor.

Although this same law provides for the formation of a Bar Association as will be discussed below, it allocates 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 choice, contravening an increasingly observed universal principle. The Article is also vague. It provides for unspecified cases in which lawyers can be interrogated but with the prior notification of the Public Prosecutor. Interrogated by whom, and for what type of action, are questions left unanswered.

Article 46 provides for the immunity of lawyers from charges of defamation, libel and slander for oral or written statements made by him during his exercise of the profession. Cases of contempt of court falling under the Pleading Act or the CCP are not covered by this immunity. In these later cases a record containing the set of facts that occurred must be made and a copy of it be passed to the Secretariat of the Basic Professional Conference.

While this law tried to comply with international professional standards by providing for immunity of acts and statements done in the lawful scope of the profession, it 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 does not provide a sufficient remedy for that threat by stating that “[a]ny 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 the 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 is to be presided over by the most senior, according to the roll. Two other reserve members are to be selected and decisions shall not be taken by this
committee unless all its members are present. But upon their presence decisions are to be taken by majority according to 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, reproaches, disbarment 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 he abandoned the profession if what he had done while practicing fell within the jurisdiction of the disciplinary committee.

The UN Basic Principles on the Independence of Lawyers emphasizes the need for neutrality in cases invoking disciplinary measures against lawyers. Article 28 of those principles stipulate 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."

D. Lawyers Barred from Establishing Independent International Contacts

Libyan lawyers not only are denied the right to form an independent bar association in accordance with internationally observed principles but they are strictly forbidden from establishing any contacts with the international professional community.

A Libyan lawyer expressed the situation as follows:

This is not the problem of lawyers only but of every citizen or even foreigner living in the country. Our government restricts any contact with foreign organizations especially western ones and this is a reflection of its hostile relations with many Western governments. The problem is that it does not distinguish between governments and organizations no matter how independent those organizations are. All means of communication are strictly monitored without exception. So lawyers like any other group are, always afraid of making contacts with foreigners or foreign organizations.42

Article 114 prohibits lawyers from establishing any contact, direct or indirect, with any other party regarding the profession, save through

42. Supra note 26.
the bar association. Any contravention to this prohibition is made subject to disciplinary measures. If a lawyer applies for a membership in the International Bar Association (IBA), for instance, without securing a prior permission, he/she faces the risk of punishment which may extend to disbarment. This contradicts Article 23 of the UN Basic Principles on the Role of Lawyers which states that "[l]awyers like other citizens are entitled to the freedom of expression, belief, association, and assembly. In particular, [lawyers can] 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."

III. 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 embargoes imposed by Western governments and transnational corporations contributed to a sharp decrease in oil revenues, therefore forcing the regime to withdraw its earlier policies of subsidizing. On the other hand, the continued harassment of the opposition groups led to a situation of internal political unrest.

Those two factors reached their climax toward the late 1980s. The response of the regime was manifold, and it is still trying to introduce certain reforms the depth or superficiality of which are open to question.

A. 1989: Unfulfilled Promises

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 widespread 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” against dissidents living abroad. Just two years before, in an interview conducted by Tripoli TV on May 23, 1987, Quaddafi had described the policy 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 would be abolished soon and at the same time acknowledged to 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 described them as "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 the 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." 43

Although Article 6 of that document allows the creation of professional associations, Law 78/1973 which made criticism of the government an offense 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 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." 44

B. 1990: Lawyers Permitted Individual Practice

Increasing international, regional and local concern about the 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

44. Id. at 224.
1990. As expected, the response of the government was limited and fell short of guaranteeing complete independence of the legal profession. The amendment introduced that year to the Libyan bar was only an attempt to make the two extremes coexist. It tried to permit free practice, but with no independent bar on one hand and to preserve the "Popular Advocacy" model with its state-controlled bar on the other.

This second major attempt at reform occurred in April, 1990, when a law was passed amending the 1981 Autonomous Administration of the Bar Act. The new law was named the "Law of Reorganization of the Legal Profession in the Great Jamahiriya" and is also known as Law No. 10/1990. The preamble of this new law states 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.

The law is composed of nine Articles, the first of which gave individual lawyers the right to practice the legal profession through individually owned offices or through jointly owned firms subject to the conditions and specifications set forth by the 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 expressed by the reports of human rights organizations especially Amnesty International, the Libyan legislature created a dual advocacy system. Some 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 in the light of precedents established by the same regime it can be seen that this law is just another political maneuver. If lawyers are emancipated from all those chains contained in the 1981 law, it is unlikely that anyone of them will choose to perform the profession according to that paradigm. 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 necessitated by
the introduction of some political or moral element of persuasion or
threat. Therefore lawyers who chose to practice freely are now stigmat-
ized and shunned as not being “revolutionary enough” and also as
“profit seekers.” Free practitioners are not allowed to form an independ-
ent bar association.

Article 2 of this law gave the Libyan citizen the right to hire a law-
yer from among those practicing freely and at the same time be enti-
tled to the free legal defense provided for in the 1981 Act. Therefore
an accused person can enjoy both rights simultaneously. According to
Article 3, a lawyer is not allowed to combine both types of practice.
Article 4 provides that the fees charged by those who practice freely
should be “free of exploitation and subject to the limits and standards
specified in law.” Articles 5, 6, 7, and 8 deal with the social security, roll
and the publication of the law. Article 9 provides 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 member-
ship of the political organization for choosing to practice freely. Private
practitioners are not allotted any companies, a matter considered to be
of particular importance because the economy is government con-
trolled 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 for-
eign lawyers, mainly Egyptian and Sudanese, against relatively small
wages and manage to convert the proceeds of their firms to their per-
sonal interests thereby establishing a form of servitude and black mar-
et. 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 the practical
difficulties mentioned above.\footnote{45}

\footnote{45. Interview with a bar leader from Benghazi.}
IV. 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 to be the custodians of fundamental rights. Furthermore, in a country like Libya where no traditions of independent human rights groups exist, an independent bar association is by its very nature the only resort available to the people who seek protection from government’s abuse of power.

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.

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