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Knowledge Development for Justice and State-Building: A case from Libya

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## 1. Introduction

After the fall of Gaddafi in 2011, Libya's new authorities moved fast to reshape the state envisaged by the revolution: just and democratic. Many international partners offered their advice and assistance, among other things to 'establish the rule of law and good governance'. There was an obvious instant need for 'knowledge development', many consultancy reports were written, and projects initiated. However, when the euphoria faded away, violent conflict increased, and the state, in 2014, split in two parts; the projects stopped. Now that violent conflict has almost stopped by the end of 2020, and efforts to end the political divide seem to gain success, international assistance is once more offered. The question, however, is how effective such assistance is.

The paper argues that for sustainable improvements in justice and state-building, an effective communication within the triangle of national government, domestic knowledge institutions, and 'the international community' is needed. This communication is largely lacking. International assistance projects appear to not respond well to domestic needs, and to not take sufficiently into account domestically produced knowledge. This lack of communication seems also to feature the relationship between the national government and domestic knowledge institutions. Such shortcomings had already been indicated in a book by Carothers (2006) entitled *Promoting the Rule of Law Abroad, in search of knowledge*, to which we will refer in our analysis below.

As one possible response to these problems, an eight-year-long international academic collaboration has been conducted in this field, initiated by scholars at the universities of Benghazi and Leiden, Netherlands. While a major part of its funding has been international, Libyan academic expertise on law, governance and society has been the point of departure – and destination. To analyse problems of injustice and failing governance, knowledge from different disciplines - law, social sciences and humanities – needs to be integrated. To enhance actual application of such knowledge, the involvement of Libyan stakeholders is required.

To demonstrate the approaches, opportunities and constraints of this kind of knowledge production, this paper reviews and reflects on this experience. It concludes that this experience shows that the highly desirable effective communication within the triangle of national

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government, domestic knowledge institutions, and 'the international community' is indeed feasible.

## 2. Knowledge development under Gaddafi

Under Gaddafi's regime, the role of both domestic knowledge institutions and international assistance was limited as a result of the prevailing ideology and policies. This appeared to change in the regime's later years (the 2000s) as part of reform efforts conducted under the auspices of Saif Al-Islam, Gaddafi's son and presumptive heir. Still, the change faced resistance within the regime itself resulting in limiting its effects.

Gaddafi had a unique understanding of state and society that he presented as a Third Global Theory, as an alternative to Capitalism and Marxism. His Green Book had three volumes on democracy, society and economy. The people would exercise democracy directly through basic congresses; representation, hence political parties, would not be allowed. These congresses would a.o. have the power to legislate and choose, and hold accountable, public committees entrusted with implementing legislation. The people's power to legislate would not be restricted even by a constitution. Constitutions were seen as tools that elites use to control; the only valid constitutions were those of customary or divine origins.

Islam was key in Gaddafi's thinking, but his understanding of it defied common understanding. For example, he denied the authority of the Sunnah of Prophet Mohammed, the second source of Islam after the Quran. He also personally practiced *ijtihad*, independent reasoning, which resulted in enacting legislation that, while presented as Sharia-based, was widely contested by religious scholars. This enabled enacting legislation favorable to women, for example heavily restricting polygamy, providing them with more bases for divorce and entitling them to serve as judges. As for the economy, it was the public sector that was to lead the change towards a society wherein workers would be shareholders rather than wage earners. The private sector was significantly limited and so was private ownership.

The effect of this ideology, and accompanying policies and legislation, on domestic knowledge institutions was massive. Only public institutions were allowed, and they were subject to measures aimed at ensuring their conformity with this ideology. For example, to become an academic staff member, one needed the approval of the revolutionary committees at the faculty, and university and national levels. Already existing staff were monitored closely by such committees and those suspected of upholding unapproved ideas would be subject to measures ranging from expulsion to, in worst cases, public execution in annual celebrations on the 7<sup>th</sup> April, the so-called *Eid Al-Tullab*, literally the festival of students. Awarding scholarships to study abroad became quite restricted. It was suspended for years, and when allowed, only those proved to uphold the regime's ideology were selected to study in predetermined, unthreatening, countries mostly Arab countries such as Egypt and Morocco. Participating in international conferences was no different; it required a decision by the ministry of education which was difficult to obtain.

Besides, universities were underfunded. Academic staff received low salaries, which led many to undertake additional paid teaching duties leaving them very little time to carry out research. Many only published to satisfy minimum academic promotion requirements. Lack of financial resources resulted also in a few publication avenues which aggravated the situation further. It

was not uncommon that academic journals would stop for years or cease to exist altogether. It should come as no surprise then that the share of Libyan researchers in the Arab contribution in international journals is less than 0.3% (Yosuf et al. 2020: 52, 53).

The situation at research centers was not much better. There were not many within universities, and those formed under the National Council for Scientific Research were predominantly limited to 'real' and applied sciences, perhaps for being seen as less threatening from the regime's perspective. Still, they were also underfunded. These centers were: the Libyan Center for Remote Sensing and Space Sciences; Center of Solar Energy and Research Studies; Center for Biotechnology Research; Center for Solar Energy Studies; National Center for Medical Research, and Center for Archives and Historical Studies

In such an environment, it should come as no surprise that international research initiatives, let alone assistance programs, had hardly been possible. For decades the country was largely inaccessible. This, however, started to change in the 2000s. Back then, Saif Al-Islam oversaw what was called the Libya of Tomorrow Initiative, *Libya alghad*, in which Libyan and international knowledge institutions, academics and consultants played a significant role. Drafting a constitution for the first time after decades was part of this initiative.

To ground such political reform, in 2008, the Benghazi University's Centre for Research and Consulting formed a team of Libyan experts to draft a *Vision for Libya in 2025*. The team emphasized that the regime's legitimacy would be conditional upon its achievements in sustainable development and political reform, which would, in turn, necessitate the rule of law, societal participation, and plurality of authorities, organizations and ideas. To this end, the team highlighted the need for a new social contract based on national dialogue between the various segments of society. This social contract would be the basis for a constitution that would ensure, among other things, citizens' participation in running the state affairs (Centre for Research and Consulting 2008).

However, the new constitution did not get beyond the draft stage. After a group of Libyan and international experts (McClennen 2011) had produced a draft, it went through various changes to eventually be brought in line with the existing ideology. A leaked draft revealed that the system of government would continue to be based on *Jamahiriya*, the government system according to Gaddafi's Green Book (Dunyā al-Waṭan 2008). Innovations were largely limited to adopting a secret voting system within basic congresses, the establishment of a constitutional court and the abolition of exceptional courts (Maḥmūd 2008). Even so, the draft was never adopted. Qaddafi, reportedly, rejected it.

The same was the fate of several draft laws aimed to amend, or even end, Gaddafi's socialist laws. For example, a committee headed by a professor of law at Tripoli Law Faculty was created to review the Libyan Civil Code and related laws and to consider whether to replace or amend them. The committee noticed that the 1970s and 1980s periods had witnessed the enactment of laws restricting real property ownership, contrary to this Code. These laws, the committee argued, intended to address temporary situations and circumstances, and so would expire once these situations and circumstances changed. The change, according to the committee, already occurred, and so these laws were no longer suitable to Libyan society and must be ended with immediate, rather than retrospective, effect to ensure that the law's achievements would not be touched. The regime, however, did not accept the recommendation.

Although Saif al-Islam's reform initiative produced neither political participation nor satisfactory distributive policies, "it served to foster an environment in which it became gradually more acceptable for Libyans to express their grievances in the public arena. Public protests, almost unheard of in the 'revolutionary decades', became increasingly commonplace" (Pargeter 2016: 179–180). Thus, when the neighboring Tunisia and Egypt witnessed uprisings against their rulers, Libya was ready to follow in their footsteps. Saif Al-Islam made a pledge to draw up a new constitution when the uprising started in February 2011 (BBC 2011), but it was already too late.

### 3. Knowledge development in post 2011 era

The February 2011 Uprising promised to bring about a prosperous and democratic Libya governed by the rule of law, to which knowledge development by domestic and international actors would be key. There were efforts to reform domestic knowledge institutions so they could play this role satisfactorily, and international assistance programs thrived to provide the assistance needed. Yet, the effect was rather limited due to a deteriorating political and security situation as well as limitations featuring the type and method of international assistance provided.

The early years following the uprising (2011-2013) were full of hope for the desired new Libya. In October 2011, after months of armed struggle, the National Transitional Council (NTC) announced the liberation from Gaddafi's rule. Less than a year later, in July 2012, a General National Congress (GNC) got elected to lead the country in a transitional period that would end once a new parliament would be elected in accordance with a constitution to be drafted by a Constitution Drafting Assembly (CDA) and approved in a popular referendum. In 2014, however, the GNC was forced into an early step down due to wide allegations of poor performance. Islamist forces within the GNC bore much of the blame for this performance. Unsurprisingly, they were the biggest losers in the subsequent 2014 election of the new House of Representatives (HoR). This year witnessed also the election of the CDA, in which Islamists did also not secure significant representation. Ultimately, forces behind the GNC declined to hand over power to the HoR. This resulted in the two bodies competing for being the only legitimate legislature. The country became divided between the two camps: the GNC's and the HoR's, each with its government, 'national' army, central bank, national oil institution, ... etc.

In December 2015, the rival parties signed, under the aegis of the UN, a Political Agreement (PA) to end the divide. The PA envisaged a unity Government of National Accord (GNA) headed by a Presidential Council; the HoR as the legislature; a new High Council of State (HCS) with strong 'advisory' powers, composed of the GNC's members, and the CDA. Yet, the PA was never fully implemented. The GNA was formed in Tripoli as well as the HCS, but the HoR declined to recognize the GNA and continued to have its own government. The political bifurcation, thus, persisted, and took, at times, violent forms, notably in the war over Tripoli in 2019-2020. Still, the UN continued to pursue a peace process, and there is at the time of writing (November 2020) a dialogue in Tunisia aimed at ending the divide through forming a new national accord government and paving the way for preliminary and presidential elections in December 2021.

In this environment, efforts aimed at reforming domestic knowledge institutions were frustrated as can be illustrated by the attempts to enact a new university law and to form a council for research in social sciences and humanities.

Realizing the limitations imposed on universities, the ministry of education decided in June 2013 to form a committee to draft a university bill. The committee was composed of academics representing various disciplines: law, philosophy, political science, history, engineering and economy.<sup>2</sup> The committee finalized its draft after consultations with universities in various parts of the country. The draft focused on public universities; private ones were to be regulated a special law. It emphasized the university's academic, administrative and financial independence. Besides public fund, the university would be able to receive donations and keep any revenues generated from activities such as conducting research and providing consultations. At least 10% of the budget would be allocated to research. The rector and deans would be selected based on a competition.

The draft aimed to ensure high academic rigors. Appointment would require meeting conditions based on purely, high, academic qualifications. For instance, only those with very good grades (3 out of 4 points) would be able to apply, and selection would be based on higher grades, recent graduation and cultural and social activities. Scholarships, and sabbatical leaves, would in principle be abroad; they would as an exception be in Libya. Academic promotion would require achieving high in each of three elements: research, teaching and serving university and society. Failing to achieve the requirements during a specified period of time would result in ending service. Staff would receive high salaries, and would have to perform less, compared with past practice, teaching duties.

However, the GNC did not discuss the draft bill. There was a meeting in December 2013 with the GNC's committee for education which had no major remarks on the draft save the salaries. They were too high and could provoke demands for high salaries from other sectors. Eventually, the salary table was left out from the draft; it would be approved through a government decision once the law would be approved. Still, the GNC did not discuss the draft bill. It was facing strong demands for stepping down and discussing a university bill was not seen as a priority. The bill was later adopted by the HoR in a move of dubious legality. This move came at a time, April 2018, when the HoR's legitimacy, and authority, was not recognized by almost half of the country including the capital Tripoli. Besides, many members of the HoR were boycotting its sessions casting a doubt on meeting the quorum needed for enacting legislation. In any case, the law is still to be implemented even in the area under the control of the HoR.

The attempt to reform the scientific research council was not luckier. As mentioned earlier, research in social sciences and humanities received very little attention compared with 'real' and applied sciences. To address this, the ministry of education formed in December 2013 a committee to reconstruct the national council for scientific research.<sup>3</sup> The committee drafted a proposal that the council of ministers adopted on 3 March 2014 into a Resolution Number 215/2014 on the Formation of the High Council for Scientific Research. The main provision concerned the creation of two sub-councils for research, one for humanities and social sciences

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<sup>2</sup> The (first) author was a member and rapporteur of the committee.

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research and the other for natural sciences and technology research. The latter was largely the old council for scientific research and included most of the already existing centers, e.g., Center for Biotechnology Research; Center for Remote Sensing and Space Sciences; Center for Solar Energy Research and Studies; Center for Medical Research and Advanced Center for Technology. The two remaining centers for Economic Research and Desert Research and Community Development were added to the new council for humanities and social sciences research. This council was also to include a new center for legal research. However, the Resolution came, as mentioned earlier, at a difficult time and had thus no chance of getting implemented.

Whereas the proposed reforms to the public universities and the research council were stalled, existing domestic knowledge institutions still managed to play a role in providing knowledge needed for the country's transition. The Benghazi Centre for Research and Consulting of Benghazi University (BRCC) is a case in point. Since the early months of the uprising, the BRCC embarked on conducting surveys exploring people's opinions on a wide array of issues, e.g., the NATO intervention (March 2011), issues to be addressed in the constitution and national dialogue. For the first time in Libya, the Centre took part in the 2013 World Values Survey wave. The Centre also concluded an agreement with the Constitution Drafting Assembly (CDA) to provide technical assistance and coordinate that offered by international organizations.<sup>4</sup> Accordingly, the Center conducted, for example, surveys exploring people's opinions on controversial issues and co-hosted workshops involving CDA members and national and international experts.

In terms of this paper, the coordination part was especially interesting. The CDA received many offers for technical assistance, and decided to entrust the task of selecting and coordinating this assistance to the BRCC. Part of this was to ensure the quality of what was being offered. One way of doing this was to agree with a European organization to solicit Libyan and international experts for providing answers to questions raised by CDA members. Joint opinions, it was assumed, would combine depth and relevance. The assumption, however, was not always realized. In one occasion, the international expert selected by the European NGO seriously lacked knowledge of the issue at hand, i.e., transitional justice, and grossly underestimated the CDA members. The BRCC served here as a quality control mechanism and the expert was replaced.

Unfortunately, soliciting such international 'experts' was not uncommon in international assistance programs in Libya. Focusing on the constitution making process, Hammady (2017: 167, 171) cited various reasons for the shortcomings associated with these programs. The way this process was designed left limited role for civil society organizations, domestic and international, he argued. The deteriorating security situation forced international organizations to relocate to neighboring Tunisia further limiting their access to the CDA. They continued to organize outside Libya, which exposed CDA members to international experts and expertise, but, he noted, many of the experts commissioned, and the expertise provided, lacked knowledge of the Libyan context, hence risked being irrelevant. In his words:

[T]he general quality of expertise provided by international organizations supporting the CDA could have been improved. A very limited number of mobilized experts did speak

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<sup>4</sup> The (first) author took part in this initiative.

Arabic and a majority of them had a limited understanding of local realities, culture and history. On the other hand, the mere fact of speaking Arabic was equated, sometimes, with expertise. This is not to mention that some international actors may provide only experts they could control or who are in line with their views. Further, most of these organizations were implementing pre-set projects that neither took into account beneficiaries' inputs, nor undertook an in-depth analysis of the country's needs. Their main concern remained, thus, meeting donors' requirements which are generally phrased in terms of quantity of events (2017: 170).

An increasing suspicion of foreigners made international assistance even more difficult. Such attitude had roots in Gaddafi's era and increased noticeably with the growing international interference in Libya's affairs.

Some of these observations apply not only to the case of the CDA. For example, quite early on, Carlisle (2013: 53, 54) identified the lack of access to domestic knowledge as a limitation in the work of international organizations in Libya. When working from far, or spending only little time inside Libya, one has to rely on some interviews, and readings of reports and formal documents, such as legislation and policy papers, which, while valuable, could mask social and legal realities. There is also the risk of relaying on a narrow group of informants and overlooking others, to whom access is limited or nonexistent, and, as a result, making "partial evaluations of issues on which there is less general consent". (2013: 53, 54)

To address these limitations, Carlisle recommended that the international community would "make use of additional resources that will connect it to expert legal knowledge as well as to the opinion of "the street." To this end, she suggested "that qualified Libyan academics are well placed to make these connections through conducting legal and social science research, publishing their findings and analyses and participating in internationally and domestically organised workshops."<sup>5</sup> In her opinion, "[t]hese contributions could furnish both domestic and international organisations and decision-makers with information gathered from close observation of legal institutions and practices over the medium to long-term" (2013: 53).

These shortcomings in the international 'enterprise' of rule of law promotion did not occur in Libya only. They have to do with legal transfers in general, and have deeper causes. Carothers (2006: 25-27) identifies in his chapter on 'The Problem of Knowledge' five obstacles to knowledge development in this field. First, 'the rule of law is an area of great conceptual and practical complexity'. Secondly, the 'tremendous particularity of the legal systems' and the way they are functioning. Thirdly, aid organisations are 'ill-adept to the task of generating and accumulating the sort of knowledge that would help fill the gap' between existing knowledge and the question 'what to do?' Fourthly, 'political science departments or law schools' are not building knowledge either, as they have been conspicuously absent from 'the burgeoning field of rule of law promotion in the last twenty years'. Fifthly, 'many lawyers - who tend to dominate the operational side of rule-of-law aid - are not oriented toward the empirical research necessary for organised knowledge accumulation'. In the concluding section of this draft paper

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<sup>5</sup> Carlisle based her suggestions on joint research by Leiden and Benghazi Universities that, actually, provided an example of the desired combination of domestic and international experts and expertise (see Otto et al. 2013)

we will discuss how and to which extent the Benghazi-Leiden collaboration has succeeded in overcoming these five obstacles

#### 4. Leiden – Benghazi collaboration

Not long after the success of the February 2011 Revolution in overthrowing Gaddafi regime, the Leiden – Benghazi collaboration started. Its first project began when, in order to mark the 100th anniversary of the Peace Palace, the City of The Hague commissioned a research project to the newly established The Hague Institute for Global Justice<sup>6</sup> (The Hague Institute) about sustaining the rule of law and its institutions in Libya, and compare it to fragile and conflict-affected states. The institute invited Leiden University's Van Vollenhoven Institute for Law, Governance, and Society (VVI/LU) to be its partner for this research project. In November 2011 Libya was considered an important testing ground for new approaches to peace building and rule of law promotion. The Hague Institute itself would conduct a comparative desk study of other fragile states as a foundation for a set of principles aiming to contribute to peaceful conflict prevention, and resolution and restoration of justice in post-conflict settings, known as The Hague Approach. The VVI would conduct a research project, in the forthcoming year (2012/2013), on and in Libya, as a fragile state, which would be relevant both to Libya as well as to further “knowledge-based” rule of law assistance. It was made clear that the research should be as domestically grounded and participatory as possible.

The VVI/LU, in its quest for a partner in Libya, sought collaboration with the Benghazi Centre for Research and Consulting of Benghazi University (BRCC/BU). Following successful exploratory talks in Benghazi in February 2012, the VVI and BRCC jointly decided to carry out such a research project. They named it “Access to Justice and Institutional Development in Libya,” (AJIDIL). A small interdisciplinary and interuniversity research team was formed in Libya and Leiden. A report explaining the research and its outcomes was presented in August 2013 as part of the official centennial celebration of the Peace Palace.

The first major conclusion of the project concerned the international rule of law assistance and the need for legal and socio-legal research. It noted “that the rule of law is not “a product that can be delivered effectively” without a deep knowledge of law and context. Foreign advisers should therefore assume their ‘responsibility to learn’ and make efforts to provide tailor-made advice and training. In order to obtain the knowledge required with a view to the long-term needs of Libya’s legal system, both the national government as well as the international community might consider commissioning legal and socio-legal research about major challenges and aspects of the justice system.” The project also advised the Libyan government/ministries of justice and higher education to establish a national research institute for law and society studies.

As it turned out, the recommendations to fund legal and socio-legal research projects and establish a center specializing in such research were uptaken. The authors of this paper drafted a proposal for establishing the research center as part of the National Council for Scientific Research. The Minister of Higher Education, whose participation in the final conference of the AJIDIL project in Tripoli made him appreciative of the potential of such a center, showed his

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<sup>6</sup> In spite of initial strong support by the City of The Hague, the new Institute did not meet the expectations, and after seven years, in 2018 its activities were finally suspended.



support to the proposal. The Chairperson of the Council, however, did not share the enthusiasm. He did not welcome the addition of a center for socio-legal research to a council heavily devoted to 'real' and applied sciences. The Minister then issued a decision on 7 November 2013 to establish the Center for Law and Society Studies (CLSS) as part of Benghazi University, and to appoint the first author of this paper as its director. Since then, the CLSS has partnered with the VVI in carrying out socio-legal research projects mainly funded by the Netherlands Government.

Under the umbrella of an agreement between the Leiden and Benghazi Universities,<sup>7</sup> the CLSS and VVI have conducted several projects. The first was a project on Assessing Legislation for Libya's Reconstruction (2014-2015), which focused on processes of Libya's law-making, based on five case studies, as well as on the draft constitution, an ongoing project of state-building conducted by the elected CDA (see above). The second project 'Resolving Property Conflicts in Post-Gaddafi Libya (2016-2017)' dealt with conflicts arising from Gaddafi's socialist legislation and formal and informal mechanisms to address them. The third, still ongoing, project deals with the Role of Law in Libya's National Reconciliation (2018-2020), and researches the actual and desirable role of law in addressing major disagreements hindering national reconciliations; these disagreements concern issues of national identity, national governance, decentralization, transitional justice and security forces.

Emphasis in these projects has been placed on ensuring Libyan ownership; following a socio-legal approach and thriving for academic rigor while being policy relevant. Libyan ownership is key not only to ensuring research tailored to the country's needs and based on knowledge of law and context, but also to the uptake of this research in Libya where people are wary of whatever deemed foreign. Measures taken to ensure Libyan ownership run throughout each project's phases. For example, Libyan academics, practitioners and policy makers are consulted about which issues to address and in what order. It was a consultation with Salah Marghani, then, Minister of Justice that convinced the team to focus on conflicts arising from Law no. 4/1978 that restricted private ownership of real property. The composition of research teams is also an important measure. They are composed by large of Libyan researchers. For example, the advisory board in the project on the Role of Law in National Reconciliation is composed of four senior experts: three Libyan and one Dutch. Field researchers are also solely Libyan. Projects' outputs are always written in Arabic and English, and it is not uncommon that they are first written in Arabic.

Ensuring national ownership is not without its challenges. The mere fact that the projects are largely funded by another country, the Netherlands, can give rise to questions about the donor's 'hidden agenda'. Indeed, why does the Netherlands sponsor your project? is a question that have learnt to receive when approaching people for taking part in our research activities. Fortunately, we have been largely successful in assuring those people of Libyan ownership. Key in this is the reference to the composition of the team of well-known Libyan academics and practitioners; the research partner being the highly regarded Leiden University and the neutral and constructive stance of the Netherlands in their policies regarding the conflict in Libya.

Another challenge stems from having to organize research events, e.g., conferences, training courses and workshop, outside Libya, mainly in Tunisia. Given the political divide prevalent in

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<sup>7</sup> Expired on 1 November 2018 and then renewed for five years.

Libya since July 2014, it has become difficult to have events with full participation inside the country. Researchers from Benghazi, for example, expressed uneasiness about attending an event in Tripoli, and vice versa. Besides, the ever-deteriorating security situation has made it impossible for non-Libyan researchers to attend events in Libya. Tunisia, being easily accessible to Libyans, as they do not need to have visa, and home, since the divide, to international organizations working on Libya including UNSMIL, provides a good, neutral, place for such events. But this, as just mentioned, has provoked criticism and questions about the Libyan ownership of the research. In response, and in addition to citing the team composition, we have tried to accompany the events held in Tunisia with others held in Libyan cities. The latter option obviously incurs extra costs and faces the problem of getting full participation, as mentioned, but it can help assure suspicious voices of the research true ownership.

The research partners follow a socio-legal approach in their research. They do not only study law in the books, but also law in action and employ, to this end, methods ranging from an analysis of legislation and policy documents, interviews and focus groups discussions to surveys. In doing so, they thrive “to practice what the responsibility to learn-approach advocates.” It is a Libyan knowledge institution, the BRCC in the AJDIL project and the CLSS in the other project, that is the institutional focal point of the project, with the VVI as a foreign academic partner engaging in long-term cooperation. In the AJDIL project, for example, after forming a joint research group, the researchers began discussing major instances of serious injustice in Libya. These instances were first looked at bottom up, from the perspective of victims and justice seekers, then top-down, from the perspective of legal professionals and the state legal system. We took these instances as first entry points to understand the justice sector, in order to be attuned to real-life, and thus to be policy-relevant. The group set out to describe in those instances the actual views and behaviours of individual actors as well as the broader legal, political, and historical context. In the process, the group began identifying what types of knowledge were required for such analysis. This ranged from detailed legal knowledge, to quantitative survey methods, from socio-legal concepts to policy analysis. Efforts were made to pool the relevant knowledge already available, with an emphasis on domestic bodies of knowledge. In the process, the group tried to map rapidly evolving national policies and legislation, as well as the involvement of the international community. All of these inputs had to be fitted in an overarching conceptual socio-legal framework.

This approach fitted the ambitions of the BRCC, which has a history of involvement in research projects exploring possibilities for reform in pre- and post-2011 eras. Its international partner, VVI could contribute to the research by virtue of its background in the study of law, governance, and development (LGD). The history of this academic domain goes in part back to the work of Cornelis van Vollenhoven, a renowned socio-legal scholar.<sup>8</sup> Over the last decades LGD studies in Europe, North America, Asia and Australia have gradually developed as an interdisciplinary subfield of sociolegal studies, focusing on the formation and functioning of legal systems in developing countries, on the contributions those systems make to good governance and development, and on the use of external interventions. LGD studies have drawn from a broad range of (sub-)disciplines: law, legal history, comparative law, area studies, linguistics, (legal) anthropology, sociology (of law), public administration, governance studies, religious studies, development studies, and, in the case of fragile states, also from conflict

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<sup>8</sup> See J.F. Holleman (ed.) 1981, Van Vollenhoven on Indonesian Adat Law. Springer

studies. Since 1985 the VVI has pioneered in this field and been involved in preparing and executing international legal cooperation projects.

The partners thrived for academic rigor while being policy relevant. Meeting high academic standards is considered, for example, when composing research teams. There is always an advisory board composed of Libyan and international senior experts. In the project on the Role of Law in Libya's National Reconciliation these experts are: Zahi Mugharbi, Professor of Political Science at Benghazi University; Nagib Hussadi, Professor of Philosophy at Benghazi University; Kuni Abouda, Professor of Law at Tripoli University and Jan Michiel Otto, Professor of Law and Governance in Developing Countries. The first three are well-known and highly regarded scholars in Libyan, and the Arab world, who are always involved in Libyan public affairs. Their expertise is complemented by the fourth's expertise on and long experience with other developing countries. In addition, the partners solicit Libyan experts, mainly academics but also practitioners, to write papers focusing on specific aspects of the issues researched. In the project just mentioned, the experts belong to the fields of public administration, political science, economy, history, geography, Sharia, Libyan folklore, law (criminal, private, public and anthropology). The partners also target junior researchers and, to enhance their research capacity, offer them training courses on, among others, qualitative research methods and data management. Publication in Arabic and English is also part of the research. Besides providing the researchers with directly needed publication avenues, publishing in Arabic makes the projects' outputs accessible to Libyan policy makers and practitioners, which ties with the partners' ambition to be policy relevant.

Of course, publishing in Arabic is not enough for the research to be policy relevant. It is necessary, and not uncommonly lacking in the outputs of international assistance projects, but it needs also to be accompanied with, and preceded by, other measures. To ensure that the research planned responds to actual needs, the partners consult policy makers and other well-informed persons about the research design, involve them in the interviews and focus groups discussions, entrust Libyan academics and practitioners with most of the field research, and present and discuss any initial findings and recommendations with policy makers. For instance, the two ministers of justice who played a key role in several post Gaddafi laws, i.e., Mohamed Allagi and Salah El-Marghani attended the final conference of the Assessing Legislation project; their views were considered when writing the final project report. The same was also true of the project on Resolving Real Property Disputes. Key persons such as the Director of the Authority of the State Property, Director of the Authority of the Real Property Registration Authority, Head of the Fact-Finding and National Reconciliation Commission participated in the project's events in Tunisia and the Netherlands. Furthermore, the Head of the Central Compensation Committee, Judge Youssef El-Hanesh joined the research team as an advisor and took part, in this capacity, in all research events.

A challenge facing attempts for being policy relevant is related to how to deal with the rival policy and legislation makers. Since July 2014, Libya, as mentioned earlier, has witnessed a political bifurcation. The country is de facto divided into two: West and East, each with its own parliament, government, national army, central bank and national oil institution. The attempt to end this divide in December 2015 via a Political Agreement sponsored by the UN has to date been largely unsuccessful. Perhaps the main effect has been to shift international recognition from the East-based government to the West-based one. This recognition is, however, not very helpful when it comes to being policy relevant; dealing only with the internationally recognized

government would mean, basically, limiting any possible impact to half of the country. Thus, the partners try to be more practical and target policy and law makers on both sides. For example, in the project on the Role of Law in Libya's National Reconciliation, the list of interviewees included key persons such as the President of the Presidential Council (West); Prime Minister of the Interim Government (East); Chairperson and members of the High Council of State (West); Chairperson and members of the House of Representatives (East); Minister of Foreign Affairs, Minister of Justice, Government of National Accord (GNA) (West); Minister of Local Governance, Interim Government (East); Spokesperson of the Libyan National army (LNA), (East).

Such an approach is not risk-free. At times, especially when the divide is associated with armed conflict as was the case in 2019, dealing with a party can be a cause for suspicion for the other. It can be interpreted as an act of recognition of that party, one amounting even to treason. The Libyan partner, CLSS, being based in the East can give rise to questions about the project at hand being associated with a particular side in the conflict. This can have the effect of not only hindering the uptake of the research, but the personal safety of the researchers. We address these risks through, among other things, highlighting the fact that the research is executed, in addition to the CLSS, by the highly reputable Leiden University and that members of the research team are chosen from different Libyan universities, backgrounds, and from different regions within Libya, which ensures that there is no inherent bias within the team, and gives the research project an objective and unbiased reputation. However, when holding an event in a specific place or involving a specific person is concluded to endanger the safety of the researcher/s, the event or activity at hand will be canceled.

An alternative, safer, measure to, indirectly, influence policy and law makers on both sides without jeopardizing the safety of the researchers is to target persons who, while having an influence in Libyans circles including politics, are not directly associated with a particular political rival. In September 2019, the war over Tripoli was at its highest, which made it difficult to organize inclusive meetings inside Libya. Thanks to the generous support of the Dutch Ministry of Foreign Affairs, we managed to organize a High-Level Meeting in Tunisia to present and discuss the initial findings and recommendations of the project on the Role of Law in Libya's National Reconciliation concerning disagreements over national identity and national governance. The meeting involved political party leaders; former ministers and politicians; prominent academics; media key persons and directors of active civil society organizations. It was a success. Besides communicating our research to an important audience, the meeting provided us also with valuable feedback.

Feeding into policy and law making can take more direct forms. Amongst our researchers are academics and practitioners who also take part in actual policy and law making and/or execution. For example, amongst our Tripoli-based research members is Prof. Kuni Abouda who, besides being a highly respected legal scholar, served as head of the High Institute for the Judiciary and is currently an advisor to the Ministry of Justice. He is frequently selected to lead, or be a member of, legislative drafting committees. There are in the research team also Ali Abu Raas and Uthman al-Kaf, judges at Tripoli Court of Appeal, advisors to the Ministry of Justice, and legal trainers at the High Institute for the Judiciary. These three are currently serving on a committee entrusted with drafting an executive regulation for Law Number 29/2013 on Transitional Justice, a frequent theme in our research. Their involvement on both

sides has facilitated the communication of our research-based findings and policy and legislative recommendations.

## 5. Conclusion

Hopes of peacefully ending Libya's political bifurcation and associated conflicts are at the time of writing (November 2020) high. This may signal the resumption of once thriving international assistance programs, and there are indeed clear indications of that. There are, however, concerns over the merit of such programs. The experience shows that a considerable number of them have been largely ineffective. The absence of an effective communication between the providers of these programs, the national government and domestic knowledge institution, which is direly needed, has been a major factor. As shown by their reports, mostly unavailable in Arabic, such programs tend to be pre-set, lacking in both input of recipients and in-depth analysis of needs. Such tendency could be traced, in part, to the donors' requirements, which tend to focus on meeting quantitative standards.

Part of the lack of access to domestic knowledge can be explained by reference to the institutions supposed to provide such knowledge. There exist a, very, few institutions specializing in social sciences and humanities, let alone law. The existing few are underfunded. Admittedly, there are many universities, too many one may say, but they are too underfunded, and academic staff, who are poorly paid, devote too much time for additional paid teaching duties at the expense of research. Their capacity to produce high quality research is further hindered as a result of decades long lack of access to the international academic community; many are unable to conduct research in languages other than Arabic, thanks to years of the ban placed on learning foreign languages notably English and French. As a result, research outputs are mainly only produced in Arabic. Lack of publication avenues makes the situation worse.

The political bifurcation prevalent since July 2014 has also made it difficult to effectively interact with national government institutions. Instead of dealing with one legislature or one executive, for example, one has to either deal with two or select one out of the two. While dealing with the two seems a better option as it enables access to the entire country, it risks being seen as legitimating the rival party, by dealing with it. This may not only hinder access, but could also risk personal safety. In practice, the few remaining programs, especially after the Political Agreement of 2015, tend to favor dealing with the internationally recognized government based in Tripoli, limiting in the process their access to the rival government, and the areas it controls.

As a response to this problem, there has been an academic collaboration between Benghazi and Leiden University. It focuses on issues pertaining to the rule of law and good governance, and has considerably succeeded in creating the desired effective communication within the triangle of national government, domestic knowledge institutions, and 'the international community'. Benghazi University's Center for Research and Consulting and its Center for Law and Society Studies have been indispensable in this collaboration. Through them, access to Libyan expertise and experts as well as national government institutions is ensured. Libyan researchers, academics and practitioners, specializing in various relevant disciplines, located in various parts of the country and well connected to (rival) government institutions are recruited. The interaction between the research team and government institutions is further enhanced through involving government officials in activities such as interviews and focus group

discussions; and events like workshops and conferences in which research's plans, progress and initial findings and recommendations are presented and discussed. Research's reports and papers are also always made available in Arabic, facilitating the access of such persons to them.

Thanks to the financial support that the Netherlands government has provided, such recruitment, activities and publications are possible. This support, however, is not without its risks. In a country where suspicion of foreign aid is growing, fund by another country, especially a western one, can raise questions about hidden agendas. Luckily, the reputation that the Libyan Centers enjoy and the involvement of highly respected Libyan academics in the research, has provided enough assurance of the Libyan ownership of the research and its products. This has been made easier by the Netherlands' neutral stance on the ongoing conflict in Libya, and the complete autonomy the project has enjoyed in all phases of its research. Importantly, the fact that the international partner in the collaboration is the highly reputable VVI/Leiden University assisted in refuting the said suspicion. Of course, the involvement of the VVI/Leiden University has served to do more than just that. It has helped to ensure the academic rigor of the research; provide access to international academia and training on socio-legal research methods.

In sum, as for the abovementioned five obstacles to knowledge, identified by Carothers in his critique of international rule of law assistance, the Benghazi-Leiden projects have been able to address at least some of them successfully. The composition of the team in Libya has guaranteed a deep understanding of both the complexity of the rule of law and the particularities of Libya's legal system, both in theory and practice. The Dutch ministry of foreign affairs has recognized and promoted the importance of knowledge development in ways that aid organisations rarely do. Rather than entrusting this task to an aid organization or consultants, the ministry partnered directly with a Dutch and a Libyan academic institute, allowing the latter to determine the course of the research and the former to play a supportive role. Having the Libyan director of the CLSS and the project also employed at the VVI in Leiden has been helpful as well. In Benghazi leading scholars of law, political science and philosophy have worked together intensely as an interdisciplinary team, together with legal scholars and practitioners in Tripoli, combining legal and empirical research. Finally, the VVI's vast experience with socio-legal research in the global South including in North Africa, and the readiness of Libyan scholars to engage in serious empirical research has contributed to the successes of this collaboration. Hence, this experience shows how this particular type of long-term academic cooperation could help to overcome obstacles to knowledge in rule of law that have plagued rule of law projects for many years.

In the final version of this paper, we will also try explore how this type of cooperation could and should be further improved.

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