



# Libya: Transition and U.S. Policy

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## Summary

Libya's post-conflict transition is underway, as Libyans work to consolidate change from the 40-year dictatorship of Muammar al Qadhafi to a representative government based on democratic and Islamic principles. On July 7, 2012, Libyan voters chose 200 members of a General National Congress (GNC) in the country's first nationwide election in nearly 50 years. The GNC will oversee national government affairs, appoint a new cabinet, and determine the method for selecting members of a drafting committee to prepare a new constitution. If voters approve a constitution in a national referendum, then new elections are to be held by mid-2013, bringing a nearly two-year transition process to a close.

In the wake of the July election, Libya's interim leaders remain answerable to a wide range of locally and regionally organized activists, locally elected and appointed committees, prominent personalities, tribes, militias, and civil society groups seeking to shape the transition and safeguard the revolution's achievements. The shift from an appointed interim government to elected leaders may provide the government more democratic legitimacy and better enable it to make decisions in key areas, such as security, fiscal affairs, and post-conflict justice and reconciliation. Libyans are debating the proper balance of local, regional, and national authority and the proper role for Islam in political and social life.

Security conditions are mostly stable, although armed non-state groups continue to operate in many areas of the country amid periodic flare-ups in a number of local conflicts. In some cases, these groups work to provide security in coordination with national authorities and in other cases they operate on an independent basis. Interim leaders have issued orders calling for armed groups to hand over land and facilities to state authorities, and registration of former revolutionary fighters for recruitment and/or retraining is underway. It remains unclear whether armed groups will more fully embrace reintegration campaigns under the newly elected government.

The proliferation of military weaponry from unsecured Libyan stockpiles—including small arms, explosives, and shoulder-fired anti-aircraft missiles (MANPADs)—remains a serious concern in Libya and in neighboring countries. Security Council Resolution 2017 specifically addresses this threat. The Obama Administration is implementing a program with Libyan authorities to retrieve and disable certain types of weapons, including MANPADs. Non-government reporting indicates that arms depots remain unsecured. U.S. officials believe that nuclear materials and chemical weapons components are secure (including previously undeclared chemical weapons), and Libyan leaders have recommitted to destroying the remnants of Qadhafi's chemical arsenal.

On March 12, 2012, the United Nations (U.N.) Security Council extended the mandate of the U.N. Support Mission in Libya (UNSMIL) for one year in order to assist the transitional authorities with security and administrative challenges. U.N. Security Council resolutions also set conditions for the sale of arms and training to the Libyan government and partially lift a U.N. mandated asset freeze for certain purposes. The U.S. Treasury Department has issued licenses that authorize the release of over \$30 billion in formerly blocked assets belonging to Libyan entities.

As of August 2012, the United States government has provided more than \$200 million in assistance to Libya since the start of the uprising in 2011, including \$89 million in humanitarian assistance, \$40 million for weapons abatement, and \$25 million in nonlethal assistance from Department of Defense stockpiles. As Libyans work to shape their future, Congress and the Administration have the first opportunity since the 1960s to fully redefine U.S.-Libyan relations.

## Contents

Background.....	1
Assessment .....	4
Issues Before Congress.....	5
Legislation in the 112 <sup>th</sup> Congress .....	6
Key Developments and Issues .....	9
General National Congress Election and Results .....	10
Constitutional Assembly and Federalism Debate.....	12
Security and Human Rights Challenges.....	13
Weapons Proliferation and Related Concerns.....	13
Chemical Weapons Destruction and Nuclear Material.....	14
Islam and Politics in Libya .....	16
United Nations Support Mission in Libya (UNSMIL).....	17
Libyan Assets and Oil Exports .....	17
Libyan Assets .....	17
Libya’s Oil Production, Exports, and Revenue .....	17
International Criminal Court (ICC) and United Nations Human Rights Council Investigations.....	18

## Figures

Figure 1. Libya At a Glance.....	2
Figure 2. Libya Uprising and Conflict Timeline.....	3
Figure 3. Libya’s Proposed Transition Timeline.....	3

## Tables

Table 1. U.S. Assistance to Libya FY2010-FY2013.....	7
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## Contacts

Author Contact Information.....	19
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## Background

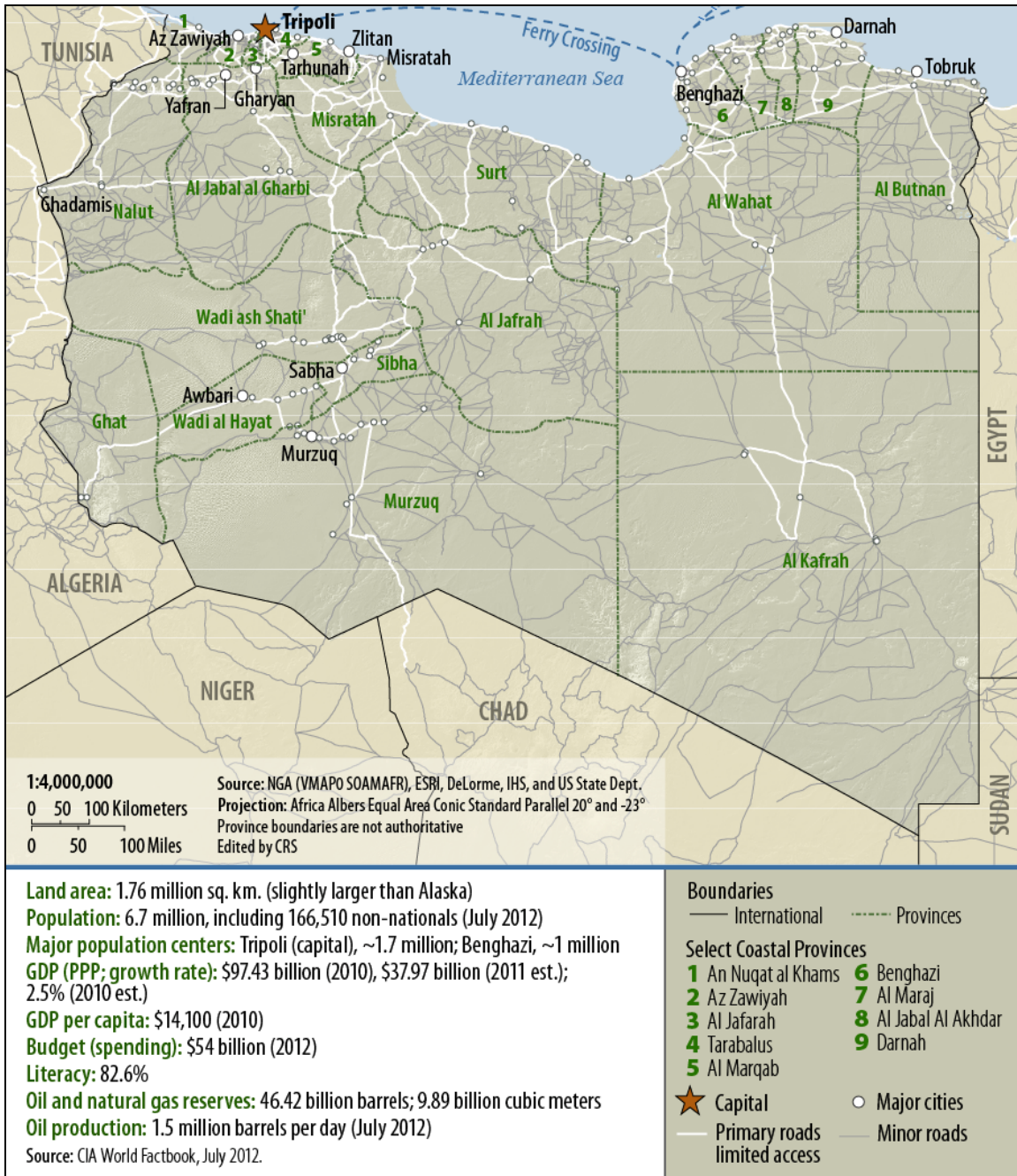
Political change in neighboring Tunisia and Egypt helped bring long-simmering Libyan reform debates to the boiling point in January and early February 2011. In recent years, leading Libyans had staked out a broad range of positions about the necessary scope and pace of reform, while competing for influence and opportunity under the watchful eye of hard-liners aligned with the enigmatic leader of the 1969 anti-monarchy revolution, Muammar al Qadhafi. Qadhafi had long insisted that he held no formal government position, but by all accounts he maintained his 40-plus-year hold on ultimate authority, until his death in October 2011, as the “reference point” for Libya’s byzantine political system. Ironically, that system cited “popular authority” as its foundational principle and organizing concept, but it denied Libyans the most basic political rights. Tribal relations and regional dynamics, particularly long-held resentments of Qadhafi among residents in the east, continue to influence Libyan politics. Rivalries are emerging among locally organized revolutionary groups with differing experiences during Qadhafi’s rule and the 2011 uprising. Political groups with differing priorities are now vying to shape Libya’s transition.

Qadhafi’s claimed policy reversals on weapons of mass destruction (WMD) and terrorism led to the lifting of most international sanctions in 2003 and 2004, followed by economic liberalization, oil sales, and foreign investment that brought new wealth to some in Libya. U.S. business gradually reengaged amid continuing U.S.-Libyan tension over terrorism concerns that were finally resolved in 2008. During this period of international reengagement, political change in Libya remained elusive and illusory. Some observers argued that Qadhafi supporters’ suppression of opposition had softened, as Libya’s international rehabilitation coincided with steps by some pragmatists to maneuver within so-called “red lines.” The shifting course of those red lines had been increasingly entangling reformers in the run-up to the outbreak of unrest in February 2011. Some Libyans and outside observers welcomed government efforts to rehabilitate imprisoned Islamists and allow the return of some exiled opposition figures. Ultimately, inaction on the part of the government in response to calls for guarantees of basic political rights and for the drafting of a constitution suggested a lack of consensus, if not outright opposition to meaningful reform.

The 2011 revolution was triggered in mid-February by a chain of events in Benghazi and other eastern cities that quickly spiraled out of Qadhafi’s control. The government’s loss of control in these cities became apparent, and broader unrest emerged in other regions. A number of military officers, their units, and civilian officials abandoned Qadhafi. Qadhafi and his supporters denounced their opponents as drug-fueled traitors, foreign agents, and Al Qaeda supporters. Until August 2011, Qadhafi and his forces maintained control over the capital, Tripoli, and other western cities. The cumulative effects of attrition by NATO airstrikes against military targets and a coordinated offensive by rebels in Tripoli and from across western Libya then turned the tide, sending Qadhafi and his supporters into retreat and exile. September and early October 2011 were marked by sporadic and often intense fighting in and around Qadhafi’s birthplace, Sirte, and the town of Bani Walid and neighboring military districts. NATO air operations continued as rebel fighters engaged in battles of attrition with Qadhafi supporters.

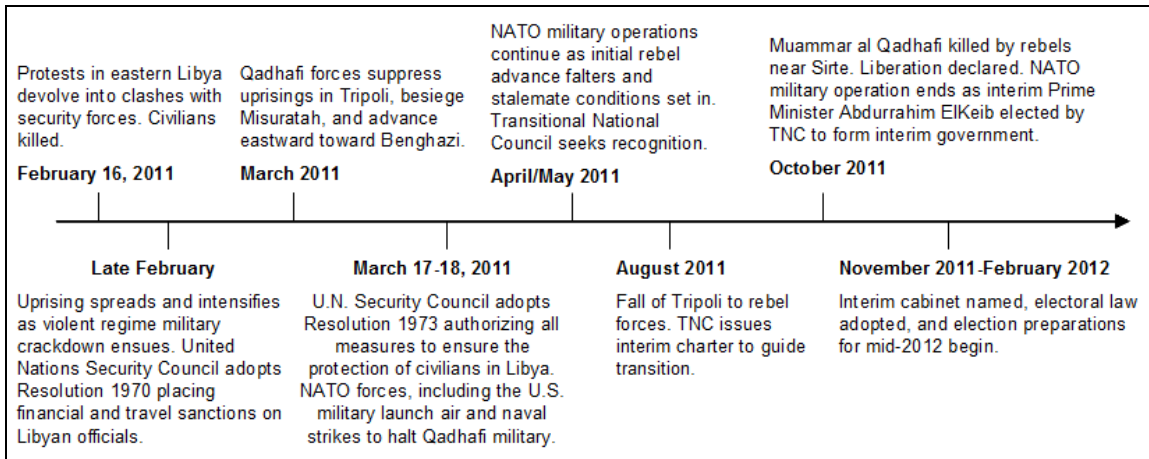
Qadhafi’s death at the hands of rebel fighters in Sirte on October 20 brought the revolt to an abrupt close, with some observers expressing concern that a dark chapter in Libyan history ended violently, leaving an uncertain path ahead. The self-appointed interim Transitional National Council (TNC) and its cabinet took initial steps toward improving security and reforming national institutions. Voters elected an interim General National Congress (GNC) in July 2012. The GNC assumed power on August 8 and will determine the process for drafting a new constitution.

Figure I. Libya At a Glance



Source: Prepared by Amber Hope Wilhelm, CRS Graphics Specialist.

**Figure 2. Libya Uprising and Conflict Timeline**



Source: CRS.

**Figure 3. Libya's Proposed Transition Timeline**



Source: Prepared by Amber Hope Wilhelm, CRS Graphics Specialist. Derived from Transitional National Council draft charter, August 2011 and United Nations U.N. Support Mission in Libya reporting.

Notes: Subject to revision.

## Assessment

After the swell of confidence and international recognition that followed the announcement of Libya's liberation in late 2011, Libya's citizens, revolutionaries, and Transitional National Council (TNC) leadership moved haltingly down a path of political transition and economic recovery during the first half of 2012. Political parties and civil society organizations—long banned—have emerged in large numbers, and a lively political atmosphere now exists, as reflected in the preparation for and conduct of Libya's first national election in nearly 50 years on July 7, 2012. The election of an interim 200-member General National Congress (GNC) marked an important step on the planned transition timeline (see **Figure 3** above), and many Libyans and outside observers have expressed hope that the elected interim Congress will appoint a cabinet that will be able to leverage its democratic legitimacy to act decisively on key issues. Like their predecessors, Libya's new interim leaders will face a number of chronic economic and political challenges, some of which have been exacerbated by the consequences of the violent revolution and complicated by the legacies of decades of Qadhafi's patronage- and fear-based rule.

With the exception of some violent attempts to disrupt voting in eastern Libya, domestic and international election observers reported that voting was administered professionally and transparently, without critical interruptions or serious irregularities.<sup>1</sup> Over 60% of registered voters participated. The results showed a strong performance by former interim-Prime Minister Mahmoud Jibril's Alliance of National Forces, which won 39 of 80 "political entity" (party-list) seats, followed by the Muslim Brotherhood-affiliated Justice and Construction party, which won 17 seats. The 120 individual candidates elected include a variety of activists, locally prominent persons, and party affiliates. The winners are now negotiating among themselves to form coalitions and identify members for the new interim cabinet that will replace the outgoing TNC and its executive authority.

Some expert observers of Libya's domestic politics have emphasized the general weakness and fractured condition of Libya's political landscape after 40 years of idiosyncratic abuse by Qadhafi and his supporters. Qadhafi purposely undermined state institutions, including the military, and manipulated tribal, regional, and political groups to maintain power. As a result, transitional authorities have inherited weak national institutions, and competition among some groups has intensified during the transition. Political support for interim leaders among some Libyans has waned in light of the government's failure to rapidly improve basic services, ensure security, or deliver expected financial support via salaries, subsidies, and relief payments. U.S. officials applauded the conduct of the election, welcomed the newly elected GNC, and have not described ongoing political debates and intermittent security incidents as grave threats to the transition.

Security concerns remain the immediate priority, as a series of isolated armed conflicts and attacks on international targets in several cities have raised serious questions about the ability of the interim authorities to ensure order. As of August 2012, militia groups remained active and influential, with some acknowledging and participating in government efforts to assert central security authority. Public displays of weapons, attacks on international targets, and isolated armed

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<sup>1</sup> European Union Election Assessment Team, Preliminary Statement, July 9, 2012; Carter Center Election Observation Mission Preliminary Statement, July 9, 2012; Shahed Network for Election Monitoring, Statement on Election Day - Morning Period, July 7, 2012. Author served as an international election observer with the Carter Center Election Observation Mission in Ajdabiya and Benghazi in eastern Libya.

clashes underscore the threats posed by some groups. Security officials continue to rely on irregular forces to provide security in much of the country. Differences of opinion over regional representation and the balance of power between national and local authorities may become a subject of greater debate and potential source of conflict as the transition continues.

Libya's borders and hundreds of suspected weapons sites remained loosely secured, although limited efforts to secure them have begun, with the support of the United Nations Support Mission in Libya (UNSMIL), the United States, and other governments. The proliferation of small arms, man-portable air defense missile systems (MANPADS), and some heavy weaponry among Libyans and beyond Libya's borders has led some counterterrorism and arms trafficking experts, as well as officials in neighboring countries, to express concern about the conflict's longer-term implications for security in Libya and the region. Most security experts expect that unexploded ordnance, explosive remnants, and looted weaponry will present a domestic and regional challenge for many years. Officials in the United States and Europe have expressed concern about the potential for violent extremists to benefit from conditions in Libya and are seeking to maintain counterterrorism cooperation with the post-Qadhafi government.

Taken together, these factors suggest that securing U.S. interests in Libya may require sustained attention and commitment of resources. Administration officials argue that U.S. policy must remain flexible in order to effectively shape and respond to developments. Administration officials and Members of Congress may choose to reexamine U.S. interests in Libya; discuss possible outcomes for Libya's transition and their potential implications; and define the authorities for and costs of potential U.S. responses.

## Issues Before Congress

Many Members of Congress welcomed the announcement of Libya's liberation and the formation of an interim cabinet, while expressing concern about security in the country, the proliferation of weapons, and the prospects for a smooth political transition. Congress continues to exercise oversight over U.S. diplomatic, security, and assistance efforts in Libya and is considering appropriation and authorization requests and notifications related to Libya programs. Securing stockpiles of Libyan conventional and chemical weapons has emerged as an issue of broad congressional concern, as has ensuring that transitional authorities act in accordance with international human rights standards in pursuing justice and handling detainees. Members may also debate Libya's regional influence, whether as a political example or a potential source of instability. Administration officials and congressional decision makers have worked together to identify and reprogram an array of previously appropriated funding to respond to developments in Libya since 2011 (see **Table 1** below).

- Medical and humanitarian assistance has supported Libyans injured or displaced during the revolution as well as Libyans and non-Libyans who fled the fighting last year.
- U.S. programs to mitigate threats posed by weapons proliferation and to support the political transition toward democratic government are ongoing. U.S. civilian advisers work with Libyan forces to locate, secure, and disable shoulder-fired anti-aircraft missiles and other weaponry (see "Weapons" below).
- U.S. civil society support for Libya's transition is being provided under the auspices of the State Department's Middle East Partnership Initiative (MEPI) and



the \$5 million Libya Transition Initiative (LTI), managed by the U.S. Agency for International Development (USAID) Office of Transition Initiatives (OTI). The National Endowment for Democracy also is funding programs being implemented by the International Republican Institute, the National Democratic Institute for International Affairs, and Libyan civil society organizations.

For FY2013, the Obama Administration is requesting \$150,000 in Foreign Military Financing (FMF), \$250,000 in International Military Education and Training (IMET) funding, and \$1.25 million in Nonproliferation, Antiterrorism, Demining and Related Programs (NADR) funding to continue engagement programs with Libyan security forces and to improve border security. A portion of a requested \$770 million Middle East North Africa Incentive Fund (MENA-IF) also may benefit Libyans, if appropriated. As of August 2012, the House Appropriations Committee had declined to include funding for the MENA-IF initiative in its version of the FY2013 Foreign Operations appropriations bill (H.R. 5857). The Senate Appropriations Committee included \$1 billion for the MENA-IF, an increase over the Administration's request (S. 3241).

Congress has enacted legislation encouraging cost-matching by Libya, given its resource wealth, and prohibiting U.S. grant funding of rehabilitation or reconstruction of infrastructure in Libya using FY2012 funds. Similar conditions or restrictions may be included in appropriations legislation for FY2013, along with requirements for vetting of Libyan personnel participating in security assistance programs.

## **Legislation in the 112<sup>th</sup> Congress**

The pending FY2013 Foreign Operations appropriations legislation discussed above constitutes the main legislation relevant to Libya currently before Congress. Debate concerning the future of U.S. policy toward Libya is being shaped by the events of the transition period, and may increasingly reflect issues that were prominent prior to the uprising, including U.S. counterterrorism priorities, economic opportunities in Libya, security cooperation, and human rights. Recent legislation adopted includes:

- The FY2012 State Department and Foreign Operations appropriation (Division I of P.L. 112-74), which provides up to \$20 million in bilateral Economic Support Fund (ESF) account assistance “to promote democracy, transparent and accountable governance, human rights, transitional justice, and the rule of law in Libya, and for exchange programs between Libyan and American students and professionals.” The law prohibits the use of FY2012 funding for non-loan-based rehabilitation or reconstruction of infrastructure in Libya. The committee report on the Senate version of the bill directs the use of NADR account funding for disarmament and securing Libyan weapons stockpiles.
- The FY2012 National Defense Authorization Act (P.L. 112-81), which was amended (S.Amdt. 1180) to include, in Section 1235, a requirement that the Director of National Intelligence submit to Congress an assessment “that accounts for the disposition of, and the threat to United States citizens and citizens of allies of the United States posed by man-portable air-defense systems that were in Libya as of March 19, 2011.” The law also requires the Administration to develop a strategy for mitigating potential related threats and submit a detailed report to Congress, in unclassified and classified form.

**Table I. U.S. Assistance to Libya FY2010-FY2013**

(thousands of dollars, fiscal year of appropriation unless noted)

Account/Program	FY2010	FY2011	FY2012 Estimate	FY2013 Request
<b>Economic Support Fund (ESF)</b>	-	-	-	TBD
<b>Foreign Military Financing (FMF)</b>	150	-	150	150
<b>International Military Education and Training (IMET)</b>	319	-	200	50
<b>Nonproliferation, Antiterrorism, Demining and Related Programs (NADR)</b>				
Anti-Terrorism Assistance (NADR-ATA)	-	-	800	1,000
Export Control and Related Border Security Assistance (NADR-EXBS)	-	500	1,300	250
<b>Middle East Partnership Initiative (MEPI)</b>	3,530	3,145	-	
<b>Middle East Response Fund (MERF)</b>	-	25,615	-	-
<b>USAID Middle East Regional Funding</b>	-	175	-	-
<b>Democracy Fund</b>	-	600	-	-
<b>Development Assistance</b>	-	470	-	-
<b>Humanitarian Funding</b>				
Emergency Refugee and Migration Assistance (ERMA)	-	25,000	-	-
International Disaster Assistance (OFDA)	-	13,300	-	-
International Disaster Assistance (FFP)	-	15,700	-	-
Migration and Refugee Assistance (MRA)	-	35,000	8,800	-
<b>Weapons Abatement Programs (NADR subaccounts)</b>				
Counterterrorism Engagement (CTE)	95	-	-	-
Conventional Weapons Reduction (CWD)	-	5,750	-	-
Global Threat Reduction (CTR)	500	-	350	-
Nonproliferation Disarmament Fund (NDF) <sup>a</sup>	-	34,300	-	-
Regional Strategic Initiative (RSI)	-	9	-	-
<b>Transition Assistance (USAID-OTI)</b>	-	4,000	1,500	-
<b>Department of Defense Nonlethal Support Drawdown Authority<sup>b</sup></b>	25,000	-	-	-

**Source:** U.S. Department of State communication to CRS, June 2012.

**Notes:** Click here and type the notes, or delete this paragraph

- a. NDF funds reprogrammed from multiple fiscal years - FY2003, FY2004, FY2009 and FY2010.
- b. During the 2011 conflict, the Administration notified Congress of its intent to offer up to \$25 million in nonlethal material support to groups in Libya. U.S. officials argued that the rebels' most pressing needs were command and control, communications, training, organization, and logistics support.

- Section 598 of P.L. 112-81 also reflects language introduced in S. 1822, and directs the Secretary of Defense to assess the feasibility and cost of identifying, exhuming, repatriating, and reinterring the remains of U.S. service members buried in Tripoli, Libya who were killed in the explosion aboard the *U.S.S. Intrepid* in Tripoli Harbor in 1804.

Other legislation introduced in the 112<sup>th</sup> Congress related to Libya includes

- H.R. 3725, which would direct the President to vest blocked Libyan assets “to defray the full costs of Operation Odyssey Dawn and United States participation in NATO Operation Unified Protector and any associated humanitarian efforts undertaken on behalf of the Libyan people,” and, “to satisfy and pay in full all final awards of compensation to United States nationals ordered by the Foreign Claims Settlement Commission in its Libya Claims Program pursuant to the Libyan Claims Resolution Act (P.L. 110-301) and the International Claims Settlement Act of 1949 (22 U.S.C. 1621 et seq.)”
- H.Con.Res. 75, which would state the sense of Congress that,  
“the funds of the regime of Muammar Qaddafi that have been frozen by the United States should be returned to the people of Libya for their benefit, including humanitarian and reconstruction assistance, and the President should explore the possibility with the Transitional National Council of using some of such funds to reimburse NATO countries for expenses incurred in Operation Odyssey Dawn and Operation Unified Protector.”
- S. 1520, which would restrict the transfer of blocked Libyan assets to Libyan authorities for other than humanitarian purposes until the President certifies to Congress “that the Transitional National Council or successor government is fully cooperating with requests for information and ongoing investigations related to the bombing of Pan Am flight 103 and any other terrorist attacks attributable to the government of Muammar Qaddafi against United States citizens.” The bill would provide national security waiver authority to the President and require reporting on U.S. efforts to obtain information regarding terrorist attacks along with Libyan cooperation.

### **U.S. Military Operations in Libya and Congressional Debate**

Debate between Congress and the Obama Administration about congressional authorization and the cost of U.S. military operations in Libya diminished during 2011 as the prospect of a sustained military campaign requiring extended U.S. investment and force deployments became less likely. In early 2011, some Members of Congress questioned the President’s authority to commit U.S. forces to the conflict, criticized the extent of the President’s consultation with Congress, and sought a clear definition of U.S. objectives, costs, and operations. Some Members became increasingly assertive in their efforts to force President Obama to seek explicit congressional authorization for continued U.S. military involvement. A number of proposed resolutions and amendments to appropriations and authorization bills sought to require reporting on U.S. strategy and operations or to proscribe limits on the authorization or funding for continued U.S. military operations in Libya. Others sought to authorize the continued use of U.S. Armed Forces in support of NATO operations, short of the use of ground troops.

On June 3, 2011 the House adopted H.Res.292 (Roll no. 411), which directed the Administration to provide documents on consultation with Congress and a report “describing in detail United States security interests and objectives, and the activities of United States Armed Forces, in Libya since March 19, 2011.” The Administration submitted the report on June 15, 2011. The House of Representatives rejected a series of other resolutions seeking to authorize or de-authorize continuing U.S. participation in Operation Unified Protector. U.S. and NATO military operations ended in late October 2011.

## Key Developments and Issues

Libyans' initial euphoria at the downfall of Muammar al Qadhafi has settled into an uneasy mix of hope and fear about the country's future.<sup>2</sup> The country's rich energy resources, its young population, its strategic location, and its economic growth potential present significant opportunities for positive change. However, the immediate consequences of the 2011 war in Libya—namely the wide dispersal of weaponry, the military mobilization of the society, the disruption of state finances and institutions, damaged infrastructure, and the injury and displacement of many Libyans—continue to confront Libya's interim authorities and citizens. The deeper consequences of Qadhafi's divisive rule—inadequate human capital development, sclerotic and corrupt bureaucracy, political manipulation of local and tribal groups, and widespread property dispossession—also are complicating the transition and present thorny problems to overcome.

The General National Congress (GNC) election on July 7 marked a shift toward democratic governance that has been mirrored in a series of local elections in different cities held in 2012. During the initial phase of the transition period, the Transitional National Council (TNC) and its executive cabinet struggled to balance the responsibilities of interim governance, the lack of a clear democratic mandate for them to make and enforce decisions, and the expectations of an energized population demanding tangible change and swift results. Compensation and medical treatment for conflict victims, maintenance of basic security, and the establishment of rule of law remain the key concerns of Libyans and interim leaders, amid ongoing political debates about the principles that will shape the new national constitution.

Libya's civil conflict led to the emergence of local governing councils and militia that in some cases are competing with each other and with interim leaders for authority. The elected status of the GNC may alleviate some of the perceived democratic deficit that has haunted the interim leadership to date, but the country's challenges are significant, popular patience has waned, and over time the country's considerable opportunities may be at risk.

The GNC election and the planned constitutional drafting process also have reignited long-subdued regional tensions between eastern and western Libya. Activists in eastern Libya have demanded equal regional representation in the GNC and the constitutional drafting committee, despite of the fact that eastern Libya has a smaller population than in western Libya. Broader debate focuses on the relative merits of administrative decentralization or regional autonomy in a federal system. National reaction to easterners' demands has been mixed at best, with many Libyans embracing calls for decentralization while expressing concern that the political assertion of regional identity and calls for autonomy risk dividing the country and may spark renewed conflict.<sup>3</sup> Similar debates, concerns, and risks featured prominently during Libya's founding as a unified state under United Nations auspices in the early 1950s and shaped national politics until Qadhafi and his allies overthrew the monarchy in 1969.

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<sup>2</sup> Ian Martin, the United Nations (U.N.) Special Representative of the Secretary-General and Head of the U.N. Support Mission in Libya (UNSMIL) has summarized the challenges and opportunities facing Libya in a series of detailed presentations to the Security Council in 2012. See U.N. Documents S/PV.6707, January 25, 2012; S/PV.6728, February 29, 2012; S/PV.6768, May 10, 2012, and, S/PV.6807, July 18, 2012.

<sup>3</sup> UNSMIL's Ian Martin said in his July 2012 report that "the strength of feeling regarding past marginalization of the east is widely shared there and requires political solutions." S/PV.6807, July 18, 2012.

## General National Congress Election and Results

On July 7, 2012, Libyan voters chose 200 members of General National Congress in the country's first national election since 1965. Domestic and international observers praised officials and voters for the conduct of the election, noting the short time frame and significant logistical challenges that Libyans overcame. Of the 2.8 million voters who registered to vote, roughly 62% voted in the July election, with turnout consistent across most areas of the country. A combination of national and local security officials and militia groups provided security for election sites, with local volunteers serving as election administrators at over 1500 polling locations. Local conflict delayed voting in the southern town of Kufrah, and, in the east, armed groups attempted to disrupt the election by destroying sensitive voting materials and attacking polling sites in Ajdabiya, Benghazi, and other areas. Local authorities employed ad hoc security responses, and, with U.N. support, national authorities replaced critical material in time for voting to proceed.<sup>4</sup>

The election featured a mixed electoral system of 120 individual candidate seats and 80 political entity list seats. Seats were distributed nationally on the basis of population, with western Libyan districts receiving 100 seats, eastern districts receiving 60 seats, and southern districts receiving 40 seats. Debate over the electoral system in the run up to the election revolved around this regional distribution of seats (see below) as well as the best ways to encourage the selection of nationally-oriented figures rather than advocates for discrete local, tribal, or party agendas. Advocates for individual candidacy argued that a party-dominated system would empower better-organized or better-funded groups such as the Muslim Brotherhood-backed Justice and Construction Party. Advocates of greater party representation argued that individual candidates would reflect the elite interests of the wealthy and of local families and tribes at the expense of average Libyans and groups with national perspectives.<sup>5</sup>

The mixed electoral system appears to have succeeded in yielding a group of representatives that balances party and local interests and creates opportunities for negotiating coalitions across party and regional lines. The body of elected individual candidates is made up of locally prominent individuals, political activists, and some national figures, while the successful political entity lists reflect the range of competing trends in Libya's emerging political order. The Alliance of National Forces, a coalition of civil society organizations led by former interim Prime Minister Mahmoud Jibril, won 39 of the 80 political entity seats and performed particularly well in Benghazi, Tripoli, and other urban areas. The Muslim Brotherhood-affiliated Justice and Construction Party won 17 seats and was most successful in Tripoli, central Misuratah, and south-western Libya. Overall, 21 political entities won seats, of which 15 entities received only one seat. Margins of victory for both individual candidates and political entities varied, with some candidates and entities leveraging local notoriety to score decisive victories and other candidates winning based on narrower margins of a few hundred seats or less. Women won 33 seats, 32 of which were "political entity" seats. Political entities were required to alternate male and female candidates on district lists as well as alternate their top list candidates by gender to better ensure female representation.

Many media outlets have characterized the result as a signal that Islamist political parties are less popular in Libya than they are in neighboring Egypt or Tunisia. The timing and unique

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<sup>4</sup> The author served as an international election observer in Ajdabiya and Benghazi.

<sup>5</sup> Abd al Sattar Hutaytah, "Libyan Parties Marginalized Amidst The Rise of The Role of Tribal And Militia Leaders," *Al Sharq al Awsat* (London), January 31, 2012.

circumstances surrounding the election may make that judgment premature. Most political entities and candidates emphasized national unity during the election rather than seeking to define themselves in religious terms or advance Islamist priorities. Libya remains a relatively conservative society and many political figures and entities make frequent reference to Islam and its role in Libyan social and political life. Topics such as the role of religious law in the legal system are shaping debate over the new constitution. Historically, Libyan Islamist groups have not played the same role in political life as they have in other Arab countries; their political fortunes may improve as they increase their public profile and campaign more directly on issues that resonate with conservative Libyan voters.

### **Libya's Emerging Political Movements**

Political parties and all opposition groups were severely restricted under the Al Senussi monarchy and banned under Qadhafi. Formal political pluralism was frowned upon by many members of the Qadhafi-era elite, even as, in the period preceding the unrest, some regime figures advocated for greater popular participation in existing government institutions. Dynamics among expatriate Libyan opposition figures and Libya-based activists reflect the subtle legacies of Libya's former monarchy period, changes to monarchy-era power structures under Qadhafi, and the events of the anti-Qadhafi revolution.<sup>6</sup> Prior to the 2011 uprising, Libya's opposition movements were often categorized broadly as Islamist, royalist, or secular-nationalist in orientation. Their activities and effectiveness were limited by government repression and infiltration, disorganization, rivalry, and ideological differences.

The July 2012 election served as an important first step for Libyans working to overcome a shared lack of experience in formal political organization, competition, and administration. In election campaigning, many movements and parties emphasized common themes of national unity, security, social solidarity, and support for those killed and wounded in the revolt. They also presented differing priorities and opinions on controversial issues such as national reconciliation, security, the role of religious law in public life, and the relative merits of proposals for a federalist constitution for Libya. Secular-nationalist and Islamist groups feature prominently among the new entities, and leftist groups and pro-federalism movements also have emerged.

**Alliance of National Forces** – Led by former interim Prime Minister Mahmoud Jibril, the Alliance of National Forces consists of nearly 60 civil society organizations and political entities united around a platform that supports a civil state, human rights protections, and economic liberalization. The Alliance has been criticized by some Islamist rivals for adopting religious symbols and language while advocating for a relatively secular agenda. The Alliance platform categorically rejects relations with Israel, referring to it as “the Zionist entity.”<sup>7</sup> The Alliance won 39 political entity seats in the July 2012 GNC election.

**The Muslim Brotherhood & The Justice and Construction Party** – The Libyan Muslim Brotherhood has existed since the 1940s and was banned under Qadhafi. It now has official recognition as a civil society organization. The Brotherhood selected Bashir Abdelsalaam al Kabti as its General Guide at a landmark public meeting in November 2011. Al Kabti lived in the United States for 30 years prior to his return to Libya. The Justice and Construction party (JCP) serves as the Brotherhood's political vehicle, but includes non-Brotherhood figures. Mohammed Sawan serves as the head of the JCP, which won 17 political entity seats in the July 2012 GNC election.

**National Front Party** – The National Front for the Salvation of Libya (NFSL) was one of the most active and prominent exile-led opposition movements during the Qadhafi era. The National Front Party represents the NFSL's attempt to transition from its former role in seeking to unite Libyans from abroad to leading Libyans at home. Like other exile-led groups, the National Front is vulnerable to criticism from Libyans that are suspicious of expatriates. The National Front won three political entity seats in the July 2012 GNC election. Its leader Mohammed Magariaf was elected, and some Libyans are speculating that he may assume a leadership role within the GNC.

<sup>6</sup> According to one analyst, the TNC leadership consisted of members from several general groups: “defectors from the former regime elite”; “scions of the aristocratic and bourgeois families who had dominated Libya during the monarchy (1951-69)”; exiled “members of the non-aristocratic Libyan intelligentsia and business community”; and, Libya-based “representatives of the educated elite, such as lawyers and university professors.” These individuals have struggled to make common cause at times with Islamists, elites in western Libya, protestors, and armed volunteer fighters. See Wolfram Lacher, “Families, Tribes and Cities in the Libyan Revolution,” Middle East Policy Council, November 2011.

<sup>7</sup> Clause 32 of Alliance Charter, available at [[http://www.nff.ly/Eltahalof\\_Mesak.aspx](http://www.nff.ly/Eltahalof_Mesak.aspx)]. Accessed July 18, 2012.

## **Constitutional Assembly and Federalism Debate**

The next major step in Libya's transition process is the drafting and approval of a new constitution. To date, the transition has followed steps laid out in an interim constitutional declaration issued by the Transitional National Council (TNC) in August 2011. The interim constitution has been amended to reflect political developments over the last year, particularly with regard to resurgent debates about federalism and regional representation in national decision-making bodies. These issues have lurked in the background of Libyan politics since the creation of the state in 1951. The independent kingdom of Libya united three provinces with different historical experiences and political identities under the leadership of the eastern-Libya based Al Senussi monarchy. Rivalry among the regions shaped the original constitution drafting process and limited the effectiveness of the federal system it created. Resentment of the centralization of the state, first under the easterner-dominated monarchy in the 1960s and then under Qadhafi from the 1970s onward, subtly divided Libyans on regional lines.

A widely-espoused commitment to national unity and solidarity has defined much of the political rhetoric of the post-Qadhafi transition period. Nevertheless, some in eastern Libya fear that a consolidation of power at the national level will continue a pattern that they claim marginalized the east and neglected its development. As such, procedures for selecting a new constitutional drafting body have been amended twice, each time in an effort to respond to calls from activists in eastern Libya concerned that the constitution would be drafted on the basis of proportional differences in population rather than equal regional representation. The TNC's allocation of seats for the General National Congress (GNC) election granted more populous western Libya more seats than the east or the south, but fewer seats than a directly proportional ratio would have guaranteed.

- In March 2012, the TNC amended Article 30 of the interim constitutional declaration to state that the soon-to-be-elected GNC would select a body from outside its membership to draft a constitution made up of 60 members "in the manner of" the 60-member committee that drafted Libya's 1951 constitution.<sup>8</sup> The 1951 constitutional committee drew 20 members equally from each of Libya's three constituent regions – Tripolitania, Fezzan, and Cyrenaica.
- In July 2012, just days before the national election, the TNC issued a further amendment stating that the constitutional committee would be directly elected by voters rather than chosen by the GNC.<sup>9</sup> The move came as activists in eastern Libya continued to protest the proportional division of seats for the GNC elections by regional population.

Among the first decisions the elected GNC faces is whether or not to reverse the TNC's eleventh hour change to the GNC's role in selecting the constitutional drafting committee. Critics of the TNC decision point to the delay that a new election would insert in the transition process, which could be problematic given the increasing popular demands for action on key issues. Supporters of the TNC decision argue that accommodating key political concerns in the foundational decisions that will shape Libya's new constitution may be the best way to ensure that aggrieved parties do not have grounds to fundamentally reject the transition process in the future.

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<sup>8</sup> Transitional National Council, Constitutional Amendment Number 1 of 2012, March 13, 2012.

<sup>9</sup> Transitional National Council, Constitutional Amendment Number 3 of 2012, July 5, 2012.

## **Security and Human Rights Challenges**

Since late 2011, sporadic outbreaks of violence among rival militia groups, criminals, and armed citizens have shaken Libyans' confidence in transitional leaders and in each other. From one perspective, the number of security disruptions is smaller than might otherwise be expected in a post-conflict environment awash in weapons and dominated by dozens of armed groups with varying relationships to state authority. From another perspective, the level of crime, the continuing independence of local militia, the broad availability of weapons, and the relative limitations of national security bodies suggest that Libya's security remains a function of Libyans' self-restraint rather than the capability of security authorities. According to UNSMIL, "Libya's revolutionary brigades do not seek to remain in separate existence and to challenge State authority," but "efforts to date to integrate revolutionaries and brigades have lacked an overall concept and coordination, and need urgent review as part of the security reform agenda for the police and defense forces, including integrated border security and management."<sup>10</sup>

International human rights entities and the United Nations have observed and criticized examples of torture, unacceptable detention conditions, and extrajudicial punishment by official security entities and militia groups across Libya. The TNC directed militia groups to abstain from abusing prisoners or settling scores with arms, and the GNC-appointed government is likely to continue to rely on militia groups to secure some areas of the country and hold Qadhafi-era detainees until national security forces are more developed. In March 2012, UNSMIL estimated that between 5,000 and 6,000 detainees remained in the custody of militia groups. In July 2012, UNSMIL argued that the elected Libyan government should urgently act to improve its judicial capacity in order to grant detainees access to trial, obviate the need for extra-judicial action by militia groups, and bolster the rule of law.<sup>11</sup> Some minority groups and tribes associated with the Qadhafi regime remain internally displaced and have been targeted by rival groups, such as former residents of Tawergha, members of the Mashasha tribe, and the Tuareg and Tebu ethnic groups.

## **Weapons Proliferation and Related Concerns**

The Libyan military's massive small arms and heavy weapons stockpiles have been looted and dispersed both within Libya and beyond its borders, creating local and regional security concerns. Authorities in several countries, including Egypt, Niger, Algeria, Israel,<sup>12</sup> and Tunisia have expressed concerns about the smuggling of Libyan weaponry across or toward their borders, and continuing smuggling incidents and arrests reflect the broad scope of the threat. Particular concern has been focused on the potential smuggling of shoulder fired anti-aircraft missiles (MANPADS). U.N. and U.S. officials have not indicated that they have seen evidence that MANPADS have been smuggled out of Libya, but believe such leakage can not be ruled out.<sup>13</sup>

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<sup>10</sup> U.N. Document S/PV.6807, July 18, 2012.

<sup>11</sup> U.N. Document S/PV.6807, July 18, 2012.

<sup>12</sup> According to unnamed Israeli officials, "thousands" of weapons have entered Gaza from Libya, including "SA-7 anti-aircraft missiles and rocket-propelled grenades (RPGs)," but the weaponry is "not a major qualitative enhancement" for Gaza-based armed groups. Israeli officials also have stated that "weapons are available in Libya as a result of the unstable situation there, and Hamas has exploited it to buy weapons from Libyan smugglers." CRS cannot independently verify these statements, and the Obama Administration has not commented on the record regarding reports of arms shipments from Libya to Gaza. See Reuters, "Israel sees Libya as New Source of Arms for Gaza," July 21, 2011; and, Reuters, "Israel Says Gaza Gets Anti-Plane Arms from Libya," August 29, 2011.

<sup>13</sup> U.N. Special Representative Ian Martin told the U.N. Security Council in late January that "there is as yet little evidence that MANPADS have been smuggled out of Libya in significant numbers." U.S. Assistant Secretary of State (continued...)



According to U.N. officials, Libyan efforts to secure the country's borders are hampered by a lack of internal coordination. Southern borders remain the least secure, and frequent closures of the border with Tunisia reflect the limits of coordination with neighboring countries.

U.S.-Libyan efforts to mitigate the threats posed by the proliferation of weaponry from Libyan military stockpiles are proceeding under the terms of a bilateral agreement on weapons abatement signed in late 2011. The U.S. government has deployed Quick Reaction Forces of expert civilian personnel to Libya who are embedded with Libyan military units. As of late January, they had inspected over 120 storage areas and 1,500 bunkers, accounting for over 5,000 MANPADS systems.

The State Department-led interagency MANPADS Task Force plans to oversee a three-phase MANPADS accounting, recovery, and threat mitigation program for Libya and the region, to include inventory, border control assistance, and airport security assessments.<sup>14</sup> Their efforts are complicated by the fact that NATO airstrikes targeted weapons depots where large numbers of the systems may have been stored, and these systems and other weapons have been subsequently destroyed, disrupted, or buried. The dispersal of some systems among Libyan militia and the reluctance of Libyans to disarm are also challenges.<sup>15</sup> In July, Assistant Secretary of State for Political Military Affairs Andrew Shapiro was quoted as saying that Libyan "militias have control of the MANPADS...and other loose weapons."<sup>16</sup> UNSMIL has reported that U.N.-assisted Libyan efforts "to develop safe arms and ammunition storage areas" have been "inhibited by unclear allocations of responsibility and lack of coordination among various Libyan actors."<sup>17</sup>

## **Chemical Weapons Destruction and Nuclear Material**

The security of Libya's stockpiles of declared chemical weapons material and its remaining nuclear materials have been the subject of sustained scrutiny.<sup>18</sup> In August 2011, the State

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for Political-Military Affairs Andrew Shapiro stated in remarks at the Stimson Center in Washington DC in early February 2012 that the U.S. government had not seen evidence of MANPADS leaving Libya to date although it was all but impossible to be certain. Remarks by Andrew J. Shapiro, Assistant Secretary, Bureau of Political-Military Affairs, Stimson Center, Washington, DC, February 2, 2012. In late February, Algerian authorities reported that they had discovered a cache of over forty Russian-made shoulder-fired surface to air missiles near the eastern desert town of In Amenas, southwest of the Libyan border town of Ghadames. The cache reportedly consisted of 15 SA-24 and 28 SA-7 missiles. Lamine Chikhi, "Exclusive: Algeria seizes missiles smuggled from Libya: source," Reuters, February 18, 2012; Sihem Balhi, "Un stock découvert à In Amenas : Des missiles libyens anti-avion sur le territoire Algérien," *Dernières Nouvelles D'Algérie*, February 19, 2012.

<sup>14</sup> Remarks by Andrew J. Shapiro, Assistant Secretary, Bureau of Political-Military Affairs, Stimson Center, Washington, DC, February 2, 2012.

<sup>15</sup> In March 2012, the U.N. Secretary General reported that, "The full magnitude of the arms problem remains unknown because access to stockpiles controlled by 'brigades' remains a challenge; no reliable records exist of pre-conflict weapons stocks; and details of weapons destroyed, transferred or used during the conflict are not available." U.N. Document S/2012/129, March 1, 2012. For a comprehensive assessment of these challenges, see International Human Rights Clinic (IHRC), CIVIC and Center for American Progress, "Explosive Situation: Qaddafi's Abandoned Weapons and the Threat to Libya's Civilians," August 2012.

<sup>16</sup> John T. Bennett, "U.S. Official: No Evidence Of 'MANPADS Leakage' In Syria," *U.S. News and World Report - Dotmil Blog*, July 27, 2012.

<sup>17</sup> U.N. Document S/PV.6807, July 18, 2012.

<sup>18</sup> For an overview of Libya's declared chemical weapons and nuclear materials see U.S. State Department, *Condition (10)(C) Report—Compliance with the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, August 2011; and, International Atomic Energy Agency (IAEA) (continued...)

Department reported that prior to the conflict, Libya had destroyed over 50% of its declared mustard agent stocks and over 40% of its declared liquid chemical weapons precursors. In late 2010, Libya had restarted the long-delayed destruction of its declared mustard agent and precursor stockpiles, although technical problems and the outbreak of the conflict resulted in Libya missing its May 2011 destruction deadline.

Libya destroyed the munitions for dispersing mustard agent that it had declared in 2004, and during the 2011 conflict, U.S. officials repeatedly stated publicly that they believed the remaining sulfur mustard agent and precursor stockpiles were secure.<sup>19</sup> The non-weaponized nature of the declared sulfur mustard agent and precursor materials had suggested that the material posed a smaller threat than otherwise may have been the case.<sup>20</sup> The TNC formally notified the Organization for the Prohibition of Chemical Weapons (OPCW) on November 1, 2011 that it had located what it believed to be undeclared chemical weapons. The OPCW has now verified that the materials consist of sulfur mustard agent and artillery shells that are chemical munitions. The Qadhafi government reportedly omitted the materials from its original declaration to the OPCW in contradiction to the basic commitments it made as part of the normalization of its relations with the United States and Europe.<sup>21</sup>

Libyan forces control the sites where the materials of concern are stored, and transitional leaders have committed to upholding Libya's commitment to destroy chemical weapons materials under the mantle of the OPCW.<sup>22</sup> Libya's previously declared stockpiles were required to be destroyed in full by April 2012 under a renegotiated OPCW deadline. In April 2012, transitional officials submitted an amended destruction plan under which destruction operations would resume in March 2013, with the goal of complete destruction of the remaining stockpiles and materials by December 2016.<sup>23</sup>

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Board of Governors, *Implementation of the NPT Safeguards Agreement in the Socialist People's Libyan Arab Jamahiriya*, GOV/2008/39, September 12, 2008.

<sup>19</sup> The declared chemical materials are stored at Rabta, southwest of Tripoli and Ruwagha, near the Al Jufrah Air Force Base in central Libya. According to the U.S. State Department, identified mustard and nerve agent precursors present in Libya included pinacolyl alcohol, isopropanol, phosphorus trichloride, 2-chloroethanol, tributylamine, and thionyl chloride. See State Department, Office of the Spokesperson, "Libya: Securing Stockpiles Promotes Security," August 26, 2011.

<sup>20</sup> For example, Colonel David Lapan, a Pentagon spokesman argued that "Even if not weaponized, there's still a threat, but it's a smaller threat than if it is weaponized." Agence France Presse, "Libya Has Mustard Gas, Lacks Delivery Systems: Monitor," March 10, 2011.

<sup>21</sup> The revelation that Qadhafi withheld information about chemical agents and munitions and that the OPCW and U.S. and European intelligence services appear to have had no knowledge of the omission raises questions about intelligence and one aspect of the rationale for the Qadhafi government's international rehabilitation. R. Jeffrey Smith, Joby Warrick, and Colum Lynch, "Iran may have sent Libya shells for chemical weapons," *Washington Post*, November 20, 2011.

<sup>22</sup> The OPCW has stated that "the new authorities inherited the obligations of the old regime," and that the OPCW "will continue to work with the Libyan authorities to verify and destroy any newly declared stocks." AFP, "Libya's NTC Pledges To Destroy Chemical Weapons: OPCW" November 4, 2011, and, OPCW, "OPCW Inspectors Return to Libya," November 4, 2011.

<sup>23</sup> According to the OPCW, "The OPCW will continuously maintain rotating teams of 5-6 inspectors at Ruwagha throughout the destruction process, which OPCW officials expect should be completed for Libya's Category 1 chemical weapons within 6 months after operations resume." OPCW, "Canada Provides OPCW its Largest-Ever Donation to Expedite Destruction of Chemical Weapons in Libya," April 24, 2012; and, OPCW, Libya: Facts and Figures, accessed August 3, 2012.

Libya's nuclear materials also have been subject to international and U.S. oversight and joint operations that removed highly enriched uranium and other proliferation-sensitive items. Libya's research reactor east of Tripoli at Tajura was converted with U.S. assistance in 2006 to operate using low-enriched uranium. Libya also possesses a stored stockpile of at least several hundred tons of uranium oxide yellowcake, reportedly stored near Sabha. UNSMIL considers the sale or transfer of 6,400 barrels of uranium yellowcake remaining in Libya to be a "key priority."

## Islam and Politics in Libya

Libyans are predominantly (~90%) Sunni Muslims, and many reportedly endorse relatively moderate approaches to Islamic law, or *sharia*, affiliated with the Maliki school.<sup>24</sup> Islam has been the official religion since independence, and the Quran is the nominal basis for the country's law and its social code. Most Libyans accept a prominent role for Sunni Islamic tradition in public life, but differ in their personal preferences and interpretations of their faith. Libyan social norms are relatively conservative and traditional, and Salafist groups, while organized and increasingly publicly active, have not yet asserted themselves as an influential political force as they have in Egypt.

Libyans remain engaged in a long-running public debate about the proper role for Islam in public life—a debate that in the past has led to violence and in the present has taken on new urgency given the opportunity to define a new constitution. Calls for and against strict interpretations and enforcement of *sharia* have featured regularly in public discourse since the fall of the Qadhafi regime. Libyans hold a wide array of views on these questions and are now freely sharing them. During January 2012, public gatherings in the low thousands emerged in Benghazi and Misuratah to demand that *sharia* be codified and enforced as the primary component of Libya's new constitution. Emergent groups such as Ansar al Sharia and Hizb al Tahrir support that position. Muslim Brotherhood leaders have indicated they "are calling for the establishment of a civilian state but with an Islamic reference."<sup>25</sup>

Some of these views have been reflected in actions taken by transitional authorities to date. The August 2011 interim constitutional declaration states in Article One that "Libya is an independent Democratic State wherein the people are the source of authorities.... Islam is the Religion of the State and the principal source of legislation is Islamic Jurisprudence (*sharia*).... The State shall guarantee for non-Muslims the freedom of practicing religious rights and shall guarantee respect for their systems of personal status." In July 2012, the TNC issued a declaration advising the newly elected government and constitutional committee to preserve *sharia* as the principal source of legislation under the new constitution and to not submit the matter to a national referendum.<sup>26</sup>

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<sup>24</sup> International Crisis Group, "Holding Libya Together: Security Challenges after Qadhafi," Middle East/North Africa Report N°115, December 14, 2011, p. 9. Maliki refers to one of the traditional Sunni schools of Islamic law.

<sup>25</sup> OSC Report GMP20120305825005, "Libyan Brotherhood Leader Urges Creation of Civil State With Islamic Reference," March 5, 2012.

<sup>26</sup> TNC Decree Number 7 of 2012, July 5, 2012.

## **United Nations Support Mission in Libya (UNSMIL)**

The United Nations Support Mission in Libya continues to operate under the mandate outlined in Security Council Resolution 2009 and extended through March 2013 by Resolution 2040. The United Kingdom's Ian Martin has served as UNSMIL director, continuing the work he began in mid-2011 as the Secretary-General's special adviser for post-conflict and transition issues in Libya. Martin is stepping down and his replacement has yet to be named. To date, UNSMIL activities have included electoral advisory support, transitional justice consultation, and public security and economic needs assessments. On December 2, 2011, the Security Council tasked UNSMIL with "assisting and supporting Libyan national efforts to address the threats of proliferation of all arms and related materiel of all types, in particular man-portable surface to air missiles." The Obama Administration has not requested specific FY2013 funding to support UNSMIL, but the mission is funded through assessed contributions of U.N. member states, including the United States.<sup>27</sup>

## **Libyan Assets and Oil Exports**

### **Libyan Assets**

During 2011, the United States and others froze tens of billions of dollars in Libyan state assets, and the Obama Administration placed targeted sanctions on Libyan oil companies and other entities in support of Executive Order 13566 and U.N. Security Council resolutions 1970 and 1973. The TNC has identified up to \$170 billion in Libyan assets that were blocked worldwide and it has sought access to those funds over the last twelve months. U.N. Security Council Resolution 2009 reiterated the Security Council's intent to ensure that frozen assets are made available as soon as possible to and for the benefit of the Libyan people and established a number of conditions and mechanisms to regulate the return of assets. The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) has issued general licenses that authorize new transactions with Libyan state entities and maintain the asset freeze established under Executive Order 13566 on named individuals and a handful of state entities. In December 2011, the Obama Administration unblocked over \$30 billion of roughly \$37 billion in frozen Libyan assets, building on a previous transfer of \$1.5 billion in assets for the benefit of the Libyan people and the TNC.<sup>28</sup>

### **Libya's Oil Production, Exports, and Revenue**

Libya's oil production and export infrastructure survived the revolution relatively unscathed, although some facility damage, the departure of large numbers of laborers and skilled technicians, and the lack of maintenance during the conflict were expected to limit the speed with which production and exports would be restarted.<sup>29</sup> However, efforts to restore operations have

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<sup>27</sup> The United Nations Department of Political Affairs is responsible for UNSMIL.

<sup>28</sup> See U.S. Department of the Treasury, General License No. 11 with respect to Unblocking the Government of Libya, its Agencies, Instrumentalities, and Controlled Entities, and the Central Bank of Libya, With Certain Exceptions, December 2011; U.S. Department of the Treasury, Fact Sheet: Lifting Sanctions on the Government of Libya, December 16, 2011; and, State Department, Office of the Spokesperson, Unfreezing Assets to Meet the Critical Humanitarian Needs of the Libyan People, Washington, DC, August 25, 2011.

<sup>29</sup> The oil terminal at Brega reportedly suffered the most damage, along with support infrastructure elsewhere.

proceeded rapidly. Prior to the conflict, Libya was exporting 1.3 million barrels of oil per day; in July 2012, Libyan officials reported that production was roughly 1.56 million barrels per day.<sup>30</sup> The U.S. Energy Information Administration has projected that Libyan output could return to pre-conflict levels by the end of 2012, but Libyan officials hope to reach the target by October. The importance of oil exports for Libya cannot be overstated, as the IMF reported in February 2011 that over 90% of state revenue came from the hydrocarbon sector in 2010. The U.S. Treasury Department has removed restrictions on transactions between U.S. persons and Libyan oil firms.

## **International Criminal Court (ICC) and United Nations Human Rights Council Investigations<sup>31</sup>**

Prior to Muammar al Qadhafi's death, some observers argued that the prospect of an International Criminal Court (ICC) trial made it less likely that he would have agreed to relinquish power or to have surrendered to the opposition.<sup>32</sup> The death of Muammar al Qadhafi, the arrest in Libya of his son Sayf al Islam, and the detention of former intelligence chief Abdullah al Senussi in Mauritania have complicated efforts to prosecute these individuals on charges of crimes against humanity issued by the International Criminal Court (ICC).<sup>33</sup> Outstanding ICC arrest warrants notwithstanding, TNC officials have asserted their intention to prosecute Sayf al Islam al Qadhafi and Abdullah al Senussi in Libyan courts, and have filed an admissibility challenge with the ICC to that effect in the case of Sayf al Islam al Qadhafi. He remains in the custody of the Zintan militia, ostensibly until the completion of a national prison facility to house high-level detainees.<sup>34</sup> Some observers have speculated that leaders in Zintan may be seeking to leverage Sayf al Islam's detention for national influence. Four ICC personnel were detained in June and July 2012 after Zintan security officials suspected them of passing messages to or from Sayf al Islam al Qadhafi. Al Senussi is in detention in Mauritania, where authorities have signaled they intend to try him on fraudulent passport charges rather than comply with requests to extradite him to Libya, France, or the Hague.

On March 8, 2012, the U.N. Human Rights Council's Commission of Inquiry issued its final report on the Libyan conflict and concluded that crimes against humanity and war crimes were committed.<sup>35</sup> With regard to government forces, an official summary of its findings stated,

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<sup>30</sup> Marie-Louise Gumuchian and Ali Shuaib, "Libya sees return to pre-war oil output in October," Reuters, July 26, 2012.

<sup>31</sup> For more information on the ICC and Africa, see CRS Report R41116, *The International Criminal Court (ICC): Jurisdiction, Extradition, and U.S. Policy*, by Emily C. Barbour and Matthew C. Weed and CRS Report RL34665, *International Criminal Court Cases in Africa: Status and Policy Issues*, coordinated by Alexis Arieff.

<sup>32</sup> For example, see International Crisis Group, "Popular Protest in North Africa and the Middle East (V): Making Sense of Libya," Middle East/North Africa Report No. 107, June 6, 2011.

<sup>33</sup> On June 27, 2011, Pre-Trial Chamber I of the International Criminal Court (ICC) issued arrest warrants for three individuals: Muammar al Qadhafi, his son Sayf al Islam al Qadhafi, and intelligence chief Abdullah al Senussi, for "crimes against humanity committed against civilians" not including "war crimes committed during the armed conflict that started at the end of February." For more information, see U.N. Document S/PV.6528, Provisional Record of the 6528<sup>th</sup> meeting of the Security Council, May 4, 2011, and ICC Prosecutor's Office, Public Redacted Version of Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi, and Abdullah Al Senussi, May 16, 2011.

<sup>34</sup> OSC Report GMP20120218950038, "Libya: TNC Chief Gives Interview on Revolutionaries, Sayf al-Islam," February 17, 2012.

<sup>35</sup> The commission members are Cherif Bassiouni of Egypt, Asma Khader of Jordan, and Philippe Kirsch of Canada. (continued...)

“international crimes, specifically crimes against humanity and war crimes, were committed by Qadhafi forces in Libya. Acts of murder, enforced disappearance, and torture were perpetrated within the context of a widespread or systematic attack against a civilian population. The Commission found additional violations including unlawful killing, individual acts of torture and ill-treatment, attacks on civilians, and rape.”<sup>36</sup>

With regard to opposition forces, the commission found that

“the *thuwar* (anti-Qadhafi forces) committed serious violations, including war crimes and breaches of international human rights law, the latter continuing at the time of the present report. The Commission found these violations to include unlawful killing, arbitrary arrest, torture, enforced disappearance, indiscriminate attacks, and pillage.”

The commission previously found in its June 2011 interim report that it did not believe “that the violations committed by the opposition armed forces were part of any ‘widespread or systematic attack’ against a civilian population such as to amount to crimes against humanity.” However, in the March 2012 report, the commission stated that it was “deeply concerned that no independent investigations or prosecutions appear to have been instigated into killings committed by *thuwar*.”

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See U.N. Document A/HRC/17/44, “Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya,” June 1, 2011.

<sup>36</sup> U.N. Human Rights Council, Report of the International Commission of Inquiry on Libya, A/HRC/19/68, March 8, 2011.