



CONFLICTS OF INTEREST IN PUBLIC SECTOR RECRUITMENTS IN LIBYA

Libyaⁱ is deemed to be one of the five most corrupt countries in the world, with its public sector considered as among the most corrupt institutions in Libya.ⁱⁱ Citizens do not trust the public administration but at the same time, they are deeply dependent on it. The public sector, financed by oil revenues, is very dominant in Libya and employs between 70 and 85 per cent of the formal workforce.ⁱⁱⁱ Further, the high degree of subsidisation of basic commodities such as food and fuel that characterises the Libyan economy enhances the role and dominance of the state.^{iv}

Employment in the public sector and public officials' role in securing access to basic commodities thus has a great effect on citizens' lives. Recruitment in the public sector often is reportedly based on nepotism instead of qualifications and there are claims that public officials' actions are motivated by personal interests rather than the public good^v. Public officials taking advantage of their positions to enrich themselves or their family networks by engaging in nepotistic or corrupt activities have devastating effects for the entire public sector in Libya.

This paper discusses key reasons for nepotism and conflicts of interest in the public sector. Such practices have led to an inefficient use of human and financial resources, corruption, and a social burden for Libyans trying to create a country based on transparency, accountability and integrity. The paper looks at what has so far been done to address these problems and key recommendations to see needed changes.

Conflicts of interest in recruitment, nepotism and cronyism were key traits of Gaddafi's rule and have proven to be a very heavy burden to shake off. Even after the Libyan Revolution in 2011, the country continues to struggle with nepotism in recruitments and public officials nourishing their own personal networks instead of working towards a well-functioning public administration. These problems have persisted with the interim government, the National Transitional Council (NTC), and later the democratically-elected General National Congress (GNC) and House of Representatives (HoR). Nepotism in recruitments not only excludes potential qualified staff from employment opportunities in the public sector but also creates a culture where public officials owe loyalty to the person or tribe that has helped them secure employment.

The public sector's recruitment process has been unregulated and has led to vast overemployment as well as duplicate positions in the public sector. Approximately 200,000 to 300,000 "phantom workers" with duplicate public sector jobs allegedly receive salaries without working.^{vi} To improve efficiency, the African Development Bank has called for cutting 400,000 government positions.^{vii}

Recruitments based on one's personal networks rather than one's merits also lead to a public sector staffed with under-qualified individuals. Poorly-skilled public officials increase the risks of regulations being misapplied, wasted public resources, general mismanagement, and even corruption. The lack of a well-functioning public administration contributes to people's lack of trust in the state and its institutions. Militias and other non-state actors have sought to fill this vacuum. In this sense, nepotism and conflicts of interest have a negative impact on the entire integrity system and stability of the country.

Conflicts of interest permeate the public sector, from staff recruitment and public procurement processes, to the productivity of the sector and its civil servants.

1. TAINTED RECRUITMENT PROCESSES

Conflicts of interest in recruitments are a significant problem in the Libyan public sector despite legal mechanisms that should prevent them. The current legal framework is considered sufficient to avoid such conflicts and includes guidelines on how appointments and promotions of public sector employees are to be handled, including transparency measures to prevent political interference and conflicting interests.^{viii} According to the law on civil work, vacancies should be published and recruitments should be based solely on the applicant's qualifications.^{ix} However, rules are only rarely enforced efficiently and as a result, external interference, especially in relation to appointments and promotions of civil servants, often take place.

The practice known as *wasta*, which is Arabic for “intermediary”, is an ingrained social practice in Libyan society that affects public sector recruitments. As part of this patronage practice, typically powerful relatives or members within the same social group provide assistance or favourable treatment to others within the same group. Upper and mid-level managers use this system to enlarge the circle of people dependent on them for jobs and their livelihood and thus heighten their own influence. *Wasta* leads to public sector employees who are more motivated to accommodate the interests of patronage than do what is best for the state. Considering the importance of the public sector as an employer in Libya, this system clearly impacts how civil servants are recruited.

A survey from 2012^x confirms that *wasta* and corruption are still widespread problems in Libya: more than 62 per cent of the respondents strongly agree that bribery and corruption remain one of the main obstacles for the state to implement development programmes. Moreover 93 per cent of the respondents agree or strongly agree that favouritism hampers programme implementation.^{xi} Poor performance due to the *wasta* system is also felt to plague public sector managers. In the same survey 83 per cent of respondents said that they strongly agree or agree that leaders in the public sector lack the necessary skills to perform their jobs efficiently.^{xii} In another survey conducted in 2013, more than one in four people found it necessary to use *wasta* in order to get a job in the public sector.^{xiii}

2. CLEANING UP THE PUBLIC SECTOR

Major reforms including the establishment of completely new institutions, organisations and agencies, and adaptation of new laws have been necessary in order for Libya to re-invent itself as a democratic state. But to rebuild a new public administration, the decision was taken to purge the government of people that were part of the former corrupt regime in order to address potential conflicts of interest. This “cleansing” has been done by many other countries that have undergone the same type of regime change. In Libya, the adaptation of the Political and Administrative Isolation Law in 2013 was a means of cleaning out the public administration, ‘purifying’ and starting on a clean slate.^{xiv} The law disqualified many civil servants from being employed in the new administration or anywhere in the public sector. It was felt that one cannot engage the same people who were an integrated part of a non-transparent and illegitimate administration to rebuild new democratic institutions.

Yet cleaning up Libya’s public administration has had severe consequences. Most qualified staff were removed, leaving the administration in the hands of inexperienced individuals. In the case of the police force, this “cleansing” resulted in the state being without law enforcement and many of the fired police officers joining the militias (now one of the root causes of the current instability).^{xv}

Moreover, the way the law was passed poses its own challenges and questions. First, the law was only approved several years after the revolution and without any democratic debate (as the GNC was pressured by militias into passing the law)^{xvi}. Second, the legislature and executive are completely lacking incentive to apply the law as these institutions did not initiate it.^{xvii} Third, the judiciary has been prevented from challenging the law, which constitutes a serious accountability issue.^{xviii}

There are also some problems with the provisions and articles in the law, which can be broadly interpreted and applied. Critics have argued that they conflict with basic democratic principles such as freedom of expression since anyone whose “behaviour” in the period from 1969-2011 glorified Gaddafi or his regime is barred from the public sector.^{xix}

In order to implement the law, an Isolation Committee was established in 2012. The Committee is under criticism for not having a clear mandate and possessing too broad of powers to investigate former public servants.^{xx} In addition, before the Political and Administrative Isolation Law was passed and the Isolation Committee was established, another step was taken to deal with the same issues. The NTC established a High Commission for the Implementation of the Integrity and Patriotism Standard, which is a public entity responsible for examining a wide range of individuals who seek public employment. This body was tasked to determine whether these individuals have ties to the previous regime or are involved in criminal activities. While this could be regarded as a sign of accountability and integrity, this commission has also been criticised for applying criteria which is too broad and vague and not using hard facts in their assessments. The situation created has been one open to political manipulation, potential conflicts of interest and an arbitrary application of the law.^{xxi}

CHANGING THE GAME

Unfortunately, the attempts to deal with nepotism and issues of conflicts of interest in Libya have become part of the problem instead of solving them. Poorly-defined laws passed under pressure from undemocratic forces and undefined mandates for integrity bodies clearly hamper attempts to improve integrity in the public sector. Therefore, it is considered vital to focus on both the demand and supply side of the problem. Citizens and CSOs must be involved in new initiatives to eradicate conflicts of interest and nepotism. At the same time, the government must enhance the public sector’s procedures.

4. RECOMMENDATIONS

Distrust in public authorities and bodies had added fuel to the fire in the ongoing conflict in Libya, Citizens will be even more inclined to support militias as opposed to the official structures if this trust is not built and secured. To break this cycle, Transparency International recommends taking the following steps:

- Develop, adopt and enforce a general code of conduct that includes rules and regulations regarding recruitment, gifts, hospitality, post-employment, etc.
- Formalize recruitment processes by establishing job/recruitment agencies that can link employers with job seekers.
- Conduct training for public officials on conflict of interest in recruitment and in their work functions in order to raise awareness of integrity mechanisms.
- Involve citizens and CSOs in reform processes of the public sector by communicating to stakeholders and citizens and conducting public hearings.
- Establish a public agency with the mandate to handle citizens' complaints about the public sector, its agencies or individuals, which could also work as a first-stop for whistle-blowers.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of December 2014. Nevertheless, Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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NOTES

- ⁱ This working paper was prepared in the context of the publication of the “National Integrity System Libya 2014” study. Data and content refer to the findings of this publication.
- ⁱⁱ Global Corruption Barometer 2013, http://www.transparency.org/country#LBY_DataResearch
- ⁱⁱⁱ AfDB 2013, IMF 2013
- ^{iv} The Governance Network/Mercy Corps, Beyond Gaddafi: Libya’s Governance Context, 2011
- ^v Interview of Medhat Ghdamsy, National Economic Development Board, Government, Tripoli, 2014.
- ^{vi} Libya Herald 2013
- ^{vii} AfDB 2013
- ^{viii} Interview of Omar Titish, Ministry of Labour, with Sherif Jenan, Tripoli, June 11, 2014 and interview of Dr. Bashir Ghariani, Public Administration Consultant, with Sherif Jenan, Tripoli, June 10, 2014
- ^{ix} Interview of Dr. Bashir Ghariani, Public Administration Consultant, with Sherif Jenan, Tripoli, June 10, 2014
- ^x Ibrahim Nouredin Kamba & Mohd Fu’ad Sakdan, Reality Assessment of the Corruption in Libya and Search for Causes and Cures, International Conference on Management, June 2012, Malaysia. The survey was conducted with higher level employees from ministries, the government, CSOs and the private sector.
- ^{xi} Ibrahim Nouredin Kamba & Mohd Fu’ad Sakdan, Reality Assessment of the Corruption in Libya and Search for Causes and Cures, International Conference on Management, June 2012, Malaysia
- ^{xii} Ibrahim Nouredin Kamba & Mohd Fu’ad Sakdan, Reality Assessment of the Corruption in Libya and Search for Causes and Cures, International Conference on Management, June 2012, Malaysia
- ^{xiii} Unpublished public opinion survey September 2013 – conducted in collaboration between JMW Consulting and the National Democratic Institute (NDI)
- ^{xiv} LFJL, 2014
- ^{xv} <http://travel.state.gov/content/passports/english/country/libya.html> [accessed 19 March 2014]
- ^{xvi} Roman David and Houda Mzioudet, *Personnel change or personal change? Rethinking Libya’s Political Isolation Law*, Brookings Institution, March 2014
- ^{xvii} LFJL, 2014
- ^{xviii} Interview with Kevin George, Country Director Libya, American Bar Association, with Nedal Swehli, Tripoli, June 17, 2014
- ^{xix} LFJL, 2014
- ^{xx} LFJL, 2014
- ^{xxi} George Grant, 'Human Rights Watch denounces Integrity Commission following disbaring of Zeidan ministers', Libya Herald, 16 November 2012

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