



Highly-skilled Migration (Libya) Legal aspects

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CARIM Analytic and Synthetic Notes 2010/31

Highly-Skilled Migration Series
Legal Module



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Consortium for Applied Research on International Migration

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These papers will be discussed in two other meetings between Policy Makers and Experts on the same topic in early spring 2010. The results of these discussions will also be published.

The entire set of papers on Highly-Skilled Migration are available at <http://www.carim.org/HighlySkilledMigration>.

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The Consortium for Applied Research on International Migration (CARIM) was created at the European University Institute (EUI, Florence), in February 2004 and co-financed by the European Commission, DG AidCo, currently under the Thematic programme for the cooperation with third countries in the areas of migration and asylum.

Within this framework, CARIM aims, in an academic perspective, to observe, analyse, and forecast migration in Southern & Eastern Mediterranean and Sub-Saharan Countries (hereafter Region).

CARIM is composed of a coordinating unit established at the Robert Schuman Centre for Advanced Studies (RSCAS) of the European University Institute (EUI, Florence), and a network of scientific correspondents based in the 17 countries observed by CARIM: Algeria, Chad, Egypt, Israel, Jordan, Lebanon, Libya, Mali, Mauritania, Morocco, Niger, Palestine, Senegal, Sudan, Syria, Tunisia, and Turkey.

All are studied as origin, transit and immigration countries. External experts from the European Union and countries of the Region also contribute to CARIM activities.

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- Research and publications;
- Meetings of academics and between experts and policy makers;
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The activities of CARIM cover three aspects of international migration in the Region: economic and demographic, legal, and socio-political.

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Abstract

Libya, a country that gained independence in 1951, has known only two contradictory regimes: a monarchy from 1951-1969, and a revolution since 1969. With oil as its main source of revenue, and after ten years of UN backed-sanctions, in addition to a decade of public sector dominance, Libya suffers from both brain drain and brain waste. The active Libyan market of today, after its return to the international community, and given decades of economic and administrative instability, requires skilled and unskilled labour. Libya's labour policies have always been motivated by politics. There has not been a labour strategy, and the need for skilled labour has been a constant in a rich country with only six million inhabitants.

Libya today is country full of promise that offers opportunities to its own citizens. It is still, however, unable either to contain brain waste, or to stop brain drain, especially in the medical field. The private sector which has been reactivated after years of public sector dominance is hungry for labour and regulation is imminent. Economic activities, in infrastructure and building for example, need the labour market, private and public, to be properly regulated.

Résumé

La Libye, devenue indépendante en 1951, n'a connu que deux régimes opposés : une monarchie de 1951 à 1969 et une révolution depuis 1969. Avec le pétrole comme principale source de revenu, après dix ans de sanctions onusiennes, et une décennie de prédominance du secteur public, la Libye subit à la fois une fuite et un gaspillage des cerveaux. Le marché du travail libyen actuel requiert de la main d'oeuvre qualifiée et non qualifiée depuis son retour sur la scène internationale après des décennies d'instabilité économique et administrative. Les politiques de l'emploi libyennes ont toujours été motivées par la politique. En l'absence de stratégie de l'emploi, le besoin de main d'œuvre est une constante dans ce pays riche pourvu de seulement six millions d'habitants.

La Libye d'aujourd'hui est un pays plein de promesses, porteur d'opportunités pour ses citoyens. Elle est cependant encore incapable de réduire le gaspillage des cerveaux et de stopper la fuite des cerveaux, surtout dans le domaine médical. Le secteur privé, réactivé après des décennies de domination publique, a faim de main d'œuvre et la régulation est imminente. Les activités économiques, dans les infrastructures ou le bâtiment par exemple, ont besoin d'un marché du travail, public comme privé, réglementé.

Introduction

Libya is, to a certain extent, unique among southern Mediterranean countries. It is spacious, with only six million inhabitants,¹ who mainly reside along the coast. Unlike neighboring Arab countries that were in the past colonized by either France or Britain, Libya was under Italian control occupation in colonial times. This continued until the Second World War, when Italy was defeated by the Allies.

In its recent and contemporary history, Libya has known only two political regimes. The first lasted only nineteen years (1951-1969); the second, a unique political regime, is still in place, forty years later (1969-2009). The Libyan revolution of 1969 changed the whole of Libyan society by introducing not only radical political, but also economic and social reform. Political reform was at the heart of all changes, and continued instability in political strategy influenced and entailed other changes including new laws, instability in administrative institutions and economic strategies.

After becoming a republic in 1969, Libya became a *Jamahirya* ('state of the masses') in 1978, based on the theories set out in the Green Book², that include the ultimate destruction of institutions, allowing the people (the masses) to govern themselves. This theory required equality between people, which led to the abrogation of the private sector, and thus the domination of the public sector. In the early nineties, with Libya still under international economic sanctions and with a crumbling economy, the private sector was permitted to develop again, though with difficulty.

It was only after sanctions were lifted and Libya gave up its weapons of mass destruction program (WMD) in 2003, that it started actively seeking the expertise of private and international institutions in relation to its economy and that it also began to aspire for a stable and sustainable economy.

Libya came back to the 'traditional institutional' rules that it had rejected and replaced with a quite different political and economic system for almost twenty years.

This historical background is important in order to understand the skilled labour situation today, and how it is that a country of only six million people with a high but undiversified income source (mainly oil revenue), suffers from both brain drain and brain waste.

1. The political implications of the labour market

Libya went through different approaches towards labour; approaches driven by politics rather than the real situation on the ground. In the name of Arab unity with its neighbours (Egypt, Tunisia, Sudan), the Libyan labour market was opened up to the citizens of those countries. Labour legislation was accordingly enacted to encourage this Arab influx of labour. However, subsequently Libyan labour legislation followed other strategies, organizing Arab labour or limiting it on the basis of relations with neighbouring Arab countries. Political instability around migrant workers has had a major effect on Libyan legislation in that regard³. The same outcome has been played out in relation to migrant workers from Sub Saharan and other African countries.

¹ 6,276,632. Source World Bank, World Development Indicators.

² The Green Book has three parts: political, economic, and social. Its author is Colonel Gaddafi.

³ Libya today is involved in important negotiations with Egypt to organize and limit Egyptian labour in Libya. The Egyptian work force in Libya is irregular and they have a special status, because of their size, number, and Libya's special relations with Egypt.

2. Skilled migration to Libya

- i. When Libya gained its independence, it was considered one of the poorest countries in the world. Important battles of World War II had been fought on its soil,⁴ and the Italian occupation had been harsh and cruel, modernization only being for the benefit of Italian settlers in Libya. Once Libya gained its independence and oil was discovered in the late fifties, the need and expectation for development was then high. Libya desperately needed highly-skilled labour, and Egypt was the main source for this labour. Teachers, doctors, engineers, administrators, accountants, judges, university professors, even musicians and actors were Egyptian. They were legal skilled migrants who held work permits and concluded labour contracts.
- ii. Diaspora Libyans, who left the country during the Italian occupation, came back to Libya after its independence, particularly from Tunisia, Egypt, Syria, and Sudan. Some also returned from Sub Saharan countries. Those who came from Egypt and Syria, both men and women, were educated and contributed to the development of the country. They were fully integrated into Libyan society and became a power in the country. The presence of Libyans outside the country at its independence had an effect on the regularization of Libyan nationality as will be shown below, an issue that was dealt with separately by a specific law related to nationality in 1954.

3. The Libyan Nationality Law

- i. The Libyan Nationality Law, issued in 1954, was one of the first pieces of legislation to be introduced in the newly independent state. During the extensive negotiations amongst Libyan leaders, the big question was how to define a Libyan? Peoples of different origins were living in Libya including Italian settlers, Jewish inhabitants, and others of Arab origin. The size of Libyan Diaspora was also significant at the time. Therefore the first task of the law was to determine who was a Libyan, and second to shut the door on dual nationality. The Libyan Nationality Law authorizes only one nationality then. It also does not allow children of Libyan women married to a foreign father to acquire nationality automatically.
- ii. This last fact made life difficult for some Libyan women in their own country. Added to this is the fact that a foreign husband, who is married to a Libyan, has no better chance of obtaining Libyan nationality. Further, he is considered a foreign national who can only obtain permanent residence rather than citizenship. A Libyan woman in such a situation is inevitably insecure and there will arise the question of leaving to go to her husband's country.
- iii. Such a law made it almost impossible for a non-Libyan to obtain Libyan nationality, and this fact discouraged foreign nationals from settling in Libya, including skilled migrants. Their presence was limited by their work permits, and there was never any intention for them to stay. Teachers who spent more than 20 years in Libya and whose children were born in Libya, who enrolled in Libyan schools and universities, were not considered to be Libyans. Their final destination was their country of origin.
- iv. In 1980, Libya issued a new law relating to Arab nationality. In substance, this law did not differ much from the 1954 nationality law, and it did not abrogate it, therefore there are today two laws in Libya regulating nationality. Article 5 of the 1980 law, specifies three categories that have the right to acquire – in principle – Arab nationality: children of Libyan women married to non-Libyans⁵; highly-skilled scientists whose skills are needed in Libya; and non Libyan women married to Libyan men, provided that they give up their own nationality. However, even if the law includes these three categories, the law does not accord them any special treatment, and does not accord any special procedures for them to gain nationality.

⁴ The battle of El Alamein in Libya is considered as one of the decisive battles of World War II.

⁵ The law states that they have the right, but there are no procedures that allow the application of such a right. They are treated like any other non Libyan who seeks Libyan nationality.

Therefore, the three categories have no privileged status and children of Libyan women married to non Libyan men cannot automatically acquire Libyan nationality. They depend on a decision from the GPC.

- v. In 2001, in an effort to bring home skilled Libyans, the GPC issued decision no. 190 (2001) that, for the first time, allows Libyans who hold another nationality, to keep their Libyan nationality. A Libyan then can now hold more than one nationality, provided that he or she declares it to the Libyan authorities which give him/her permission for this. Upon this decision several Libyans declared their cases and permission was automatically granted: their names were posted on the internet. Others did not make such a declaration, though no measures were taken against them.

Conclusion

The Libyan nationality laws in force (1954, 1980) do not encourage foreign nationals to obtain Libyan nationality. The procedures are long and discretionary and this has not encouraged skilled migrants to consider living permanently in Libya. Nationality legislation reflects the political strategy of the state. When the state shifted towards Arab nationalism, a new nationality Arab law was issued that allowed the granting of “Arab” nationality to Arabs who hold sought after skills; though the process is discretionary. Once Libya opened its doors to its own citizens living abroad, it issued a decision that for the first time allowed Libyans to hold more than one nationality at the same time.

4. The Libyanization of the work force

Libya went through several setbacks with its skilled migrants. The first was in 1977 after a decision to expel Egyptian labour, following tensions with Egypt, had seen a brief military clash between the two countries. Another labour crisis occurred with Tunisia after a worsening in political relations. Still, another crisis took place with Palestinian labour when certain privileges accorded to Palestinians were cancelled⁶ following the Oslo agreement between the PLO and Israel.

In the 1980s, a new slogan of the ‘libyanization’ of jobs in the public sector was given: the intention was to reduce organized migrants who held jobs in the Libyan administration, notably teachers and functionaries in the public sector. The Arab workforce in the public sector was significantly reduced.

However, with the reopening of the private sector in the early 1990s, a flux of irregular workers entered the country from neighboring states, especially Egypt. Libya is trying hard to regularize them, but it is still unable to do so efficiently, though their numbers have been reduced lately⁷.

5. Libyan Brain drain

The first wave of brain drain started in 1973. During that year, political tensions were high and the policy was to reject any form of opposition. In 1972 law no. 71 relating to the criminalization of partisanship was issued and any act aimed at establishing a political party became a crime, with heavy penalties. Libyans studying abroad simply did not return. Others fled the country and started a new life elsewhere, particularly in the West. Thus the first wave of brain drain was for political reasons.

⁶ Palestinians now and after the GPC decision in 2009 enjoy several citizenship rights .

⁷ Libya took a radical measure in 2007, by declaring that it will require an entry visa even from citizens of neighbouring Arab countries. It then retracted its declaration, and introduced other requirements, such as concluding a contract with a Libyan counterpart, or possessing the equivalent of 500 LD when entering Libya.

The second wave was for political and political-economical reasons. Upon the publication of the Green Book, in particular its second part named 'the solution to the economic problems', the state took radical steps to nationalize the private sector which was flourishing at that time. No private businesses were allowed, including professionals such as lawyers or architects, with the exception of manual workers (artisans). Several businessmen left the country and tried to continue their businesses abroad, either in Arab countries that encourage foreign investment such as Egypt, Tunisia, Morocco, and Jordan, or in Europe and the US.

At the time, Libyans residing abroad for long periods, for whatever reason, were considered political opponents. Measures were taken against them such as not renewing their passports or expropriating their homes. After the promulgation of the Green Charter for Human Rights in 1988, limited measures were taken to facilitate the return of businessmen who had fled. A committee was formed, presided over by the Head of the Supreme Court to receive applications from these citizens and help them re-acquire their homes or businesses. The committee was not part of the executive administration and its main work was to contact the appropriate government department. Certain Libyan businessmen returned and their properties were returned to them allowing them to reopen businesses in Libya.

Despite the easing of restrictions and increased openness at the end of the 1980s, Libya saw a third wave of brain drain in the form of fresh young graduates or students of Islamic tendencies. In the mid 1990s, harsh measures were taken against Islamists and hundreds were jailed. Several managed to flee the country and take up residence in the West or other Arab countries such as Yemen, Saudi Arabia and the UAE. In addition, UN sanctions imposed on Libya in 1993 led to professionals in certain part of the economy such as the aviation and petro-chemical sectors obtaining contracts in the Gulf States and these moved there. Certain state initiatives especially those taken by the Gaddafi Foundation for Development (GFD) played a role both in getting Islamist prisoners out of custody or in returning them to Libya. Lists of people the GFD is working on is regularly posted on the internet⁸ and in local newspapers. The GFD still needs security clearance from the authorities before guaranteeing the safe return home of these exiles.

The brain drain of doctors⁹

- i. Since Libya started sending students abroad on government scholarship in the 1960s, it was inevitable that a proportion of them would settle outside their home country. This has been especially so in the medical profession, as medical salaries in countries such as Canada and the US tend to be high. Though these students are asked to sign a document that states that they have to return and work in a government body for twice as long as they enjoyed a scholarship, this is not enforced, even for those who do return.
- ii. There was a significant brain drain of doctors in the 1980s, when private medical practice was banned along with other professions and doctors could only work in government hospitals earning poor salaries. A Libyan specialist in the West earned a salary that was triple that of a doctor in Libya, in addition to extra earnings from private practice. Travel restrictions at the time prevented Libyan doctors based in Libya from participating in regional and international conferences, and the deteriorating situation in public hospitals, was another major discouragement. Countries such as Canada, that allow permanent residency and citizenship, forced a further brain drain in the 1990s. This matter was raised during a Heads of States meeting in Tripoli, and led to a reduction in the numbers of Libyan doctors sponsored by Libya in Canada.

⁸ Latest list was published last month, see <http://gdf.org.ly/>

⁹ Numbers of Libyan doctors abroad is estimated to be between 2000 and 3000.

- iii. With the re-establishment of the private sector, including the medical profession, and salary hikes in public hospitals, some doctors returned. The Libyan Health Minister visited the UK last month where he met Libyan doctors in an attempt to encourage them to come back and practice in Libya.
- iv. With a new openness in Libya's internal policy, in addition to State¹⁰ and Libyan NGO initiatives¹¹, several doctors who have settled abroad have been coming to give lectures/courses/consultations in Libya. One such example is in diabetes care, where the Libyan Association for Diabetes & Endocrinology has, for the last five years, held an annual conference which Libyan specialists based abroad attend at their own expense. Further, some of these doctors, have agreed to help Libyans coming to their adopted countries, to settle and to find a job or training program: a process mirrored in other professions.

Needless to say, Libya would have benefited from the permanent return of such professionals, and a number of medical specialties are still short-staffed. Whether these doctors (and others) are morally bound to come back to settle and work in the country that supported them is a controversial question. There are those who think that they should serve the tax payers that paid for their training. And then there are those who maintain that it is the country's duty to give the best possible education to its citizens: and that where they choose to settle afterwards is their choice.

6. Libyan Brain Waste

- **The Cultural Revolution and its effects on other cultures**

The Libyan revolution, as most revolutions, was based on three principles: freedom, socialism, and unity. It was also very much influenced by Nasser's Egyptian revolution. In 1973, Libya proclaimed a cultural revolution. Other cultures, besides Arab-Islamic ones, were considered as imported cultures which were to be rejected, even opposed.

Certain measures were taken thereafter: foreign books, music, newspapers and magazines were banned, and certain western musical instruments were even burned in public. These measures were extended to schools. Some private foreign schools, in which Libyan students were freely registered, were shut down and others were banned from enrolling Libyans. Once the private sector was outlawed in Libya in the late 1970s, private Libyan schools which taught English language from the nursery upwards were also closed. Since the country had also severed its political ties with the West, several foreign cultural centers were shut down, this included the British Council and the American Cultural Institute.

- **The banning of English and French in Libyan schools**

At a later period, in the mid 1980s, the government banned the teaching of all foreign languages in schools and specifically English and French. Nevertheless, languages continue to be taught at universities, in the Languages Faculties, and teaching in certain science faculties such as medicine, pharmacy, and engineering was mainly in English. This created enormous problems. Students enrolled in language faculties had poor linguistic abilities, and students in the scientific faculties struggled hard in their studies.

The main result of these bannings is that a whole generation of university degree holders was unable to speak English. Subsequently, when Libya opened its doors to the international private sector, by issuing a law in 1997 that encouraged foreign investment, Libyans seeking

¹⁰ The Health Ministry has organized conferences for Libyan doctors abroad since 2006. see <http://www.doctor.org.ly/>

¹¹ The Libyan NGO Waatasemo holds an annual conference for Libyan doctors based abroad, inviting them and their families to Libya at its expense every summer to meet and present the latest medical developments in their specialties. <http://www.waatasemu.org/charity/>

work were unable to integrate in the market, as they spoke no foreign languages. A glance at job advertisements in local newspapers shows that speaking and writing English is one of the main requirements for employment not only in foreign organizations,¹² but also in governmental bodies¹³.

An acute problem now exists, where young Libyans are unable to obtain jobs in the thriving market, mainly due to their lack of languages.

Teaching English in schools started well before the government decision to reintegrate English in Libyan schools in 1994. Once the private sector was reactivated in the early 1990s, private schools were established as a private-sector activity, in addition to foreign language institutes. The curriculum of these schools included English as a main language; moreover these schools added foreign education curricula in addition to the Arabic ones imposed by the Ministry of Education. Foreign schools were established, for the first time since the 1970s, following on from the investment law of 1997. Further, foreign schools, including the French¹⁴, German, Italian and others were allowed to enroll Libyans. Once Libya restored diplomatic relation with the UK, it concluded a cultural agreement with it in 2003, through which a British Council (BC) was established and resumed its activities in Libya. In 2009, the BC in Libya was awarded the Strategic Impact Award¹⁵. Ministries (such as those of Health and Justice) and other government bodies (such as the National Oil Corporation) concluded agreements with BC to enroll their employees in English language programs.

The English language is today flourishing in Libya. This also applies to other foreign languages, such as French and Italian, though to a more limited extent. However, today's workforce is still lacking language skills and this is affecting employment opportunities. The needs of the Libyan market cannot wait until a new generation with language skills appears. Though fast track programs for English, such as local and overseas courses (especially in the UK) are pursued, these are still not filling the urgent and extensive market needs of today.

Though French was banned in Libyan schools in 1984, even before the banning of English, and despite troubled political relations between France and Libya, the French Institute in Libya is one of the rare language institutes that continued to function without interruption. However, French has not yet been officially integrated as a subject of the official curriculum¹⁶, and has been only partially integrated in a limited number of schools.

It is important to reiterate that in today's Libyan market it is English and English alone that is a passport for work¹⁷.

¹² see also Libyaonline job advertisement at : <http://www.libyaonline.com/business/pages.php?cid=300>

¹³ Libyan National Development Board employment advertisement includes foreign language. See: http://www.nedb.ly/docs/employment_application_form.pdf

¹⁴ <http://www.lftripoli.org/>

¹⁵ <http://www.alarab.co.uk/libyatoday/display.asp?fname=2009%5C10%5C10-26%5C50.htm&dismode=x&ts=26/10/2009%2001:13:03%20%E3>

¹⁶ See *Alfjr Aljadeed* newspaper dated 18.11.2009 on coverage of a "Colloque National sur l'enseignement du Francais langue étrangère en Libye".

¹⁷ See an interview in *Qurina* newspaper with the Head of the French Department in the University of Garyounis in which he stated that there is reluctance on the part of students to enroll in the department as they think it will not help them find a job. *Qurina* newspaper, no. 281, dated 30.10.2009

The effect of a lack of skilled force in Libya on the market

It is clear that Libya is calling for Libyan skilled people to return to their home country and integrate into the Libyan work force. However, this call has not been translated into a clear policy. Certain ministries, such as the Health Ministry, are taking separate initiatives¹⁸. Nevertheless, neither clear policies nor incentives have been implemented to encourage skilled migrants to return home.

It is also clear that there is no policy to discourage skilled workers from leaving Libya. Skilled migrants have no special status under Libyan laws and they are governed by Libyan labour law as all workers. The only exceptions to such treatment are the incentives included in their contracts. Libyan nationality laws do not include any criteria that allow them to acquire Libyan nationality in the long run.

The Libyan brain drain especially in science will continue as long as Libya is not doing enough to discourage it. Libya should not only concentrate its effort on bringing its skilled workers abroad home, it should also do more to prevent this brain drain from being activated in the first place.

¹⁸ The Minister of Health held a meeting in London in Nov. 2008 with certain Libyan doctors in the UK to discuss the reasons for their not returning to Libya.