The Role of Law in Libya's National Reconciliation (RoLLNaR)

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Acronyms and Abbreviations

CD	Constitutional Declaration
CDA	Constitutional Drafting Assembly
GNA	Government of National Accord
GNC	General National Congress
HoR	House of Representatives
HSC	High State Council
LNA	Libyan National Army
NTC	National Transitional Council
PA	Political Agreement
PC	Presidential Council
RCC	Revolutionary Command Council

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Executive Summary

This report deals with national governance in Libya, addressing the controversial issues that hinder reconciliation. These issues came to the fore after 2011, when they were discussed in Libya's transitional political, administrative and legal institutions, and legislative responses were enacted – in reality, only drafted – to respond to them. These responses included the 2011 Constitutional Declaration, the 2015 Political Agreement, draft constitutions, notably the Draft Constitution of 2017, and numerous laws, decrees and judicial rulings. This project takes stock of the issues, positions, the acquis of legislative responses, and assesses the latter.

The research for this report has been conducted against the backdrop of the ongoing crises of nation/state-building in Libya. These crises, as the report explains, occur in the areas of national identity, legitimacy, penetration, distribution, participation and integration. Without solving these crises, the prospects for reconciliation and an effective law-based nation/state – necessary for societal and political co-existence – are bleak. The difficulties are further compounded by challenges such as the political divide, the constitutional process, the lack of security, corruption, the rentier economy mentality, regionalism and tribalism, religious extremism, and the weak role of civil society organizations.

The core of this report analyses the legislative responses to the following issues related to national governance: (1) the system of government: republic/monarchy, (2) the system of government: presidential/parliamentary, (3) the relationship between the executive and legislative branches, (4) the suitability of democracy for Libya, (5) the position of political parties (6) the participation of Islamists in the political process, (7) the independence of the judiciary, and (8) the form of the state (unitary or federal). Disagreement about the last, the form of the state, relates closely to subnational governance/decentralization, which will be discussed in the next report.

These issues were reviewed by considering the positions taken on them and by reviewing the legislative responses. This leads to an assessment of these responses, based on their suitability for national reconciliation. The general conclusion drawn is that the legislative responses reviewed have not achieved their objectives sufficiently, either because of the design of the legislation or because of problems with implementation. These challenges influence the effectiveness of political institutions in enacting and implementing legislation.

Libyans have shown a clear preference for a republican system, and legislative responses have also favored that option. With regard to the choice between a parliamentary or presidential systems, Libyans have expressed broad support for a presidential one. Our research establishes two requirements: (i) a sufficiently strong executive, and (ii) a balanced relationship between the executive branch and the legislature. After 2011, and based on the Constitutional Declaration, the legislative prevailed over the executive. The 2014 February Committee attempted to counter the legislature's stranglehold on the executive by proposing a directly elected, powerful president, but the proposal was not implemented. Nevertheless, later (quasi)legislative responses, such as the Political Agreement and the Draft Constitution of 2017, provide for a more balanced relationship between the two branches than that enshrined in the Constitutional Declaration.

Although the poor performance of elected bodies after 2011 led to disappointment with, and distrust of, democratic processes, there is still a clear preference for elections and democracy, both among

governance actors and among the majority of people. While voices can be heard calling for a strong leadership to run the country in its current stage, Libya's legislative responses testify to the desire to maintain the democratic features of this state, which, according to our assessment, is an appropriate choice.

The high hopes vested in, and favorable views of, political parties in 2011 decreased as Libyans grew disenchanted, due to their poor performance. This is reflected in legislation. While legislation initially abolished the ban on political parties that had existed under Gaddafi, and allowed them to register for elections, later laws, such as the Law No. 10/2014 on the Elections of the House of Representatives banned candidacy on a party basis. One constitutional draft even proposed completely banning political parties for four years. While the Draft Constitution of 2017 does not include such a ban, it still does not allow party-based candidacy for the Senate, because, perhaps, the Senate is intended to represent regions, not political parties.

The growing influence of Islamist parties and Islamist groups, some of them violent, has led to demands for restricting their role in the political process, or even banning them. Most legislation, however, provides for the right to political participation for all, except for parties which reject the foundations of state and law or are criminal in nature. The research appreciates such inclusive approach as a necessary ingredient for national reconciliation.

With regard to the independence of the judiciary, mentioned above under (7), reconstructing the body overseeing it, i.e. the Supreme Council for the Judiciary, and redefining the judiciary are cases in point. The declared aim has been to make the judiciary more independent of the executive by removing the Minister of Justice and his deputy from the Council, and redefining the judiciary to exclude "judicial institutions" that are actually directorates under the Ministry of Justice, i.e. directorates of government lawyers, public (previously people's) lawyers and law. Although removing the Minister of Justice and his deputy from the Council does indeed strengthen the independence of the judiciary, including the directorates, besides the judiciary proper and public prosecution, in the judicial institutions has enriched the judiciary, and excluding them could risk that enrichment. There is a need, the research shows, to carefully weigh the pros and cons of excluding such bodies. The fact that the Gaddafi regime invented the concept of judicial institutions to weaken and control the judiciary should not be the determining factor in deciding its future.

1. Role of law in national reconciliation and nation/state building, an introduction

1.1. Introduction

This report on national governance is based on research conducted by the Centre for Law and Society Studies of Benghazi University, in collaboration with the Van Vollenhoven Institute of Leiden University on 'The Role of Law in Libya's National Reconciliation' (RoLLNaR). It focuses, over a period of three years, on five areas of concern, national identity, national governance, decentralization, security forces, and transitional justice, and looks at how they can contribute to, or hamper, national reconciliation. The five themes were researched during five thematic research phases, each running for a period of six months.

The project adopts a socio-legal approach, combining research on legal and judicial sources, and on English and Arabic policy documents and academic literature, with conducting interviews and focus group discussions (FGD's). The research on national governance, the second thematic phase, ran from 16 October 2018 to 15 April 2019.

To achieve the targets of the research phase, and to research the key concerns of national governance discussed in this report, a team of researchers was assembled. This thematic phase was led by Dr. Suliman Ibrahim, the project leader of the RoLLNaR research from Leiden in close collaboration with Prof. Zahi Mogherbi in Benghazi, and a team of principal researchers, Dr. Hala Elatrash, Dr. Jazeeh Shayteer, Ms. Lujain Elaujalli, and Mr. Fathi Mousay in Benghazi, and an assistant researcher, Ms. Nienke van Heek in Leiden. These were accompanied, guided, and supported by four senior experts. Besides Prof. Zahi Mogherbi, they are Prof. Nagib Husadi (Benghazi), Prof. Al-Koni Abuda (Tripoli) and Prof. Jan Michiel Otto (Leiden). In addition to this research team, who conducted the field research, drafted the legal and judicial databases, and conducted the literature review, specialist researchers were invited to write papers on topics related to national governance. These specialist researchers are: Prof. Omar Ibrahim Al-Affas, Prof. Yousef Sawani, Mr. Ali Abu Raas, Dr. Umm Al-Azz Farisy and Dr. Issa Ali.

The research conducted resulted in the development of two reports, one in Arabic and one in English. The Arabic report is a more extensive academic report, describing the issues of national governance in more detail.

The project is concerned with an evaluation of the role of law in national reconciliation in Libya. At this time in particular, this raises the question of the plausibility of focusing on law in a country that is facing real crises threatening its very existence, and whether the focus should not instead be on other ways and means of reconciliation. The answer to this question is related to how the project has conceptualized national reconciliation, as we have assumed a fundamental role for the state and its legal system, without, of course, negating the role of other actors, both domestic and international, in the formation and (non-)implementation of such legislation.

1.2. Reconciliation: a layered concept

Reconciliation in our project has two meanings: it is both an end-state and a process. As an end-state, reconciliation "…consists of mutual recognition and acceptance, invested interests and goals in developing peaceful relations, mutual trust, positive attitudes, as well as sensitivity and consideration

for the other party's needs and interests."[1] In the second meaning, reconciliation is the process of overcoming major disagreements, such as those concerning national identity, national governance, subnational governance, security forces, and transitional justice, which are the five main 'concerns' addressed by this research, which focuses on the role of law as a major instrument in overcoming and settling those disagreements.

1.3. Nation/state building and reconciliation

Nation and state building plays a key role in the reconciliation considered in this project. First, the major disagreements are largely related to who controls the state and to the division of power and resources within it. Second, the state's monopoly of power is a precondition for its sustainability. Third, since the desired reconciliation is not just regional but national in character, this assumes that the nation/state has a central role. Thus, even those disagreements and disputes that have a regional or social character can often not be resolved by just traditional leaders and notables, even though they do play major role, as, sooner or later, the role of the state is essential. Local reconciliation initiatives must often be fortified by the state, by sponsoring the agreement and fulfilling the obligations arising from it (payment of compensation), as, for example, in the Tawergha and Misrata reconciliation.

In addition, since law, understood as legislation or draft legislation, has been, as our research has shown, the Libyan state's primary tool for change since 2011, the project focuses on evaluating its role in dealing with disagreements. Furthermore, the formation and effectiveness of law is known to be dependent on the stability and effectiveness of the state. That, in turn, entails a degree of success in establishing a nation/state's identity, legitimacy, penetration, distribution, participation, and integration. Our research therefore pays explicit attention to the problems – which are actually crises – that Libya faces in the process of nation/state building.

1.4. Six 'crises of nation/state building' and the role of law

In the spring of 2019, both the Libyan state and the Libyan nation continued to be in deep crisis. The state, as a political system with its institutions, is divided into two main parts, one of which has launched a violent attack on the other. Under the banner of the 'Eastern' government, Hafter's Libyan National Army (LNA) is at war with Serraj's Presidential Council/Government of National Accord's (PC/GNA) 'Western' government.

Even without the war, post-2011 Libya would be divided along more than a few fault lines (see 3.1 on the political divide). At the time of Gaddafi's fall in 2011, the challenges of rebuilding the nation/state were already daunting. Still, it is worth noting that most developing countries have experienced such problems and, in the mid-1950s, when the Libyan state was in just its first decade, the international Committee on Comparative Politics (CCP) of the Social Science Research Council observed that, in their efforts to build nations/states, developing countries experienced several 'crises'. Charles Tilly[2] notes that in this the CCP reflected a broad consensus among its members that all developing countries had to go through a sequence of such crises.

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[1] Bar-Tal, Daniel and Gemma H. Bennink. 2004. "The Nature of Reconciliation as an Outcome and a Process." In: Bar-Simon-Tov, Yaacov (ed.): From Conflict Resolution to Reconciliation, edited by Yaacov Bar-Simon-Tov, 1-35, p. 15. Oxford: Oxford University Press. As cited by Bloomfield, David. 2006. "On good terms: Clarifying reconciliation." Berghof Report 14: 1–35, p. 6.
[2] Goodin, Robert E. and Charles Tilly (eds.). 2006. The Oxford Handbook of Contextual Political Analysis. New York: Oxford University Press Inc., p. 418.

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The CCP distinguished crises of identity, legitimacy, penetration, distribution, participation and integration. Ever since, these crises of nation/state building have been regarded as established theory[3], highlighting a political system's structures inability to perform its key functions, and forming a starting point for thinking about how to solve them. In the Libya case they are particularly relevant and serious because they all occur simultaneously.

1.4.1. Identity
Identity refers to the citizens' common sense of belonging to their nation/state. A stable nation/state requires that individuals feel that their own personal identities are, to a considerable extent, defined by their identification with that nation/state. This is hindered by competing ethnic, religious, cultural, regional and other identities, and is particularly true, when, as is the case in Libya, the nation/state is divided and does not perform well, leading to other strong socio-political actors filling the vacuum, and a consequent crisis of national identity.[4]

1.4.2. Legitimacy
Legitimacy refers to the support that a state – or a regime, a government, a policy – derives from being generally perceived as just. While the legitimacy of Gaddafi's regime had decreased over the years, the post-2011 governments have also suffered a lack of legitimacy. Since the state's bifurcation of 2014, the legitimacy crisis is out in the open. Overcoming such a crisis requires rebuilding public confidence in the state, its institutions, policies, and laws.

1.4.3. Penetration
Penetration[5] refers to how the political center extends its control over the periphery. It calls for establishing a rational administration in order to mobilize the state's resources, to create public order, and to coordinate collective efforts. The capacity of the Libyan state to actually reach inside society, effectuate basic policies, gain the confidence of its subjects, and implement and enforce its laws, is severely limited. There is, thus, a penetration crisis in state-building.

1.4.4. Distribution
Distribution refers to redistribution of incomes, goods, services, and values among citizens by the state. It requires effective collection of taxes and other revenues, and fair and efficient mechanisms to provide citizens with education, health and other services and social security. While Libya's oil revenues are high, and many citizens are on the state's payroll, investment in public infrastructure has been low and public service delivery weak. In the East, in particular, there has been a prevailing public perception that the center (Tripoli) has neglected and marginalized the region, keeping much of the oil revenues for itself, often in corrupt ways. Solving this distribution crisis is one of the challenges of Libya's nation/state building.

1.4.5. Participation
Participation of all citizens in the political process involves their rights to vote, and to form political parties, as well as implying protection of an organized opposition. As the state's political process is

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[3] See for example: Rokkan Stein. 1969. "Models and Methods in the Comparative Study of Nation-Building." *Acta Sociologica* 12 (2); Goodin and Tilly 2006. Goodin, Robert Edward, and Charles Tilly, eds. The Oxford handbook of contextual political analysis. Vol. 5. Oxford Handbooks of Political, 2006.
[4] See this project's 2018 report on National Identity.
[5] The description of these crises is loosely based on Rokkan 1969: 63-68.

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opened to those who did not participate previously, new interest groups emerge, which also leads to rising expectations. If the existing political institutions cannot meet these expectations, there is a participation crisis.

1.4.6. Integration

Integration refers to national inclusion by sharing the offices, benefits, and resources equally among all culturally and politically distinct sectors of the national community. This involves the sharing of power across elites, segments, strata, and calls for allocation rules equalizing the shares. Unfortunately, many of those who aspire to, or have held, political power in the Libyan state have reverted to exclusionary ways. The ongoing division and war have aggravated this approach. In short, there is an integration crisis in Libya's nation/state-building.

1.5. National governance and reconciliation

The focus of the project on the role of the state and its legislation does not ignore the role of other actors, as the project has employed a concept where governance is seen as "the formation and stewardship of the rules that regulate the public realm – the space where state as well as economic and societal actors interact to make decisions."[6] Researching national governance, its related challenges and issues, and the role of law is thus not limited to examining the role of the state and the interaction between its legislative, executive and judicial institutions, at the national and subnational levels, it also includes the interaction of these institutions with other actors: other political community components such as political parties and currents, civil society, and the economic community. For example, in determining positions relating to a particular issue, the research is not limited to identifying the views of representatives of state institutions, it has also sought to identify those of representatives of civil society, political parties and the economic community. The project, thus, while focusing on law, and on the state, being the formal producer of this law, also investigates the opinions of actors other than the state, because law, according to the governance approach, is formed and implemented as a result of the interaction of all those actors, even though the state is the one that officially enacts and promulgates it.

1.6. Researching the role of law, national reconciliation and governance in a conflict-torn country

Given the recent LNA attack on Tripoli, the seat of the GNA, which is the internationally recognized government, the relevance of such focus on law might be questioned. It could be argued that it may have been relevant when the 2015 Political Agreement (PA), which is seen as part of the law studied in this project, was still relevant, the question then being how it could be implemented, and, if necessary, amended to reconcile the conflicting parties. However, as the relevance of such an agreement is now seriously doubtful, the project no longer responds to actual needs, one may conclude. In response, we argue that, with its focus on the role of law in national reconciliation, this project is still relevant, and the recent developments have reinforced that.

The project's point of departure is that the apparent political divide noted by many observers in today's Libya is the result of a range of deeper divisions and disagreements. Important as it certainly is, ending the East-West political divide is not enough: unless the deeper disagreements are appropriately addressed, serious political divides are likely to reoccur. These disagreements evolve

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[6] Hyden, Goran. 2004. *Making Sense of Governance: Empirical Evidence from Sixteen Developing Countries.* Boulder and London: Lynne Rienner Publishers.

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over five areas of contention, namely: national identity, national governance, decentralization, transitional justice and security forces.

The current conflict over Tripoli is a useful illustration of the importance of addressing these divisions. For the LNA, the attack is basically intended to liberate the capital from militias and Islamist groups, a task the GNA has proven incapable of. The political divide will then end, and elections can be organized in a secure and stable environment. In the eyes of its opponents, the LNA is only attacking the capital to fulfil Hafter's personal ambition of ruling Libya, and, given his military background, it would soon lead to the country being back under a military dictatorship. Resistance is then needed to keep alive the dream of Libya as a civil democratic state. Regionalism is also involved, the attack is presented as one by the eastern region against the western. Although denied by the LNA side, such a claim is supported by statements by, for example, an eastern member of the HoR. The attack is also described as a counterrevolution: Gaddafi loyalists, tribes and former members of his special brigades, constitute important elements of the attacking army.

The project deals with the arguments and concerns raised here. For example, the question about democracy is actually a focus of this current report: is Libya ready for democracy or is there, at the moment, a need for a strong leader, a military one perhaps? Should the system be presidential or parliamentary? Should Islamists be allowed to participate in any democratic system adopted, or are they are inherently against democracy so to be banned?

Obviously, there are different opinions and positions on these issues and they need to be reconciled. This will remain the case irrespective of the outcome of the fight over Tripoli. This project has considered three scenarios. The first is that the LNA's entrance into Tripoli is halted through strong armed resistance by forces supporting the GNA, with the LNA then retreating to its previous positions. State power then remains divided geographically between the two entities. This scenario seemed most likely when we began our research, the need for reconciliation through a political process, with the 2011 Constitutional Declaration (CD) (amended), the Political Agreement (PA) of 2015, and the Draft Constitution of 2017 being important points of departure. The new situation, however, will not be exactly as it was. The conflict will probably lead to a strengthening of the positions of factions, on both sides, thought to look unfavorably at the existing arrangements, such as the PA, i.e. Gaddafi loyalists, the February revolutionaries, and the Islamists. The PA, or any other arrangement, will need to accommodate this. This is not necessarily negative, the issue of inclusion/exclusion of such groups in/from the political process, which the project deals with[7], is a key one, and their voice is more likely to be heard if they are better represented.

In the second scenario, the LNA prevails, and Hafter establishes a new regime and system of governance for the Libyan state. Whatever the nature of such a regime, it would still face the need for reconciliation, the five main concerns of our project, the crises of nation/state building. For instance, it would urgently require legitimacy for its system of national governance, based on constitutional and legal rules. The issues to be decided upon and contest will remain the same.

In the third scenario, the armed struggle in southern Tripoli will continue for many months. Meanwhile, efforts for ceasefires will continue. We can expect that deliberations and negotiations for a new system of governance will continue in the shadow of the violence. The politico-legal bottlenecks with regard to the five concerns will still need to be solved, and the question that will arise will then

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[7] See the report on national identity for an assessment of the positions and responses related to presumed Gaddafi loyalists, and the current report for an assessment of those related to Islamists.

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be whether the previous political agreements, for example, the PA 2015, and the different draft constitutions, still matter. Assessing these arrangements, and other relevant legislative responses, actual and proposed, in the context of the five concerns is the focus of this project, and that is where its relevance lies.

1.7. Research design

1.7.1. Questions

The research project aims to answer a number of detailed questions concerning the law and its implementation. These questions can be summarized into three broader questions. First, has the law been used to address a certain controversial issue hindering reconciliation and state-building? Second, to what extent has this law been effective in overcoming these hindrances? Third, if the law has not been effective, how can it be adapted to achieve these goals?

1.7.2. Six arenas of governance

Negotiations within the political process take place in a political environment that supersedes the state or government alone. Policies are negotiated between the state and different actors or stakeholders within society in different political arenas. Following Goran Hyden (2004), this research distinguishes six arenas of governance, (1) government, (2) political society, (3) civil society, (4) economic society, (5) bureaucracy, army and police, and (6) the judiciary[8]. In selecting interviewees and informants for interviews and focus group discussions, we systematically included actors from these different arenas of governance.

1.7.2. Six arenas of governance

An essential element in this research on national governance is the incorporation of multiple interviews and focus group discussions on the topic of national governance. Over a period of six months, the research team conducted around 40 interviews with major social and political actors in Libya in the previous and current political environments. Interviewees were chosen from the six arenas of governance (see 1.7.2.). In addition, several focus group discussions (FGD's) were organized in different parts of Libya; i.e. Tripoli, Sabha, Al-Baida, Ijdabia, and Benghazi. These FGD's dealt, in general, with national governance, but also specifically focused on economic and political aspects of national governance.

1.7.3. Interviews, focus group discussions, and consultations with stakeholders

An essential element in this research on national governance is the incorporation of multiple interviews and focus group discussions on the topic of national governance. Over a period of six months, the research team conducted around 40 interviews with major social and political actors in Libya in the previous and current political environments. Interviewees were chosen from the six arenas of governance (see 1.7.2.). In addition, several focus group discussions (FGD's) were organized in different parts of Libya; i.e. Tripoli, Sabha, Al-Baida, Ijdabia, and Benghazi. These FGD's dealt, in general, with national governance, but also specifically focused on economic and political aspects of national governance.

1.7.4. Legal research and court rulings

Both before and after 2011, a wide range of (draft) legislation dealing, directly or indirectly, with topics related to national governance has been produced. As part of the research project, a legal

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[8] Hyden, 2004.

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database collecting the relevant legislation was established. This legislation was then analyzed by the research team. Key legislation includes the Libyan Political Agreement (PA) of 2015, the Constitutional Declaration (CD) and the diverse draft constitutions, and many laws and decrees. In addition to this legal database, a judicial database of relevant court rulings on the topic was set up.

1.8. Phase 1: National identity 'concluded'

This research on national governance builds upon the previous phase, in which research on national identity was conducted between 16 April and 15 October 2018. The main thrust of that prior phase is summarized here. Discussions around national identity revolve around three main themes, religion, politics and ethnicity. Under each of these themes, two main disagreements were researched.

On the theme of religion, the position of Sharia in the legal system and the position of the Maliki and Ibadi *madhabs* (Islamic jurisprudential schools) were controversial issues. While some see Sharia as the only source of legislation, others allow for other sources of inspiration. Furthermore, while the Maliki and Ibadi schools are the traditional schools in Libya, the influence of Salafism has been growing, and poses a threat to these schools. The research concluded that assigning an exclusive and dominant role to Sharia would create the risk of polarizing society, and seeing Sharia as one source of legislation among others would be more supportive of national reconciliation.

On the theme of politics, controversy arose about the inclusion or exclusion of (former) Gaddafi loyalists in the political process. The researchers concluded that the principle of equality between Libyans before the law should be upheld, allowing all to take part in politics, except those convicted of crimes either before or after the revolution. A second controversial issue in the domain of politics is the choice of state symbols, such as the flag and anthem. After the February Revolution, the flag and anthem chosen when Libya became independent in 1951 were revived as symbols of the state. These became symbols of the February Revolution, but those who sympathize with the former regime would prefer a different flag and anthem. The researchers concluded that maintaining the Independence flag is in line with the wishes of the majority of Libyans, and, as such, should be maintained until a review at a later stage.

Third, on the theme of ethnicity, controversy arose over the status of minority languages. The question is whether they should be considered national languages, or state (official) languages. Here the research concluded that deeming them national languages, meaning that they can be used and taught in areas where they are spoken, would be a feasible option. A second controversial issue for non-Arab ethnic minorities is the use of an 'Arab' affiliation in the name of the state and state institutions. Research showed that the 'Arab' denomination has been removed in legislation from the beginning.

Finally, the research on national identity resulted in the formulation of a comprehensive vision of what national identity should entail in order to be able to achieve reconciliation.

2. An initial perception of a vision for national governance

National governance in today's Libya requires, in our view, building a modern civil state, allaying citizens' fears of a military or theocratic state, and enhancing their confidence in its legitimacy. This necessitates a shared vision. What is presented here is a perception of such a vision based on the Libya 2040 Vision, developed by Libyan academics and other intellectuals, and presented by the Libyan National Planning Council in June 2013. The Vision has also been tested in our field research and, based on interviews with governance actors, it appears to have broad support. In addition to providing guidance and suggestions about what any future national governance system should look like, the Vision helps to assess the relevant positions and responses taken on the issues researched. It should be noted, however, that, at times, the Vision refrains from taking a stand on specific issues, such as the form of the state and its system of government, believing that these should be decided by the people as a whole through a referendum on a draft constitution. In such cases, the Vision is content with providing guidelines about what requirements the adopted form or system should meet.

The Vision
National governance is based on a social contract that guarantees human rights and freedoms and equal opportunities to all citizens, and that is governed by a constitution that defines the powers of the state branches in a way that ensures a balance between them, without one power encroaching upon the other. The Constitution ensures that the executive and legislature are effective and balanced by one another, and that the judiciary is independent, impartial and capable of checking on the other branches' respect for the provisions of the Constitution and the law. It establishes the foundations of decentralized governance, politically, administratively and economically, and ensures effective subnational governance. It also guarantees a balance between human rights and freedoms, on the one hand, and achieving national and societal safety, security and stability on the other.

The state adopts an open political discourse capable of dealing with different political currents and based on the tenets of national identity and interests. It strengthens Libya's role as an active, well-connected force in its regional and global environment. It promotes a modern economy, transforming the 'rentier state' into a 'productive state'. It diversifies its resources and sources of income, with a focus on renewable energy sources, and provides greater opportunities for the private sector, concentrating the role of the state on management at the macro level. It aims for equitable distribution, provision of services of social value, protection of vulnerable groups from the risks of free market economies and combating corruption in all its forms.

The state also strives for national security based on the concept of human security, meaning that people are safe from persecution, tyranny, domination, violence, terrorism, intimidation, arbitrariness and violation of their privacy. It ensures a decent life for all, regardless of sex, color, language, religion or social and ethnic status or political orientation. It protects and maintains the entity of the state, territory, people, government, and national interests, thus ensuring political and social stability.

Finally, the Vision includes a society where the legitimacy of the state is based on increasing its ability to perform its basic functions of extraction, optimal utilization of the material and human resources in society, effective organization of society and its institutions, fair and efficient distribution of wealth, unambiguous delineation of the citizens' civil and political rights and duties, enabling various societal groups to participate in the social, economic and political life effectively and democratically, based on

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the idea of equal citizenship, including the formation of political parties and civil society organizations, regardless of ethnic, tribal and regional affiliations, without discrimination on the basis of political beliefs and tendencies.

3. Constraints and Opportunities

3.1. Political divide

At present, the visible political divide is obviously that of 'the East', under Hafter, and 'the West', under Serraj. These are engaged in a violent armed conflict over Tripoli. Hafter's side has framed the conflict as fighting Islamist extremists, while Serraj's side frames it as the defense of democracy and human rights. However, it would be a serious mistake to overlook the other important political divides that make the problem and its solutions more complex.

While there is a fundamental divide between 2011 Revolutionaries and Gaddafi Loyalists, there is also another divide between Islamists and supporters of a 'civil state'. The latter distinction may, in turn, obscure the important divide between Salafists and Muslim Brotherhood supporters. At the same time, it is not all about East-West, pro-contra Gaddafi, or religion. The constitutional drafting process has also been hampered by a divide between non-Arab ethnic minorities and the Arab majority, including a boycott of the process by the former. Political institutions, whether the PC, House of Representatives (HoR) or High State Council (HSC) are divided into factions. Recently, the HoR, in a second manifestation, has emerged in Tripoli. Besides, political parties and alliances are poised to fight one another in elections, for example Jebril's National Alliance Forces and the Justice and Construction Party. There is constant speculation about conflicts between high-profile political personalities. There are also longstanding conflicts between cities, between camps within cities, and between tribes, all of which are reflected in a myriad of local and regional armed groups plotting with or against other local and regional armed groups. Meanwhile, all of the above actors consider the Islamic State (ISIS) an adversary.

The political divide – or divides – are a major constraint. At the same time, there are also many individuals and institutions who try to stay clear of such divides: the moderates, the potential 'builders of bridges'. These can be found in the bureaucracy, the judiciary, economic society, civil society/academia/tribal and religious leaders, and even in government and political society. Insofar as Libya is still 'functioning', it is thanks to them. National reconciliation requires that such moderates form broad coalitions.

3.2. Security situation

Since the overthrow of Gaddafi in 2011, Libya has faced several important challenges related to the security situation. One issue is the presence of armed groups and militias, and how to deal with them. Since the revolution, the presence of armed groups has grown, and they currently have a strong grip on the country, fighting each other for influence, territory and power. This has far-reaching consequences for the economy and politics, as some of the militias have transformed into criminal networks, and have been extracting money from politicians, administrators and big businesses in

return for protection, particularly in Tripoli.[9] In addition, extremist Islamist groups have been gaining ground in Libya since 2011, as is exemplified by the presence of the Islamic State, as well as Al-Qaeda in the Islamic Maghreb (AQIM).

How to prevent these groups from extending their influence, and how to stabilize the fragile situation needs to be dealt with. Another issue is the ongoing assault on Tripoli by Hafter, which began in April 2019, immediately before a scheduled National Conference to discuss the political divide. As of May 2019, the assault has already taken the lives of 510 people, and left 2467 injured.[10] Longer-term challenges include building a national army and a national police force, and how to incorporate the militias in Libya, as well as experienced (former Gaddafi) staff. One of the issues here is the organization of the chain of command and how that command can obtain legitimacy. The position of the LNA in this structure also needs to be considered.

Big militias in Tripoli, Misrata, Zintan and other cities will, clearly, one way or another, need to cede (some of their) independence, and thought should be given about how to incorporate them into the army. Any army and police force will also need training, education and recruits, and decisions will need to be made about how to improve the system. The lack of a functioning army and police force also has direct implications. Even without a national army and police force in place, there is still a need for the maintenance of law and order, and combating crime in different parts of the country. In this context, it is important to consider the priorities for the criminal justice system, including the Public Prosecution and the judges. Although these issues are important in solving the current conflict in Libya, and these challenges will need to be addressed, this report will not focus on them in detail as they will be dealt with in an upcoming research phase, on security forces.

3.3. Corruption

Corruption is not a new phenomenon in Libya. Due to weak government systems, and a culture of patronage and personal relations, corruption was already a problem under Gaddafi. It has found even more fertile ground since 2011, due to the near complete absence of functioning state institutions. This has led to a misuse of public resources. Corruption currently takes several forms in Libya, including bribery, embezzlement of public resources, money laundering, forgery, nepotism, misuse of positions, smuggling, and tax and customs evasion. These have led to the emergence of a parallel market in a number of commodities and foreign currencies in Libya, and a consequent aggravation of the economic crisis and economic and political instability. Research has shown that, as of 2017, Libya was among the most corrupt countries in the world, ranking 171 out of 180[11], and around 30 percent of Libyans consider corruption to be one of the biggest problems facing Libya at the moment.[12]

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[9] See for example: Lacher, Wolfram and Alaa al-Idrissi. 2018."Capital of Militia's: Tripoli's Armed Groups Capture the Libyan State." *Sanaa Briefing Paper*

[10] Al-Harathy, Safa. "Who: 510 dead, 2467 injured in Libya since Tripoli war." *The Libya Observer*, 22 May 2019. Available online via: https://www.libyaobserver.ly/inbrief/who-510-dead-2467-injured-libya-tripoli-war [last accessed 22 May 2019]

[11] See: Transparency International. 2018. "Corruption Perceptions Index 2017." Available online via: https://www.transparency.org/news/feature/corruption_perceptions_index_2017 [last accessed 16 October 2019].

[12] USAID. 2018. "IFES Survey on Voters' Intent: Libya. A Nationwide Survey Exploring Public Opinion of the Political Situation in Libya and Voter Intentions to Participate in Future Election." International Foundation for Electoral Systems: Arlington, p. 7.

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Several attempts have been made to address the issue after 2011. For example, in the Draft Constitution of 2017, Article 23 deals with combating corruption, stipulating that the state should take the necessary measures to combat, uncover, and address cases of corruption. Several anti-corruption laws have been enacted, for example, Law 36/2012 dealing with the management of assets of certain individuals, later amended by Law 47/2012, and Law 11/2014, which established a national anti-corruption authority. In spite of this legislation, however, efforts to contain corruption have not been effective. While this can, in some cases, be attributed to flaws in legislation, a more prominent issue is the ineffectiveness of anti-corruption bodies, with some of them being charged with corruption themselves.

3.4. Rentier economy and mentality

After the discovery of oil in Libya, in the 1950's, a 'rentier mentality' emerged. As oil revenues were transferred directly to the state, it did not need to rely on a local economy, with taxes and fees, for income. As a result, it did not pay sufficient attention to building an efficient and long-term economic base. Instead, it focused on distribution policies, using them to shape and restrict the local economy. Local economic sectors were directly dependent on the state for benefits, which were distributed by state actors in ways that served their interests.

The direct result of these policies was the emergence of a rentier mentality at both the state and local level. The state controlled prices and markets, using them to enrich allies and deprive others. This led to the emergence of a politicized economy in which economic gain depended on proximity to power rather than on productivity and economic efficiency. This mentality has been exacerbated after 2011 because the new authorities have followed the same pattern of purchasing loyalty through the distribution of financial benefits.

3.5. Regionalism and tribalism

One of the challenges facing Libya today is how to deal with ethnic, tribal and regional loyalties. Due to the weakness of the state and its institutions, the lack of equal citizenship, and the absence of an independent and active civil society, citizens have been returning to tribal, ethnic and regional affiliations and organization. Political fragmentation as well as the ongoing conflict in Libya have led to growing influence of tribal and regional interests in political processes and decisions, both at the local and the national levels. At the local level, administrative divisions have been subject to local pressures rather than being determined on the basis of objective considerations. At the national level, efficiency and skills are not always the basis for appointment to a post, and taking tribal and regional considerations into account has become common. The Political Agreement of 2015 did not end this problem. The composition of the Presidential Council, for example, was influenced by regional factors and was not based on efficiency and skills, which impacted the PC's ability to make decisions and to reach consensus. Moreover, in some areas, armed conflict has taken on a tribal character, which has negatively impacted security.

3.6. Religious orientation

There is also a need to confront extremist Islamic groups that use violence to achieve their goals. Despite the predominance of moderate Islamist currents in Libyan society, the current conflict has allowed violent extremist groups to influence events. Their influence on the Libyan political and social scene has presented a threat to the establishment of a democratic civil state.

3.7. Civil society

The literature dealing with modernization, political development and democratization stresses the importance of a strong and active civil society in supporting the democratic system. In Libya, despite their existence in large numbers, civil society organizations have been unable to play this role. One reason for this is the impact of Gaddafi's legacy. Under his rule, civil society organizations were deemed part of the state, and were included in the official organizational structure. They were also financially dependent on the state. In the post Gaddafi era, while these organizations have the opportunity to establish organizational and financial independence, they continue to struggle with finding a secure independent financing. This has not been made easier by the dominance of the rentier mentality of relying on the state for funding (see 3.4.). Obviously, such dependency results in the continuation of the state's dominance over civil society.

The reluctance of citizens to join these civil society organizations is another challenge. Although 90 percent of Libyans agree with the constitutional text which deals with the freedom of association and trade unions, a survey on Libyan values, held in early 2014 as part of the World Values Survey[13], showed that the actual behavior of Libyans revealed a clear reluctance to join such organizations. It showed that an overwhelming majority of people are not affiliated with "any voluntary, civil, humanitarian, sports or recreational organizations" (81%), labor unions (85.5%), environmental organizations (89%), professional groups (85.8%), humanitarian or charitable organizations (79%), or other organizations (89.2%). In a survey conducted in 2018[14], 18 percent of respondents said they had attended civil society meetings, 33 percent stated they might attend such a meeting, while 49 percent said they would never attend a civil society meeting.

If the participation of citizens in civil society organizations and activities is an indicator of the strength and vitality of civil society in Libya, the data from these surveys shows that there is still a long way to go to build a strong and pro-democratic civil society. This situation is exacerbated by the pressures on civil society from military and religious actors, as well as distrust because of their presumed external linkages.

3.8. Role of women

Empowerment policies are an important means of ensuring that those who were previously marginalized now get equal opportunities in the political process. One means of achieving this is setting quotas for marginalized groups. An important group to take into account in Libya are women, and various positions were taken on this issue. After 2011, quotas for women were widely supported. In March 2013, 83 percent of Libyan expressed their support for quotas for women in elected councils.[15] In a more recent survey the 74 percent of people expressed this view[16]. Despite this, however, Libyans have expressed conflicting views about the role of women in political, economic and social life. On the one hand, 76.1 percent agree with equal employment opportunities for men and women, 68.4 percent agree that women should become ministers, and 68.9 percent agree that women should hold a judicial position. On the other hand, 63.6 percent said that they do not want a

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[13] Zahi Mogherbi et al. 2015. "Al-Musaḥ al-ʿālimi li-al-qim: al-musaḥ al-shāmil li-ārāʾ al-Lībīʾīn." *Final Report*. Benghazi University: Research and Consultation Center.

[14] USAID. 2018, p. 13.

[15] Benghazi Center for Research and Consulting. 2013. *Tanāʾij al-musaḥ al-waṭanī al-shāmil ḥawla al-dustūr*. Benghazi University, February and March 2013, 48.

[16] USAID. 2018, p. 46

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woman as the head of state, and 73.3 percent stated that they think that men are better than women in political leadership[17].

Libyan legislation has dealt with the issue of the role of women in the political process. The Constitutional Declaration provided for equality between Libyans in enjoying political rights and opportunities, without discrimination on the basis of gender. The declaration did not, however, allocate a quota for women. The Political Agreement emphasized that the Government of National Accord should ensure fair representation of women and youth when selecting its members (Article 2/2). In its eleventh article, it also formed a unit for the empowerment of women, the Women Empowerment Support Unit. The Constitutional Drafting Assembly (CDA) also dealt with the position of women, proposing allocating a quota in some of its outputs. For example, the draft of the Thematic Committee on Rights and Freedoms proposed that "an electoral system shall ensure a quota of at least 30 percent for three consecutive electoral rounds". Although in their first proposal, the Working Committee neglected to devote any quota to women, in its second proposal, it stated that "any electoral system shall guarantee a quota of no less than twenty-five percent of the total seats of the elected councils for three consecutive electoral rounds".

In the Draft Constitution of 2016, the quota applied only to the House of Representatives and local councils, and the words "no less" were dropped (Article 205). In 2017, the Draft Constitution upheld the quota, but reduced the electoral rounds to two rounds instead of three. In laws, the quota system for women was applied in the general elections of the GNC in 2012. The Electoral Law stipulated that 80 seats would be allocated to party lists, and 120 seats to individual candidates. This law stipulated a system of alternation in the seats allocated to party lists, alternating men and women on the list. In the end, only one woman won a seat in those allocated to individuals, the remaining 32 seats held by women came through the party lists where alternation was required. This is clear proof that quotas are still needed to enable more women participation in politics.

Despite this, it should be noted that the legislation enacted, while still providing for a quota for women, has gradually reduced this quota, thus limiting their political participation.

3.9. The constitutional process

Libya's constitution process, despite drawbacks, can offer an opportunity to better address national governance challenges and controversial issues. The drawbacks are related to the process itself and its outcomes. The problems related to the process can be traced back to how the CDA was first envisaged and how it then changed. The Constitutional Declaration first proposed the CDA as a committee formed and controlled by the legislature. This committee, most likely to be composed of experts, would submit, within sixty days, a draft for approval to the legislature that would put it to a yes-or-no public referendum. This would need a two-thirds majority of the voters to become a constitution. Under pressure from federalists, this plan changed so that the CDA would become, initially, a body composed of sixty members, twenty from each region, and, later, elected rather than appointed by the legislature, with the latter no longer having any power over the substance of the Draft Constitution. When the CDA elections were finally held in February 2014, they had a very low turnout; less than 10 percent of the population took part. In addition, the Amazigh, Libya's biggest minority, boycotted the elections.

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[17] Benghazi Center for Research and Consulting. 2015. Al-musaḥ al-shāmil li-ārāʾ al-Lībīʾīn ḥawla al-ḥiwār al-waṭanī. Benghazi Univserity, 37-38.

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The task was far from easy. The CDA had to operate in a divided country, and the polarization that dominated the scene found its way into its work. Unsurprisingly, building consensus was a continuing challenge. When the CDA's Thematic Committees produced drafts in December 2014, achieving consensus on one draft even amongst a three-member committee proved impossible. The drafts produced later by the Working Committee and the Consensus Committee also failed to achieve consensus, with some members boycotting the process, and resorting to courts to challenge a produced draft was not infrequent.

Though the CDA managed, on 30 July 2017, to agree on a draft, the prospects for this draft to be put to the required referendum are still slim. Apart from the security situation, there are also legal challenges. The referendum law, as regulated in the PA, is to be enacted in consultation between the HoR and the HSC. The former, however, enacted the law with no such consultation. The new law required, for the approval of the Draft Constitution, not only two-thirds of the voters as the Constitutional Declaration stated, but also fifty-plus-one percent in each of the three regions. Given the draft's controversial stance on key issues, the two-thirds majority is in itself a high, perhaps too high, threshold, let alone the additional majority requirement. The new changes have already been challenged for constitutionality before the Supreme Court.

Despite all this, the constitutional process can offer an opportunity to deal with Libya's key challenges, including those related to national governance. The CDA is an elected body which includes representatives of various regions, ethnicities and political orientations. While this has made the task of building consensus quite difficult, such a composition would be hard to replicate in Libya today. Besides, as this report shows, the latest draft takes a laudable stance on many issues, including some related to national governance. Its stance on a few, still key, issues is, however, problematic, again shown in this report, but this does not, by any means, justify abandoning the process altogether.

The best course of action is, instead, to address the problematic aspects of the constitutional process. There is, first, a need to rethink the referendum as stipulated in the HoR's recent amendment. Requiring a fifty-plus-one majority in every region in addition to the two-thirds nationwide could (arguably) be defended on grounds related to the design of the constitutional process itself: the CDA is itself composed of members equally divided between the three regions. Still, the amendment excludes the provision tasking the CDA with writing a second draft constitution if the first is rejected. This raises questions about whether this could actually be interpreted as terminating the CDA in such a case. Regardless of whether the amendment reasonably gives rise to such an understanding, terminating the CDA would, in every way, be undesirable, not only because of the lack of clarity about the alternatives and who will decide on them, but also because of the CDA's positive composition. Of course, since important segments of society such as the Amazigh and Gaddafi loyalists are not represented, its composition far from ideal, so there is a need to reach out to these groups. The high likelihood of the Draft Constitution being rejected might provide the CDA with an opportunity to do so, aided by other stakeholders. For example, academic research centers could provide advice on both the process and substance of constitution making, and civil society organizations could help with awareness raising campaigns.

3.10. The role of UNSMIL and other international players

UNSMIL was established under UNSC Resolution 2009/2011 to assist and support national efforts to restore security, public order, and the rule of law. In the years after 2011, UNSMIL attempted to

coordinate international assistance efforts from Tripoli. After the 2014 political bifurcation of the state, UNSC Resolution 2174 broadened UNSMIL's mandate. The mission now mediated between delegations of the two sides and advocated a political agreement, which was finally achieved in December 2015 when the Libyan delegations and all major international actors signed Libya's Political Agreement (PA).

This PA established a new political structure for Libya. It envisaged a unified Libya with three main political bodies, the Presidential Council (PC) overseeing a Government of National Accord (GNA), a House of Representatives (HoR), and a High State Council (HSC). However, these institutions did not really function as foreseen. The HoR in the East and its executive branch, the Thinni cabinet, increasingly aligned itself with General Hafter, who gradually extended his control, both geographically and politically. Several foreign countries actively supported this process, Egypt, United Arab Emirates (UAE), Saudi Arabia, and probably France. The PC retained the political support of the UN, EU, and most other countries, mostly explicitly of Italy and Tunisia, joined by Turkey and Qatar.

In September 2017, the head of UNSMIL, SRSG Prof. Ghassan Salamé, launched an Action Plan of three phases. The first addresses disagreements by amending the 2015 Political Agreement; the second is an inclusive National Conference to select a new executive; the third is a referendum on the Draft Constitution and presidential and parliamentary elections. In early 2019, UNSMIL was still preparing a National Conference aimed at overcoming the political divide, an effort that came to a standstill when Hafter's campaign for Tripoli began in early April. In 2018, resolution 2441 extended UNSMIL's mandate until 20 February 2020.

4. Controversial issues: positions, responses and assessments

In our research, we identified seven key controversial issues hindering national reconciliation: the form of state (federal/unitary), the system of government, the relationship between the legislature and executive, the independence of the judiciary, the suitability of democracy, the role of political parties and the participation of Islamists. While these are not the only controversial issues in Libya, we believe they are of paramount importance in the country in the context of national governance and nation/state building.

4.1. Form of state: federalist / unitary

There is controversy about whether the state should be federal, as was the case after Libya's independence in 1951, or unitary, as has been since 1963. The unitary system, especially under Gaddafi, is said to have led to political marginalization and economic injustice especially in the east of the country. Unsurprisingly, calls for restoring the federal system emerged in the immediate aftermath of the February revolution. While the connection between this issue and national governance are clear, it is even more closely related to the upcoming thematic phase on decentralization. Consequently, it is not addressed in this report.

4.2. System of government: monarchy vs. republican

In the immediate aftermath of the February revolution, there was no real public and open debate about whether a monarchical system should be adopted. Voices calling for the return of the monarchy were faint and did not express a clear or influential popular momentum even in the elections of the CDA and the HoR in 2014. The outbreak of conflicts between Libya Dawn and Dignity, the political and institutional divide, and the stagnation of the constitutional process led to voices calling for a return to constitutional legitimacy and the monarchy as a way out of the crisis.

The relevant positions, legislative responses, and assessment will be presented below.

4.2.1. Issue
There are two main positions, one calling for a return to the monarchy and another demanding the adoption of a republican system.

4.2.1.1. The first position: a return to the monarchy
This position is reflected not only in some writings and individual calls to return to constitutional legitimacy, it also grew into public movements upholding a claim that Gaddafi's regime violated the existing constitutional legitimacy, and that a return to this legitimacy is Libya's way out of its current crisis. These movements are the 'The Movement for the Return to the Constitutional Legitimacy' (*Harak al-'awda li-al-shar'ia al-dusturia*), 'The National Conference for the Activation of the Constitution of Independence and the Return of the Constitutional Monarchy of Libya' (*Al-mu'atamar al-watani li-taf'il dustur al-istiqlal wa 'awda al-malikia li-Libia*) and 'The Libyan Women's Initiative to Save the Homeland' (*Mubadara sayadatu al-inqad al-watan*).

On 14 August 2013, 'The Movement for the Return of Constitutional Legitimacy' started a national initiative proposing a comprehensive national dialogue aimed at agreeing on a roadmap, based on activating the amended Libyan Constitution of 1963 and holding a referendum on the type of government. In another initiative, the Movement emphasized that the only roadmap for a political

solution is to "activate the Libyan Constitution amended in 1963, and to invite the heir to the throne, Prince Mohammed Hassan al-Reza Mahdi al-Sanusi, to assume constitutional duties".

In early 2017, the Movement submitted a proposal to the CDA to activate the amended Constitution of 1963. The proposal noted that the activation of the Constitution of Independence would prepare the country for a period of constitutional stability to restore state institutions in a phased manner. This would allow the unification of institutions and the containing of all conflicts and quarrels. This period would continue for a maximum of three year, at the end of which the Libyan people would have an opportunity to consider the options that the Movement outlined in a document entitled "National Constitutional Merit Project". This includes a referendum on amending the Constitution to change the monarchical system to a republican one and opting for a federal system.

'The National Conference for the Activation of the Constitution of Independence and the Return of the Constitutional Monarchy of Libya' also called for a return to the 1963 Constitution. This conference held three meetings in 2017 and 2018 in Gheryan, al-Baida and Tripoli, which concluded with several recommendations. These were similar to the demands of the 'The Movement for the Return of Constitutional Legitimacy' in that they recommended reinstating the Constitution of 1963, and considering Crown Prince Muhammad al-Hassan al-Redha al-Mahdi Al-Senusi the rightful leader of the country. The Conference clearly objected to introducing any changes to the Constitution, thus distinguishing itself from the 'The Movement for the Return of Constitutional Legitimacy' which did allow for such amendments if Libyans opted for them.

Finally, 'The Libyan Women's Initiative to Save the Homeland' also called for reinstating the 1963 Constitution, by signing a statement entitled "The Initiative of Libyan Women to Save the Homeland". They also called for a return of the constitutional legitimacy, inviting Crown Prince Mohammed al-Hassan al-Redha al-Mahdi al-Sanusi to assume full constitutional responsibilities by issuing royal decrees to dissolve the transitional governments and form a government of national unity in accordance with Articles 65 and 72 of the 1963 Constitution. The statement also allowed for the appointment of members of the Senate until the composition of the National Assembly would be complete, and for electing the House of Representatives within one year from the date of the return to constitutional legitimacy, in accordance with the provisions of Article 94 of the 1963 Constitution.

Such demands seemed to resonate with some CDA members. They proposed a monarchical system, but found little support among other members. Some members even called for restoring the 1951 Constitution of Independence but to no avail.

4.2.1.2. The second position: the call for a republican system
While it was possible to observe a pro-monarchy movement, support for the establishment of a republican system did not emerge as a clear movement that could be directly observed. However, pro-Republican attitudes can be inferred through, for instance, the use of public opinion polls, focus groups, in-depth interviews, as well as the statements of political parties.

Since 2011, several surveys have been conducted on various political, economic, social and security issues by a number of local and foreign research centers. The Center for Research and Consultation (*Markaz al-buhuth wa al-istisharat*) at Benghazi University played the most prominent role, conducting, between 2013-2015, a comprehensive national survey on the Constitution, a survey of Libyans' views on a national dialogue, and a survey of Libyans' views on values within the World Values Survey project. Several foreign institutions also conducted public opinion polls in Libya,

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including the American Democratic Institute (NDI) in 2013, and the United States Agency for International Development (USAID) in 2017/2018[18].

Importantly, these surveys did not include direct questions about the preferences of the respondents with regard to a monarchical or republican system. The most likely explanation for this is that the choice for a monarchy was not debated much between 2011 and 2015. The majority of people saw the republican system as a given so there was no discussion about the topic, and no need to ask the question directly. Even the 2017/2018 survey by USAID did not address the question, despite the emergence of a strong pro-monarchy movement.

The survey[19] conducted by the Center for Research and Consultation during February and March 2013 came closest to dealing directly with the issue by asking: "Every country has an official name, which of the following names would you prefer for Libya?" The answers varied, but the 'Kingdom of Libya' ranked just fifth (5%), while different formulations related to the republican system came second, third and fourth place: the 'Libyan Arab Republic', (23%), the 'Republic of Libya', (12%), and the 'Arab Republic of Libya' (9%). The name favored by most people was a neutral name, 'the State of Libya', chosen by 46 percent. The survey also included a question about how to choose the head of state. The Libyans' preference for the republican system was apparent there, with 87 percent of the respondents saying that they prefer the head of state to be elected by direct elections, and 10 percent preferring the head of state to be chosen indirectly by the legislative authority. This implies that the majority of Libyans do not prefer a hereditary monarchy.

4.2.2. Legislative responses
Given that the immediate issue concerns the system of government, the focus will be on actual and draft constitutional legislation, including the Political Agreement that is planned to be incorporated into the Constitution. Research has shown that the legislative responses opted for the republican system. Although it did not describe the government system as republican, the Constitutional Declaration of 2011 regulates the powers of the National Transitional Council (NTC) and other state institutions in such a way that it is clear that such a system is meant. The same is true for the outputs of the CDA. The 'Thematic Committee on the Form of State and its Cornerstones' opted for a government system in which the head of state is elected by the people, which is a choice for a republican system. The subsequent outcomes of the CDA, including the draft of July 2017, explicitly opted for a republican system. As for the Political Agreement, consideration of the institutions it established, i.e., the HoR, HSC and the GNA, reveals that that the system chosen is republican.

4.2.3. Assessment of legislative responses
By opting for a republican system rather than a monarchical one, the legislative responses were in line with the wishes of the majority of Libyans, as shown by nationwide surveys (see above). As such, these responses are unlikely to lead to any polarization affecting the political and societal stability, hence to nation/state building.

4.3. System of government: parliamentary vs. presidential

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[18] See USAID 2013 and National Democratic Institute. 2013. "Believing in Democracy: Public Opinion Survey in Libya. Accessed online via https://www.ndi.org/sites/default/files/Believing-in-Democracy-Public-Opinion-Survey-Report-August-2013.pdf [last accessed 18 October 2019].
[19] Benghazi Center for Research and Consulting 2013.

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4.3.1. Issue

Where clear movements can be observed in terms of opting for a federal or a monarchical system, choices for a parliamentary, presidential or semi-presidential system are less clear. Given that the Independence Constitution adopted a parliamentary system both it its original form (1951) and in the amended one (1963), those calling for the restoration of this Constitution would be calling for this system as well. Other views can only be inferred from public surveys and statements of political parties.

According to the survey conducted by the Benghazi Center for Research and Consultation in 2013, 23 percent of Libyans preferred the presidential system, and 46 percent favored a semi-presidential system. One year later, however, views had changed. In the 2014 survey the center carried out[20], 44 percent thought the presidential system would be appropriate for Libya and 35.4 percent said it should be the semi-presidential, with just 18.9 percent opting for the parliamentary system. The deteriorating security situation, the political divide and the problematic government performance apparently strengthened a perceived need for a strong executive leader, who is more likely to be delivered by a presidential or semi-presidential system rather than the parliamentary one. The fact that, in the same survey, 39.6 percent said that Libya first needs a strong leader supports this.

While most political parties did not take a stance on this issue, the demands they made for organizing parliamentary and presidential elections reveal that the parliamentary system is not their preference. Whether their preference would then be for the presidential or semi-presidential system is unclear, with only the party of the Coalition of National Forces declaring its support for the latter.

4.3.2. Legislative responses

The analysis of the legislative responses shows that no response preferred any of the three systems debated. The Constitutional Declaration was designed so that the legislative authority would dominate the executive one, and there was no executive head with powers comparable to those of the legislature. This is in fact similar to the system of national assembly (or what some call the system of the unity of power) where the legislature holds the power, and the government is treated as an executive entity subordinate to the legislature.

As for the outputs of the CDA, they, as will be explained when discussing the relation between the legislative and the executive, are difficult to relate to any of the three debated systems. The same is true of the PA.

4.3.3. Assessment of legislative responses

In assessing the legislative responses related to the system of government, two criteria were used. The legislation should (i) establish for a strong, independent executive with specific powers and clear responsibilities, enabling it to extend its authority throughout the country and to control the country's resources and conduct its affairs; (ii) regulate the relationship between the legislative and executive authorities, ensuring that their powers and responsibilities are clearly delineated in such a way that neither can overrule the other.

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[20] Benghazi Center for Research and Consulting 2015.

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Since this report devotes a separate section to the issue of the relationship between the legislative and executive authorities, assessing whether any of the options proposed meets the criteria will be discussed there.

4.4. Relationship between legislative and executive powers

The imbalance between the two authorities is not a phenomenon that only emerged after 2011, it has existed since the country's independence in 1951. This is crucial to understanding why the relationship between the two has become an issue in the aftermath of February revolution, and why the legislative responses have varied. This section will therefore briefly describe the relationship between the two authorities during the monarchy and in the Gaddafi era, before presenting and assessing the legislative responses in post February 2011 era.

4.4.1. The issue from a historical perspective

The Monarchy era (1951-1969)

Although the 1951 Constitution stated that Libya is a hereditary monarchy and that its system was officially representative and "parliamentary" (Article 2), in his capacity as the supreme head of state (Article 58), the King enjoyed legislative and executive powers (symbolic and actual) significantly different from the powers granted to the king or to the head of state in parliamentary systems. In those systems, such powers are symbolic and the actual legislative power is concentrated in parliament and the executive in the Council of Ministers and the Prime Minister. In the 1951 Constitution, the King held legislative power in partnership with the National Assembly (Article 41), and had the right to dissolve the House of Representatives (Article 65), actually exercising that right in 1965; he was also the Supreme Commander of the Armed Forces (Article 68), with the authority to declare war and peace, to conclude and ratify treaties with the approval of the National Assembly (Article 69).

The King also had the executive power (Article 42), which he exercised through his ministers (Article 60). He could appoint the Prime Minister and ministers, accept their resignations and dismiss them (Article 72). The ministers were collectively responsible to the House of Representatives (Article 86), which had the right to withdraw confidence from the government (Article 87), which it actually did in 1960 when it decided to withdraw confidence from the government of Abdelmajid Kabbar.

It is clear that the relationship of the Council of Ministers with the King and the House of Representatives lacked balance. While the Council and the ministers were responsible for their actions before the King and the House of Representatives, they had no parallel powers. This shows an imbalance in the checks and balances between these three bodies.

Gaddafi era (1969 – 2011)

The Constitutional Declaration issued on 11 December 1969, three months after the military coup that ended the monarchy, established the relationship between the legislative and executive authorities. Legislative authority was vested in the Revolutionary Command Council (RCC), and executive authority in the Council of Ministers. Article 18 to 26 of the declaration show the superiority of the RCC and its dominance over the Council of Ministers, with the latter being merely an executive instrument of the RCC, with no independent powers.

In practice, particularly after the proclamation of the popular and cultural revolution in 1973, Gaddafi dominated the RCC and the decision-making process in Libya. The powers of the RCC were

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practically curtailed, especially after the death, resignation and exclusion of several members between 1971 and 1975.

The situation did not change much after the proclamation of the People's Authority and the establishment of the system of people's congresses and people's committees on 2 March 1977. The Declaration of People's Authority was brief (one page) and did not specify the nature of the relationship between the people's congresses (legislative authority) and the people's committees (the executive authority). The laws issued by the General People's Congress to regulate the work of the congresses and committees gave the former and the General People's Congress broad powers in defining public policies and in forming and dissolving the committees at all levels. As such, the committees were seen as only an executive tool to implement the decisions of the people's congresses and the General People's Congress.

However, all these provisions did not change the fact that Gaddafi consistently held the real power with no accountability. While both the General People's Congress and the General People's Committee were accountable for the decisions made, they had no actual power. There was, thus, a system in which there was no balance between authority and accountability.
This analysis of the relationship between the two authorities under both the Monarchy and Gaddafi's regime shows the dominance of both King Idris I and Gaddafi over the decision-making process, with the power of the King constitutionally defined but that of Gaddafi not defined.

4.4.2. Legislative responses after February 2011
After 2011, it appears that the NTC tried to prevent individual domination over decision-making. The Constitutional Declaration issued on 2 August 2011 concentrated power in the hands of the legislative authority, making it dominant over the executive authority (the Executive Office/the Interim Government), but not providing balances or checks between the two.

As a result of the apparent imbalance in the relationship between the legislative authority and the executive authority, and the resulting inability of the state institutions to perform their extractive, regulative and distributive functions, which, in turn, affected their legitimacy, there were calls to dissolve the GNC and establish new legislative and executive institutions. In response, the GNC formed a committee (February Committee) composed of GNC members and independent academics and lawyers to produce a proposal for a constitutional amendment establishing parliamentary and presidential elections. The Committee proposed holding elections for a House of Representatives and a President. While the President would appoint the Prime Minister and the Council of Ministers, the House of Representatives would have the power to express confidence in them and withdraw it. The proposal also set out a set of balances and mutual controls that addressed some of the imbalances in the Constitutional Declaration.

On 11 March 2014, the GNC amended the Constitutional Declaration so that a new House of Representatives could be elected. It decided, however, to leave to the decision about whether to approve the proposal concerning the elections for a President to the new House of Representatives. Later, on 25 June 2014, the elections of the House of Representatives were held. While the HoR decided to adopt the proposal 12 August 2014, it did not implement it, thus retaining the power its predecessors (NTC and GNC) enjoyed.

The Political Agreement was another attempt to address the imbalance in the relationship between the legislative and executive authorities. It stipulated, in Articles 1-11, the formation of a Government of National Accord composed of a prime minister, five deputy prime ministers and a number of ministers. The prime minister, his deputies and the three ministers responsible for the presidency of the council of ministers and legislation affairs, specialized councils affairs and civil society affairs form together what is known as the Presidential Council (Article 1). The PA deemed the House of Representatives elected in June 2014 (Article 12) as the legislature. Articles 13-18 defined the powers of the HoR, including the power to legislate, express confidence in the GNA, withdraw it, approve the budget, check on the GNA, and approve the public policy the GNA submitted. The Agreement also provided for the creation of an advisory council entitled the High State Council (Article 19/1), consisting of GNC members (Annex 1, Article 1). The powers of the HSC were, in reality, more than advisory as the HoR was required to consult with it about appointment in sovereign positions (Article 15), and the GNA had to seek its mandatory say on draft laws it prepared (Article 19).

The Draft Constitution of 2017, apparently influenced by the political, ideological and regional divisions, tried to harmonize the various positions by adopting a system that combines aspects of parliamentary and presidential systems. The result was a form that cannot be characterized as a semi-presidential system as it differed from the French system, which exemplifies the semi-presidential system model. The draft granted the President of the Republic the right to propose the dissolution of the House of Representatives or the Senate in a public referendum. It did not, however, grant a similar right to either of those two, their power was limited to charging the President with high treason, a serious breach of the Constitution, or a deliberate crime. The President would then be suspended while awaiting a trial, and if found guilty, be dismissed (Article 110).

4.4.3. Assessment

In assessing the responses, there are two requisites for any system of government to be able to help build a modern civil state, to dispel the fears of citizens and to enhance their confidence in its legitimacy. These requisites are:

1) establishing a sufficiently strong executive with its own specified powers and clear responsibilities enabling it to extend its authority throughout the country and to manage the country's resources and conduct its affairs.
2) regulating the relationship between this executive branch and the legislature, allowing the latter to make laws and exercise broad control over the executive based on specified powers and responsibilities, clearly delineated so that neither can override the other.

This report assesses the options chosen in the Constitutional Declaration, the Political Agreement and the Draft Constitution in the context of these two requisites.

From the responses given in the aftermath of the February revolution, it is clear that the 2014 February Committee's proposal is a definite step towards meeting the two criteria. It would establish a directly elected president with important powers, thus ensuring that the executive would no longer be subject to the domination of the legislative branch observed since February 2011. This proposal was not, however, implemented, despite the decision of the HoR to adopt it.

The Political Agreement contains provisions that regulate the executive branch, including the requirement of consensus among the President of the Presidential Council and his deputies to take decisions. Due to their conflicting backgrounds, they were, in practice, unable to make decisions in

such a way. This led the President to make decisions without observing this requirement, thus risking not only the validity of his decisions if judicially challenged but the entire Political Agreement. The Agreement also obligated the Presidential Council to seek a binding opinion of the High State Council in important matters. In addition, the relationship between the Presidential Council, the High State Council and the HoR, as regulated by the Political Agreement, are, in reality, characterized by ambiguity and dispute.

The 2017 Draft Constitution contains provisions establishing a stronger and more independent executive authority. For example, it proposed electing the President of the Republic in direct popular elections, and assigning him/her broad and varied powers including the right to submit dissolution of the House of Representatives or Senate to a popular referendum. The problem is that the draft did not grant a similar right to the House of Representatives or the Senate, who can only accuse the President of high treason, a serious breach of the Constitution, or a deliberate crime. He/she would then be suspended from his/her duty pending a verdict by a special court. This can be seen as empowering the executive at the expense of the legislature.

4.5. Independence of the judiciary

Although the issue of the independence of the judiciary has received considerable attention since Libya's independence, the positions taken, as well as the practice, varied from one era to another. In a sense, the attention the political transitional institutions have paid to this issue can be explained by referring to the situation under previous eras. This section will present the issue from a historical perspective first, and then present and assess the responses given in the aftermath of February 2011.

4.5.1. The independence of the judiciary from a historical perspective

During the era of the Monarchy (1951 – 1969), the judiciary, relative to the Constitution, was weak vis-a-vis the other two authorities, but, in practice, enjoyed noticeable independence. The Constitution established a Supreme Court, but, in detailing its powers, and the powers of the judiciary in general, it referred to a law to be enacted by the legislative authority. This gave the legislature considerable control over the judiciary. It also gave the King the right to appoint the Supreme Court judges including its President (Article 143), and the power to grant amnesty and reduce punishments (Article 77). While the Constitution granted the judiciary no parallel powers, in practice, the judiciary did enjoy significant independence. The prime example is the 1954 Supreme Federal Court ruling deeming a royal decree dissolving the executive council of the Tripolitania province unconstitutional.

During the Gaddafi era (1969 – 2011), there were, in addition to the ordinary judiciary, extraordinary courts, the People's Courts. These were established in 1989 to deal with disputes related to revolutionary laws, and had their own people's prosecution office.[21] Their composition and powers were unfamiliar to ordinary courts. For example, it was initially unnecessary for judges and public persecutors of these courts to have a law degree, and their judgments could not be challenged before the Supreme Court. Although this was later changed, the courts continued to enjoy wide powers unknown to ordinary courts. It was only in 2005, during Saif al-Islam's era of reforms, that Law 7/2005 abolished the People's Courts. However, Article 2 of this law did not end the extraordinary powers

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[21] People's Courts were temporarily established in the 1970s. See International Legal Assistance Consortium (ILAC. 2013. "ILAC Rule of Law Assessment Report: Libya 2013." Accessed online via: http://www.ilacnet.org/blog/2013/05/09/ilac-assessment-report-libya-2013/ [last accessed 16 October 2019].

that these courts enjoyed, rather it transferred them to special courts. This was seen as an attempt to maintain the courts under a new cover.[22]

In a seemingly Libyan phenomenon, courts are in a category called the "judicial institutions". In addition to the courts and the Public Prosecution, the category includes the Directorate of Law (*idart al-qanoun*), Government Lawyers (*idart qadya al-dawlaa*), and People's Lawyers (*al-muhamat al-sha'bia*). The Directorate of Law is a division within the Ministry of Justice tasked with reviewing draft laws which are referred to them by public institutions, interpreting legislation, reviewing and writing draft conventions and treaties, giving legal opinions at the request of public institutes; deciding on complaints against administrative decisions; and ruling on disciplinary actions for administrative violations by high ranking civil servants.[23]

The other two judicial institutions included are the Lawyers Directorates, both also located in the Ministry of Justice. The first is the Directorate of Government Lawyers that is given exclusively, following Law 87/1971, the task of defending public law persons, i.e. the government and other public institutions. It can also defend any company owned entirely or mostly by the state. The second is the Directorate of People's Lawyers, whose task it is to defend private law persons, in all types of cases (criminal, administrative, family, etc.), for free if they are Libyan citizens, and for a fee if they are foreigners or legal persons.[24]

As previously mentioned, these three directorates together with courts and the Public Prosecution form the judicial institutions. Apart from immunity from being detained or tried without prior permission that judges and Public Prosecutors enjoy[25], members of judicial institutions are subject to more or less the same rules. All receive the same salary based on their service length, subject to the review powers of the Judicial Inspectorate, and can be transferred from one institution to another, e.g., from the Judiciary or Public Prosecution to the People's Lawyers or vice versa.[26] This was almost completely uncontested until the 2011 revolution.

4.5.2. *Legislative responses after February 2011*
In the Constitutional Declaration, issued on 3 August 2011, the NTC allocated a separate chapter to judicial safeguards. This emphasized the principles of legality, judicial independence, presumption of innocence, and rights to counsel, resorting to a natural judge, and fair and speedy trial. The inclusion of these principles and rights in the Declaration can be seen as the basis for improved access to justice. The question is, however, how transitional governments have dealt with these principles and rights.

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[22]Al-Muhair, Khalid. "Daʿawa li-li-ulghaʾ maḥkama aman al-dawla bi-Lībīā." *Al-Jazeera*, 11 December 2009. Accessed online via: https://www.aljazeera.net/news/reportsandinterviews/2009/12/11/%d8%af%d8%b9%d9%88%d8%a9-%d9%84%d8%a5%d9%84%d8%ba%d8%a7%d8%a1-%d9%85%d8%ad%d9%83%d9%85%d8%a9-%d8%a3%d9%85%d9%86-%d8%a7%d9%84%d8%af%d9%88%d9%84%d8%a9-%d8%a8%d9%84%d9%8a%d8%a8%d9%8a%d8%a7 [last accessed 16 October 2019].

[23] Law 6/1992. Published on the website of the Ministry of Justice, http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=29. The directorate was preceded by the *idart al-fatwa' wa al-tashri* (Directorate of Legal Opinion and Legislation), and in 1973, there were plans to turn it into a fully-fledged council of state; however, these plans never materialized. See Habib (1975, 234-5).

[24] Law No 4/1981. Published on the website of the Ministry of Justice: http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=35.

[25] The Supreme Court Ruling No 113/43 dated 17 April 2000.

[26] Carlisle, Jessica. 2013. "Access to Justice and Legal Aid in Libya: The Future of the People's Lawyers." In Searching for Justice in Post-Gaddafi Libya, edited by Jan Michiel Otto, Jessica Carlisle and Suliman Ibrahim, 82-83. Leiden: Van Vollenhoven Institute.

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The issue of reconstructing the judicial institutions, which are perceived as closely linked to judicial independence, can help to answer that.

Reconstructing the council overseeing the judiciary received considerable attention after February 2011. The efforts are based on the belief that the structure inherited was intended to weaken the judiciary and compromise its independence. Placing the judiciary in the same category as the Ministry of Justice's directorates was not intended, it is argued, to entitle these directorates to the privileges of the judiciary, but rather to weaken the latter. This was evident in the formation of the Supreme Council for Judicial Institutions that included appointed members, and was headed by the Secretary (Minister) of Justice. This Council had the power to move staff between judicial institutions, so, for example, people's lawyers could be transferred to the judiciary, and judges and Public Prosecutors could be moved to the people's lawyers. The former transfer was widely perceived as a promotion for good performance, and a contribution to a better judiciary, while the latter was commonly seen as demotion. Thus the removal of judges from office in cases other than those which the law specified could be used to influence their judgments.[27]

To change this, and so make the judiciary more independent, Law 4/2011 reconstituted the Council. The new Council included the President of the Supreme Court, the Prosecutor General, and the presidents of the seven Courts of Appeal. The Minister of Justice and his deputy were excluded, as were the heads of the Directorates of Law, Government Lawyers, and People's Lawyers. The exclusion of the Minister and his deputy was welcomed domestically and abroad as an important, though insufficient, step to separate the judiciary from the executive.[28] At the same time, removing the heads of the directorates while keeping the directorates themselves subject to the council's overseeing power was received negatively, as it was seen as a demotion of these directorates, and a signal of a plan to exclude them altogether from the judicial institutions. This suspicion was further reinforced by the change of the name of the council, to the Supreme Council for the Judiciary (SCJ) rather than the Council for Judicial Institutions.

A few months later, a further step was taken in the same direction. In May 2012, the SCJ drafted a bill to establish a "Public Institute for Advocacy" (*alhyyt al'amt llmhamat*), combining the Directorates of People's Lawyers and Government Lawyers, which would be separated from the judicial institutions. The members of these directorates (more than 2500 lawyers) strongly opposed this step, and the SCJ had to back down. It withdrew the bill, and later Law 4/2013 was enacted to restore the heads of the directorates to the membership of the council. People's lawyers were renamed public lawyers in an attempt, it seems, to distance them from Gaddafi's ideology. In addition, Law 14/2013 was enacted so that the council's members can elect the President and Deputy President of the SCJ. It thus becomes possible for any member, not necessarily the President of the Supreme Court, to head

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[27] Carlisle, Jessica. "Her Day in Court: The Work of a Judge on Family Law Cases in Tripoli." In *Searching for Justice in Post-Gaddafi Libya*, edited by Jan Michiel Otto, Jessica Carlisle and Suliman Ibrahim, 86-87, 104-116. Leiden: Van Vollenhoven Institute.

[28] It was said to be insufficient because "… the council still is financially dependent on the justice ministry and that both the Supreme Court chief and prosecutor general are appointed by the legislature" (International Crisis Group. 2013. "Trial by Error: Justice in Post-Qadhafi Libya." *Middle East/North Africa Report* 140: 16). However, ILAC concluded that "[j]udicial independence has been substantially enhanced through the removal of the Ministry of Justice from the High Judicial Council […] judges, prosecutors, and private lawyers now appear to share a clear commitment to revitalizing the rule of law in Libya (ILAC 2013, 29). In assessing these reports, see Carlisle, Jessica. 2013. "Perspectives on Justice in Libya: A Review of International Reports." In *Searching for Justice in Post-Gaddafi Libya*, edited by Jan Michiel Otto, Jessica Carlisle and Suliman Ibrahim, 49. Leiden: Van Vollenhoven Institute.

the SCJ. Indeed, when the elections were held on 12 June 2013, the head of the Directorate of the Public (People's) Lawyers ran – though unsuccessfully – for the position; the winner was the President of the Tripoli Appellate Court.[29]

After the political division, both sides tried to influence the judiciary by influencing the SCJ. The Minister of Justice in the Interim Government was behind a draft law to reconstruct the SCJ so that the Minister of Justice would, once again, be the head of the Council. The HoR, however, rejected the plan for fear that it could lead to creating two judicial councils, and also that it might compromise the independence of the judiciary. The GNC, however, managed to pass a law (6/2015) stating that the President of the Supreme Court is to be the President of the SCJ. This meant that the legislature, the GNC in this case, determines who will head the SCJ as it is the body entrusted with the appointment of the President of the Supreme Court, according to Law No. 6/1982 that regulates the Court. The GNC did exactly this, issuing Resolution No. 50/2015 on 20 May 2015 appoint Judge Mohammed al-Hafi as the President of the Supreme Court, and so also the President of the SCJ.

4.5.3. Assessing legislative responses

Behind the reconstruction efforts there appears to be a belief that the judiciary cannot be fully independent unless the association introduced by Gaddafi with other institutions is severed. This was obvious in the debate that arose not long after the revolution, about whether the people's lawyers should be retained. Various reasons are given for ending this profession: incompetence, inefficiency, lack of independence, and, notably, association with Gaddafi's ideology. International institutions appear to be of this opinion, as the idea of people's lawyers does not fit the prevailing neo-liberal ideology.[30] However, what this debate lacks, as do the efforts to reconstruct the judicial institutions, is objective research assessing the profession on its own merit, regardless of it being a product of the old regime's ideology. Our research revealed that the pros of the people's lawyers seem to outweigh their perceived cons. Their services are widely used, especially by poorer people, in family cases, criminal cases, and also in administrative cases, and judges often recommend that their clients seek legal information and assistance from a people's lawyer. Besides, many people's lawyers are women, and many of them have gone on to become judges.[31] The profession could therefore be seen as a means of empowering women. For these reasons, the existence of the people's lawyers alongside the private lawyers could be viewed as a unique feature of Libya's legal system that should be retained. Of course, attention should be paid to developing their capacities, but they have that in common with other judicial institutions, including the judiciary.[32]

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[29] The elections were held on 12 June 2013. See the website of the SJC: http://itcadel.gov.ly/2013/06/%D8%A7%D9%84%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D8%A3%D8%B9%D9%84%D9%89-%D9%84%D9%84%D9%82%D8%B6%D8%A7%D8%A1-%D9%8A%D8%B9%D9%82%D8%AF-%D8%A7%D8%AC%D8%AA%D9%85%D8%A7%D8%B9%D9%87-%D8%A7%D9%84%D8%A7-2/[last accessed 18 October 2019].

[30] Otto, Jan Michiel and Suliman Ibrahim. 2013. "Conclusions." In: *Searching for Justice in Post-Gaddafi Libya*, edited by Jan Michiel Otto, Jessica Carlisle and Suliman Ibrahim, 173-182, 178. Leiden: Van Vollenhoven Institute.

[31] According to figures published by the Libyan Organization for Judges on 9 March 2015, of 1139 people's lawyers, 773 are women (68%). See a statement published by the organization on 9 March 2015 on its Facebook page: https://www.facebook.com/504909442859142/photos/a.505601359456617.130770.504909442859142/1063687373648010/?type=1&theater [last accessed 16 October 2019].

[32] This was one of the recommendations of the National Committee for the Development of the Judiciary (*al-lajna al-wataniya li-tatwir al-qadaa*) that the SJC formed on 26 May 2012. The SJC adopted these recommendations. See the report on the website of the Ministry of Justice:
http://itcadel.gov.ly/2012/09/%D8%A7%D9%84%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D8%A3%D8%B9%D9%84%D9%89-%D9%84%D9%84%D9%82%D8%B6%D8%A7%D8%A1-

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Important as it is, enacting law is not enough. The question is whether the changes introduced to the judicial institutions have resulted in any real change in their function. A case study of the way in which the Supreme Court has used, or abstained from using, its constitutional review can help answer this. While the Court enjoys this power, its use, or the absence of which, in the recent years, reveals that it has not acted independently.

4.6. Suitability of democracy to Libya

In this section of the report, we examine the impact of poor political, economic and social conditions and the associated ideological differences, political divisions, military conflicts and tribal and regional conflicts on the prospects of democratic transformation, and the attitudes of individuals and groups towards the issues of democracy and its mechanisms. These issues revolve around the appropriateness of the democratic system, the role of political parties, and the participation of Islamic currents and parties.

4.6.1. Issue

The deterioration of the political, economic and social situation clearly impacted the views of Libyans towards the democratic process, and led to their increasing reluctance to participate in the general elections. While 61 percent of the registered voters participated in the general elections held on 7 July 2012, only 45 percent participated in the CDA elections of 14 February 2014. The percentage dropped even further, to 41 percent, in the House of Representatives elections on 25 June 2014. This decline in the inclination to participate in the elections contrasts with what Libyans expressed in a 2017 poll, when 76 percent said elections are very important or important, 65 percent expressed their intention to participate in the referendum on the Constitution, and 63 percent indicated the possibility of participating in the presidential elections. These high percentages can be explained by the fact that respondents express what they believe to be politically correct rather than their actual positions, which is what is reflected in their abstention from the elections. However, the percentage of those who intended to participate in the referendum on the Constitution in 2017 (65%) is lower than the percentage in 2013 (91%), reflecting the impact of the political division and the deterioration of the general situation on their perceptions of the feasibility of participating in elections and of the democratic process in general.

The poor performance of political institutions has led to a higher level of confidence in the military and security services than other institutions. In the 2018 poll, 61 percent of Libyans expressed their confidence in the LNA, but just 27 percent expressed confidence in the House of Representatives, 22 percent in the Presidential Council and 13 percent in the High State Council. The division of views by region (East, West and South), however, reveals a degree of polarization that may be an obstacle to national reconciliation efforts. In the East, 91 percent of the respondents expressed confidence in the LNA, compared to 56 percent in the South and 46 percent in the West. While only 4 percent of the respondents in the East expressed confidence in the Presidential Council, confidence rose to 18 percent in the South and 27 percent in the West. Confidence in the HSC was 3 percent in the East, 12 percent in the South and 16 percent in the West. The level of confidence in the House of Representatives was similar (30%, 25%, and 28%, respectively).

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%D9%88%D9%85%D9%82/ [last accessed 18 October 2019].

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When asked about the most feasible way of getting Libya out of its predicament, 39 percent opted for military leadership, 33 percent opted for a newly elected president, 15 percent preferred the former regime, and only 4 percent opted for the GNA. In addition, 77 percent of the respondents in the East expressed the view that military leadership is the most feasible solution to the conflict, as did 36 percent of respondents in the southern region but only 19 percent in the West. While 18 percent of respondents in the East opted for a newly elected president, 25 percent in the South did, as did 43 percent in the West. Only 4 percent of those in the East favored a previous regime, this was 31 percent in the South and just 22 percent in the West. The GNA received low and close rates in the three regions, not exceeding 4 percent.

It is evident that the poor performance of the elected councils, the low capacity of the state authorities to perform the functions of extraction, regulation, penetration and distribution, and the conflicts and divisions between the ruling political elites have negatively affected the perceptions of the elections themselves, hence the willingness to participate in them. This has contributed to the emergence of a call for a strong leadership to lead the country at this stage. All these are negative indicators for the prospects for democratic transition.

This negative outlook here may be due to Libyans' view of the status of democracy in Libya and the suitability of democracy in the country. In mid-2014, 47.3 percent of Libyans described Libya's democracy as either very bad or bad, and 53.7 percent considered democracy inappropriate for Libya. On the other hand, most Libyans (82.4%) felt that democracy in Libya should be introduced gradually. This can be compared to Libyans' views on democracy as a system of government in September 2013, at which time, 85 percent of the respondents said that democracy is the best form of government. This reveals again that the views and attitudes of Libyans are influenced by the outcomes of the situation at the moment.

4.6.2. Response/s

The prevailing trend in legislation is to preserve the democratic system of the state. The Preamble to the Constitutional Declaration of 2011 states that it is issued "in response to the desire of the Libyan people and their hopes to achieve democracy, to establish the political multitude and the estate of institutions...". Article 1 stipulates that "Libya is a democratic state", and Article 9 stipulates that the constitutional democratic civil order should not be harmed. Article 17 entrusts the NTC with "establishing the foundations of the civil democratic constitutional state". In this context, Article 30 provided for holding elections for a General National Congress to replace the NTC.

The PA also includes some provisions on democracy. As stated in the Preamble of the agreement, the dialogue that led to it concluded with four main principles. The first is "guaranteeing the democratic rights of the Libyan people". The parties of the agreement, the Preamble states, commit themselves to "the democratic path based on respect for the results of the electoral process and the peaceful transfer of power". Full commitment to the Constitutional Declaration and the political process, based on the principles of democracy and the peaceful transfer of power, is another of the principles governing the agreement.

Similarly, the outputs of the CD emphasized the importance of the democratic process. The Draft Constitution of July 2017, for example, stated, in Article 8, that "the political system is based on the principles of political pluralism, the peaceful transfer of power, the separation of powers, as well as balance of and oversight between powers based on good governance predicated on transparency, monitoring, and accountability". Article 39 stipulates that "Every citizen has the right to express

opinions in referendums, as well as to vote or run as a candidate in free, fair, transparent and equitable elections in which all citizens are equal in accordance with the law". In this context, Article 40 enshrines the principles of freedom of political parties, the freedom of association and withdrawal from them. Article 42 requires the State to guarantee the right to democratic participation. The Draft Constitution also regulates the elections of the Shura Council in both chambers, the legislative branch, and the President of the Republic, the head of the executive branch.

At the level of laws, a number regulate the elections at the national level: the GNC elections, the HoR elections, and the election for the CDA. Laws also regulate elections at the local level: municipal council elections are to be in accordance with Law 59/2012 on Local Administration.

In contrast, an example of reducing the democratic process is a decision by the Speaker of the House of Representatives on 19 June 2016 to appoint a military governor for the area stretching from Derna to Ben Jawad. This ruling gave the military governor sweeping powers, which led him to take measures restricting public freedoms, such as banning women traveling without a protector. This measure was later replaced by a travel ban for persons of certain ages (18-45) without security permission. The military governor also replaced the elected councils with mayors he appointed, in violation of the Law on Local Administration. This measure was also adopted by the Interim Government. After the abolition of the post of military governor, it has continued to appoint Municipal Councils, without announcing any plans for municipal elections.

4.6.3. Assessment

Legislative responses have not been influenced by public opinion trends, which may only be temporary reflections of the prevailing situation, which is commendable. In contrast, responses to the appointment of a military governor, the granting of broad powers and the appointment of municipal councils instead of elections are negative.

4.7. Role of political parties

4.7.1. Issue

The impact of the current political situation on the views of Libyans and their positions are clearly manifested in their assessments of political parties and their performance in Libya. In 2014, 75.3 percent of Libyans expressed their belief in political pluralism and 58.8 percent supported the freedom to join political parties. However, the current political situation casts a dark shadow over Libyans' evaluations of political parties and their positions towards them. Due to the poor performance of the parties, 71.3 percent of the Libyans are dissatisfied about the performance of the political parties, leading to the perception that the poor political performance is connected to the party system itself. Consequently 49 percent of Libyans felt that parties should be completely banned, 41.1 percent of them felt that they should be restricted in the transitional period, and only 9.8 percent considered them to be an essential pillar of democracy. This was reflected in their views on belonging to political parties, with 98.1 percent of Libyans saying that they do not belong to any political party, and 95 percent saying they do not intend to do so.

There is concern that these attitudes towards parties are not temporary assessments of the performance of specific parties that may change when the performance of these parties improves but rather that they express principled positions towards the parties and the party system, which may originate from a political socialization that lasted more than six decades, perpetuating a political culture hostile to parties and the party system.

4.7.2. Response/s

The Constitutional Declaration enshrines the duty of the State to "establish a democratic civil political system based on political and party pluralism, with a view to the peaceful and democratic transfer of power" (art. 4). This text was translated into the abolition of the NTC Law on Criminalization of the Party, which deemed the Arab Socialist Party the only political popular organization permitted under Gaddafi, and which made the formation of other parties and joining them punishable by death. The reason for the abolition of the law was that it was seen as contrary to the objectives of the February Revolution. The NTC also enacted Law No. 29/2012 on Political Parties and Law No. 30/2012 on Political Entities. Law No. 29/2012 established the right to form and join parties (Article 3) and provided for state support for political parties.

On the other hand, underscoring the impact of prevailing conditions and culture on the party system, the Electoral Law of the GNC, No. 4/2012, included restrictions on party representation, stipulating that elections should be based on a party list system (80 seats) and an individual system (120 seats). As the negative attitude towards parties grew, the Election Law of the CDA and the Election Law of the HoR translated this into a ban on candidacy on party basis.

The laws on the elections of the CDA and the HoR passed a ban on candidacy on party basis. This translated into a draft by a Working Committee of the CDA which prohibited political parties for four years from the start of the Libyan Constitution. However, subsequent drafts of the CDA, including the draft of 2017, abandoned the provision on the prohibition of political parties. Still, Article 75 states that the election of members of the Senate shall be on an individual basis, which can still be interpreted as a ban on party-based candidacy.

4.7.3. Assessment

There is no doubt that the negative view of political parties and the political system may contribute to obstructing the building of the civil democratic state. This view should not be reinforced by legislation. For this reason, the position the CDA once took, to ban parties for a period of time, should be criticized. Fortunately, the CDA omitted this provision from the 2017 Draft Constitution. Still, this draft opted for the election for the Senate to be open to individuals only; party candidates, it seems, would not be allowed to run. This could be seen as a step towards restricting party work, and should be reversed.

4.8. Participation of Islamists

4.8.1. Issue

The emergence of extremist Islamist groups that use violence to impose their visions has led to the growth of exclusionary attitudes towards all Islamist parties, and has led to the demand that they be prevented from participating in the political process. This exclusionary position is due to experiences in the previous elections, where Islamist parties rejected the results of the elections of the HoR. Islamic armed groups then launched Libya Dawn to seize the capital and prevent the HoR from exercising its powers. This led to the division of state institutions and fragmentation of the political process, as well as the outbreak of armed conflicts, which made civil currents and civil parties doubt the commitment of Islamist parties and currents to the democratic process and its outcomes.

Through focus groups and in-depth meetings, the civil currents and civil political parties expressed their belief in the universality of the political process and the need for participation by all parties. Nonetheless, they demanded guarantees that would prevent Islamists from using violence again if the

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electoral process was not in their favor, and which would prevent them from changing the rules of the process if they assume power.

It is of concern that increasing numbers of Libyans feel that violence is sometimes necessary for a "just cause". The number of those strongly in favor, or somewhat in favor, of violence increased from 31 percent in 2017 to 54 percent in 2018, while those rejecting violence declined from 64 percent to 44 percent in 2018[33]. This contrasts with 84 percent of Libyans in the same poll saying that the use of violence is not justified at all. Comparing the regional distribution of these opinions: 67 percent in the East, 60 percent in the South and 50 percent in the West support the use of violence for a just cause. This raises questions about the respondents' understanding of what constitutes a "just cause", and whether that includes political positions, which may cast doubt on the commitment of Libyans to the democratic process.

4.8.2. Response/s
Legislative responses have enshrined the right of political participation for all. The Constitutional Declaration enshrined the principle of political pluralism and party pluralism (Art. 4), and required the State to guarantee the freedom to form political parties, associations and other civil society organizations without a ban on religious grounds (Art. 15). This was translated into the Law on Political Parties No. 29/2012, which did not ban the establishment of parties on a religious basis. It did, however, does prohibit any party from ".. establishing or assisting in the formation of military or paramilitary formations ... the use, threat or incitement of violence in all its forms ... [including] programs, publications or prints which incite violence, hatred, sedition, ... and the circulation or dissemination of any thought that is contrary to Sharia or which calls for political tyranny." (Art. 9). Besides, while the Law on Political Entities, No. 30/2012, did not prohibit the formation of political entities on a religious basis, it did prohibit party formation on tribal, regional, ethnic or linguistic grounds (Art. 6). The law also stressed the prohibition of "the political entity being an extension or branch of a foreign political entity" (Art. 7), "the establishment or contribution to military or paramilitary formations" (Art. 8), "the use of violence, or the threat to use violence, or inciting violence" (Art. 9).

The outputs of the CDA have no provision for the formation of parties on a religious basis, although they have agreed to require parties to be based on national unity, transparency of funding, non-violence and hate speech.

4.8.3. Assessment
While some may understand the fears of a part of the civil current for the participation of Islamist parties, because of the previous experience in which the Islamists rejected the results of the election (which they did not win), the exclusion of the Islamist strand, or any other strand, is contrary to the concept of the universality of political participation, and contrary to the stipulation not to exclude any strand from the political process as long as the strand is committed to national unity, transparency of funding, renunciation of violence and hate speech. Therefore, it is worth supporting the position of the legislative responses in favor of such participation, for example, the recent Draft Constitution.

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[33] USAID 2018, 41.

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5. Analysis

Before drawing conclusions and making policy suggestions, this section presents, in the light of the previously-described vision, a summary of the assessment of legislative responses to national governance issues. We first address controversial issues regarding the form, structure and institutions of the state, and then look at controversial issues regarding the political process.

5.1. Crises, challenges and issues

This report about national governance has established a link between key issues of political disagreement and the fundamental crises of the state faced during Libya's cumbersome process of nation/state-building. In a sense, Libya is trying to build political institutions in an institutional vacuum.

In the report we have identified crises of national identity, of legitimacy, of penetration, of distribution, of participation, and of integration. These crises are mutually dependent, and without solving them the prospects for nation/state building, necessary for societal and political coexistence, are gloomy. For example, the crisis of legitimacy is manifest in the fundamental problem of non-compliance by militias with government decrees ordering them to disarm. The crisis of legitimacy can only be resolved if progress is made in solving the crisis of distribution. However, in order to have anything to distribute and to do so fairly, the state needs to overcome the crisis of penetration, i.e. it must extract resources and regulate properly. At the same time, the crisis of legitimacy is closely related to the crisis of national identity in that the legitimacy of the state is negatively and positively influenced by the extent to which a common national identity is formed in which citizens of all regions, ethnicities, tribes and 'cities' feel belonging to one national political entity that brings them together without exclusion, discrimination or marginalization. Participation in the political process could be restricted, or citizens and groups, feeling the futility of such participation, may become reluctant to take part. One alternative would then be using violence against the state and other groups to make gains, with negative consequences for democratic transformation, nation-building and community and political coexistence.

This report also identifies six key issues in the area of national governance about which major disagreements have surfaced, and looks at how Libyan law has been used, and could be used, to address those issues. These issues are: the form of the state (unitary/federal); the system of government (republic/monarchy, presidential/parliamentary); the relationship between executive and legislative powers; the suitability of democracy; the role of political parties, and the participation of Islamists. The distribution of resources is also a controversial issue, and will be dealt with in the next phase of our research, on subnational governance.

The report does not pretend that reaching agreement on these six issues will lead to a smooth and effective national governance. Numerous other challenges would still remain. However, those other challenges are not subject to as much controversy among political actors. While the problems of Libya's rentier economy, of corruption, or the weak role of civil society, are definitely challenges, no one doubts, at least publicly, the importance of economic diversification, combatting corruption or strengthening civil society.

This report, therefore, discusses both major controversial *issues* of national governance as well as major, though not controversial *challenges*. This is based on the conviction that national

reconciliation is an end state achieved via, first, processes aimed at overcoming certain disagreements, and, second, a process of building that requires overcoming the crises mentioned. Both are instrumental in this regard.

With regard to the role of law, this report studies and assesses legislative responses related only to the controversial issues. With regard to the other, non-controversial, challenges, the research has taken into account their effects on the formation and implementation of specific legislative responses.

5.2. The role of law: background and assessment of legislative responses so far

As the detailed presentation of legislative responses in the preceding chapter shows, law has indeed been used extensively in Libya. Given the nature of the issues addressed, the responses are mainly in the form of constitutional (draft) legislation: the 2011 Constitutional Declaration, the 2016 and 2017 Draft Constitutions by the CDA, and the 2015 Political Agreement, which was intended to be incorporated into the Constitutional Declaration. In several cases, the principles enshrined in constitutional legislation have been translated in detailed laws. For example, laws regulating elections, political parties and entities have been introduced to implement the constitutionally enshrined principles of democracy, political diversity and inclusive participation. The question then is the effectiveness of legislation introduced, and, if ineffective, the reasons for that. This research reveals that the relevant legislative responses have not sufficiently achieved their target for reasons related either to the design of the response itself or its implementation. It also shows that there are several general explanatory factors.

The first general explanatory factor is the legacy of Gaddafi's regime. Understandably, breaking with this politico-legal legacy became the main purpose of a considerable body of the legislation introduced in the aftermath of the February 2011 revolution. And, because law-making was so heavily driven by the desire for this break, it could, and actually did, lead to problematic responses. On top of that, introducing legislation did not by itself bring about the desired break, decades of Gaddafi's rule needed more than legislation to change, and their effects on state and society have indeed frustrated many legislative responses.

The other factor is the failure of the post-2011 transitional political institutions not only to deliver on the revolution's promises of a better life but also to maintain a unified and secure state. This failure has led to rethinking the demands to break with Gaddafi's legacy as, during his rule, at least the unity and security of the state were well maintained. This has resulted in taking exclusionary positions condemning revolutionary forces, particularly the religious ones amongst these, because of their presumed role in such failure.

Dealing with Gaddafi's legacy in a more balanced way has been made difficult for his successors by the crises of state-building mentioned, and the *challenges*, including rentier economy and mentality; corruption; weakness of civil society; ethnic, tribal and regional loyalties and conflicts; religious extremism and the divided international community.

The first factor, the desire to cut ties with Gaddafi's regime, explains the reasons behind proposing, and enacting, legislation establishing for democracy, political pluralism, and multi-partyism. Gaddafi's was a totalitarian regime in which, for example, joining, let alone forming, a political party was a crime punishable by death. Legislation for independence of the judiciary is another example. Efforts to reconstruct the Supreme Council for the Judiciary (SCJ) and to redefine 'judicial institutions' were cases in point. Unlike the situation under Gaddafi, the minister of justice and his

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deputy, being part of the executive, were excluded from the SCJ; also, a redefinition was proposed for the judiciary, so 'judicial institutions' that were in fact directorates under the ministry of justice would be left out.

However, the desire to break with Gaddafi's legacy led, at times, as has been said, to problematic legislative responses. A major example is the 2011 Constitutional Declaration which opted for a national governance system where the legislature dominates the executive, rather than a system seeking a balance between the two. This was driven by the desire to avoid the situation under Gaddafi's rule when the opposite was the case. A similar justification was provided for the reluctance of the GNC to adopt the 2014 February Committee's proposal for directly electing a president with significant powers, and deciding, in the end, to leave the decision to the then yet to be elected House of Representatives. The latter, similarly, did not implement the proposal even though it nominally adopted it.

In addition, such a desire led, at times, to overlooking, or ignoring, whatever was good about the legislative legacy. An example of this is the system of 'judicial institutions' that includes, in addition to the judiciary proper and public prosecution, the three directorates of 'Government Lawyers', 'People's Lawyers' and 'Law' in the Ministry of Justice. Although controlling the judiciary could indeed be amongst the rationales of this system, the rotating system has also enabled officials of these directorates to become judges, and, given that a considerable number of those officials are female, this has resulted in more women becoming judges. Besides, unlike public prosecutors, from amongst whom judges traditionally have been selected, the practical experience of these officials is not confined to criminal law, they have had to deal with cases related to all other branches of law, like civil, commercial, administrative and family. This has indeed enriched the judiciary. However, these positive, and fundamentally unintended, consequences of the system of judicial institutions entirely escaped the attention of the legislative drafters.

The second factor, the failure of the transitional political institutions to fulfill the promises of the 2011 revolution - or even keep the state intact - provides the background for several other legislative responses. For instance, it led the HoR to appointing a military governor with sweeping powers that enabled him to replace elected municipal councils with appointed ones. Even when this post was terminated, the Interim Government in the East continued the undemocratic practice. Besides, the election laws of both the CDA and HoR banned candidates on a party basis, and the draft of the CDA's Working Committee proposed banning political parties altogether for a period of four years. Although the Draft Constitution of 2017 did not propose such a ban, it required the election of senators on an individual basis, which could be construed as a ban on running on a party basis. Furthermore, a number of members of the HoR submitted a petition to the HoR's President demanding the enactment of a law banning the Muslim Brotherhood.

The research also found that, in some cases, the failure of the transitional political institutions provided an opportunity for more balanced legislative responses. For example, the 2014 February Committee and the 2017 draft constitution proposed a more independent and stronger executive authority than that enshrined in the 2011 Constitutional Declaration. This could be seen as learning from the transitional experience and demonstrating the ability of legislators to assess Gaddafi's legacy more objectively, rather than being driven by the desire to indiscriminately disengage from it. It is also noteworthy that, despite growing calls for banning political parties or banning Islamist

participation, the recent Draft Constitution does not contain such anti-democratic measures, though it does, as mentioned previously, restrict party candidacy.

Still, the overall effect of laws regulating national governance has been disappointing. The impact of major challenges such as the political division, lack of security, corruption, rentier mentality, weakness of civil society, influence of ethnic, tribal and regional loyalties and conflicts, religious extremism and the divided international community has obviously created a negative environment for Libya's legal system. For example, despite the extensive anti-corruption legislation, the political divide has led to a multiplicity of regulators and ineffective anti-corruption bodies. Another prominent example is the lack of security that has made the Supreme Court open to pressure, and so to rule in favor of certain political actors, with, at the time, damaging effects, as was the case with the November 2014 ruling on the unconstitutionality of the HoR. Consequently, and in an effort to avoid similar pressure, the Supreme Court has decided to indefinitely suspend its power of constitutional review. A third example is the gradual but constant reduction in quotas for women in elected councils. A strong civil society could have averted this trend. It could, for example, also have helped implement anti-corruption laws. Given its current weak state, Libyan civil society can hardly be expected to play such a role. Civil society organizations suffer on the one hand from dependence on, if not - addiction to - state funding with consequent loss of independence and, on the other hand, they face pressures from armed groups and religious actors, including, at times, accusations of working for international agendas.

With regard to the role of the Political Agreement: while it aimed to end the political divide and build consensus, some of its foundational ideas actually hindered both. For example, the composition of the Presidential Council was based on representation of regional interests, and, given that the Agreement deemed consensus the basic rule for the PC's decision-making, it was actually unable to take collective decisions. To make matters worse, the Agreement also required the Council to seek a binding opinion of the High State Council in important matters such as draft laws. In practice, however, the President of the Presidential Council has increasingly and frequently made decisions without recourse to either his colleagues or to the High State Council in cases where this is required. The latter's public protest, and appeals to the sponsors of the Agreement to condemn such violation, have been in vain.

The general ineffectiveness of the legislative responses has led to a search for alternatives to fill the vacuum. One obvious example is this is the call to restoring the Constitution of Independence, either in its first version, when it was promulgated in 1951, or with the 1963 amendment that suspended the federation. In both versions, monarchy was the system of government. It is noteworthy here that, when it became apparent in the CDA's discussion of this issue that most members were in favor of a republican system, those calling for a monarchy only demanded deeming it an alternative solution if a consensus on the Draft Constitution could not be reached.

This brings us to an overview of the controversial issues of national governance. This report has not only mapped those issues, the positions taken by key actors, and the legislative responses, it has also reviewed those responses based on a vision of national governance which, based on our research, is shared by most key governance actors (see section 2 for this vision).

5.3. Controversial issues: positions, responses and assessments
5.3.1. Form of state: federal / unitary

This issue concerns whether the state should be federal, as was the case at Libya's independence in 1951, or unitary as has been since 1963.

In accordance with the vision of national governance, the chosen form of state, whatever it may be, should ensure that centralization is dismantled politically, administratively and economically, an effective subnational governance system is in place and wealth is distributed fairly and efficiently.

Since determining which of the proposed forms of state is closer to achieving these ends is related more to the upcoming thematic phase on subnational governance, this phase did not address it in detail.

5.3.2. System of government

The options discussed for the system of government are monarchical or republican, on the one hand, and parliamentary, or presidential or semi-presidential, on the other.

As for the choice between a monarchical or republican system, all legislative responses reviewed in this research opted for the latter.

About the choice between a parliamentary, presidential or quasi-presidential system, the analysis of legislative responses showed that they actually adopted none of these systems. The Constitutional Declaration was designed in a way that reflected the dominance of the legislature over the executive, and was thus close to the so-called system of the National Assembly, also called the system of 'unity of power'). The outputs of the CDA opted for formulas that are difficult to classify in any of the traditional types of governance (parliamentary, presidential and quasi-presidential). The same is true of the Political Agreement.

This report refrains from proposing a particular system of government: monarchical, republican, parliamentary, presidential, semi-presidential, as the best for the country. This preference is an option for the entire nation when voting on the draft constitution. The report, however, highlights, based on the vision earlier stated, two requisites for any system of government to be able to help build a modern civil state, dispel fears of citizens and enhance their confidence in its legitimacy. These requisites are:

1) establishing a sufficiently strong, executive with its own specified powers and clear responsibilities enabling it to extend its authority throughout the country and to manage the country's resources and conduct its affairs;
2) regulating the relationship between this executive branch and the legislature, allowing the latter to make laws and exercise broad control of the executive based on specified powers and responsibilities, clearly delineated so that neither can override the other.

The report has, as will be shortly summed up, assessed the options chosen in the Constitutional Declaration, the Political Agreement and the Draft Constitution in the context of these two requisites.

5.3.3. Relationship between the legislative and the executive branches

The imbalance between the two branches is not a recent phenomenon. The analysis of the relationship between them under both the monarchy and Gaddafi's regime shows the dominance of both King Idris I and Colonel Muammar Gaddafi over the decision-making process, although the power of the King was constitutionally defined while that of Gaddafi was not.

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With regard to the responses given in the aftermath of the February revolution, it is apparent that the 2014 February Committee's proposal is a promising step towards meeting the two previously specified requisites. It would establish a directly elected president with important powers ensuring that executive would no longer be subject to the dominance of the legislative branch observed since February 2011. This proposal was not, however, implemented, despite the decision of the HoR to adopt it.

The Political Agreement contains provisions that impede the executive branch, including the requirement of consensus among the President of the Presidential Council and his deputies to take decisions. Given the conflicting backgrounds of those, in practice they were rarely able to make decisions in such a way. This led the President making decisions without observing this requirement, risking not only the validity of his decisions if judicially challenged, but also the entire Political Agreement. The Agreement also obligated the Presidential Council to seek a binding opinion of the High State Council in important matters. Furthermore, the relationship between the Presidential Council, High State Council and the HoR, as regulated by the Political Agreement, has in reality been characterized by ambiguity and dispute.

With regard to the 2017 Draft Constitution: it contains provisions establishing a stronger and more independent executive authority. For example, it proposed electing the President of the Republic in direct popular elections, and assigning him/her broad and varied powers, including the right to submit a dissolution of the House of Representatives or Senate to a popular referendum. The problem is that the draft did not propose granting a similar right to the House of Representatives or the Senate, who can only charge the President with high treason, a serious breach of the Constitution, or a deliberate crime. He/she would then be suspended from his/her duty pending a verdict by a special court. This can be seen as empowering the executive at the expense of the legislature.

5.3.4. The independence of the judiciary
The issue of the independence of the judiciary has attracted lots of attention post February 2011. Efforts to reconstruct the Supreme Council for the Judiciary (SCJ) and to redefine 'judicial institutions' were cases in point. Unlike the situation under Gaddafi, the Minister of Justice and his deputy, being part of the executive, were excluded from the SCJ. In addition, a redefinition was proposed for the judiciary, so "judicial institutions" i.e., three directorates of 'Government Lawyers', 'People's Lawyers' and 'Law' that were in fact directorates under the Ministry of Justice would be excluded. The system of "judicial institutions", it is said, had been introduced to control the judiciary. While this might indeed have been amongst the rationales, the rotating system has also enabled officials of these directorates to become judges, and, given that a considerable number of those officials are female, has resulted in more women becoming judges. Besides, unlike public prosecutors, from whom judges traditionally have been selected, the practical experience of these officials is not confined to criminal law, as they have had to deal with cases related to all other branches of law, e.g., civil, commercial, administrative and family. This has indeed enriched the judiciary. These positive, although probably unintended, consequences of the system of judicial institutions entirely escaped the attention of the legislative drafters.

5.3.5. The suitability of the democratic system
The poor performance of the elected bodies at various levels and their inability to adequately address the economic and security problems, the deterioration of the state capacity to perform the functions

of penetration, regulation and distribution as well as the conflicts and division of ruling political elites, have had a significant negative impact on the legitimacy of elections in Libya. Compared with the 2012 GNC elections, the 2014 elections of the HoR and CDA attracted a very low turnout. Furthermore, Libyans, as shown in nationwide surveys, expressed their wishes for strong leadership to run the country at this stage, although most surveys also show that they still have a clear preference for elections and democracy. The disappointment is largely with elected bodies.

With regard to the legislative responses, the prevailing trend, from the 2011 Constitutional Declaration to the 2017 draft constitution, is still to preserve the democratic features of the state. Even so, there are instances of degrading the democratic process. One is the case of the decision of the Speaker of the HoR on 19 June 2016 to appoint a military governor for the eastern area extending from Derna to Ben Jawad. This decision gave the military governor sweeping powers that led him to imposing measures restricting public freedoms and, in violation of the Local Administration Law, appointing mayors of municipalities instead of the elected councils, a practice that the Interim Government maintained even after the abolition of his post.

That legislation and draft legislation continued to work towards establishing democracy despite the worrying trends in public opinion, which may only be temporary reflections of dissatisfaction about the current situation, is praiseworthy. On the other hand, it is worrying that undemocratic measures such as appointing a military governor and replacing elected municipal councils are being resorted to.

The report stresses that the democratic option is the choice of the Libyans, and this should not be sacrificed, even temporarily, on the pretext of taking into account security considerations or the weakness of the political culture and awareness of the people.

5.3.6. *The role of political parties*

The impact of the political situation can clearly be seen in Libyans' views of political parties,[34] which, in turn, influenced legislative responses. At first, in 2011, these responses reflected people's high expectations of political and party pluralism: legislators abolished the restrictions on political parties imposed by the Gaddafi regime. However, Law 4/2012 on the Election of the GNC limited party representation. The argument for such restriction was the lack of experience with political parties, and the consequent risk involved in letting the existing inexperienced few run the country. Besides, most Libyans were not party members, so it was felt that they should be given the opportunity to run for elections without having to join any. At the same time, political parties, being essential for democracy, should be given the chance to develop gradually. This could be achieved through a quota system: allocating them 80 seats out of the GNC's 200 seats.[35] When the negative attitude toward political parties grew, laws on the Elections of the CDA and HoR banned candidacy based on a party affiliation, and the CDA's Working Committee proposed banning political parties completely for four years. However, subsequent drafts of the CDA, including the 2017 draft, do not propose such a ban, even though they restrict running for the Senate to individual candidates.

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[34] See above.

[35] Ziwo, Khaled in *Assessing Legislation for Libya's Reconstruction*, edited by Suliman Ibrahim and Jan Michiel Otto, p. 27. Leiden: Van Vollenhoven Institute. Accessed online via: http://uob.edu.ly/assets/uploads/pagedownloads/0bbb5-assessing-legislation-for-libya-s-reconstruction-e-a.pdf [last accessed 16 October 2019].

Inspired by the Vision, the report stresses that political and party pluralism is a cornerstone of democracy, and should be strengthened. Thus, parties should be allowed provided that the principles of national unity, transparent funding, and abandoning of violence and hate speech are observed. Therefore, a ban such as that the CDA's Working Committee once proposed should be avoided. Fortunately, the CDA's 2017 draft did omit that, even though it did not remove the restriction imposed on candidacy on party basis for the Senate.

5.3.7. Participation of Islamist currents and parties

Ever since the February 2011 revolution, the challenge of extremist Islamist groups that seek to impose their views with violence has led to demands that Islamist parties and groups be prevented from participating in the political process. In 2014, Islamist parties rejected the results of the HoR election and promoted a resurrection of the GNC, leading to the political bifurcation of the state. This experience has made civil parties and currents wary of their Islamist counterparts' commitment to the democratic process.

The civil currents and parties could not convince the legislature and the CDA of these doubts. In general, legislative responses provided for the right to political participation for all, and did not ban parties formed on a religious basis. They only stipulated that all parties should be based on national unity, transparency of funding, and renunciation of violence and hate speech. The one recent exception is the law the HoR is reported to have passed banning Muslim Brothers and, possibly, their Justice and Construction Party.

While the concerns over the participation of Islamist parties and currents are understandable, the exclusion of any strand runs counter to the concept of inclusive political participation. Exclusion should only be resorted to when a party fails to respect the principles of national unity, transparency of funding, and renunciation of violence and hate speech. Consequently, the legislative responses establishing for inclusive participation, such as the 2017 draft constitution, are praiseworthy.

6. Conclusions

6.1. Six crises in nation/state building

The process of nation/state building suffers from six major crises; crises of national identity, of legitimacy, of penetration, of distribution, of participation, and of integration (see 1.3). These crises are mutually dependent, and the prospects for nation/state building, necessary for reconciliation and societal and political coexistence without solving them are gloomy. The crises are prolonged by disagreements about ways to solve them. These disagreements are manifested most saliently in seven issues concerning national governance.

6.2. Seven controversial issues of national governance

These issues are: (1) the form of the state: unitary or federal; (2) the system of government: republic or monarchy, presidential or parliamentary; (3) the relationship between the executive and legislative powers: balance or dominance; (4) the independence of the judiciary, (5) the suitability of democracy for today's Libya; (6) the role of political parties: permitted or restricted (or even banned); and (7) the participation of Islamists: allowed or banned. Below, conclusions are drawn on six of these seven issues. For (1) the form of the state, see 6.14.

6.3. The role of law

The research has demonstrated that Libya's political institutions have made extensive use of legislation to address these six issues since 2011. This occurred mostly in constitutional legislation, but also in ordinary legislation. In spite of many disagreements, the 2011 Constitutional Declaration has remained the undisputed, solid foundation to which other constitutional legislation, constitutional drafts, as well as the 2015 Political Agreement, continue to refer. Two legislatures have emerged from the 2014 political divide, leading to considerable legal confusion and legal uncertainty. Even so, the 2017 Draft Constitution has demonstrated the ability of Libya's elected representatives to achieve consensus about fundamental issues (see 6.6). Although violent struggle seems to dominate the scene at the time of writing, this research appreciates the 2017 draft constitution as a crucial point of departure. It should also be noted that Libya's judiciary has not only escaped the political divide, but has also, by and large, maintained its professional attitude. Similarly, in the mid-level bureaucracy, many civil servants try to follow the laws and thus contribute to some unity and continuity. However, ultimately, the overall effectiveness of the legislative responses studied has been very limited.

6.4. Opposite ways to deal with Gaddafi's controversial legacy as an explanatory factor

Many proponents of the 2011 Revolution, understandably, wanted to break with all of Gaddafi's legal and institutional legacy. This led not only to constitutional and legal progress, but at times also to hasty, declaratory and unbalanced legislative responses that themselves have become obstacles to reconciliation and state-building. In response, with the waning of revolutionary fervor and the return of those who had been Gaddafi's supporters and beneficiaries, some legislative responses reflect reactionary tendencies condemning revolutionary forces, notably religious ones. Meanwhile, some legislative responses studied indicate that it has become politically feasible to make more balanced laws. This suggests that it has become possible to discuss not only negative but also some possibly positive aspects of Gaddafi's legacy, such as pro-poor and emancipatory policies and laws. These dynamics are indicative of Libya's post-2011 politico-legal learning process, and are hopeful signs for the future.

6.5. Poor performance of the transitional political institutions as an explanatory factor

Another factor is the failure of transitional political institutions not only to deliver on the revolution's promises of a better life but also to maintain a unified and secure state. This failure has led not only to rethinking the demands for breaking with Gaddafi's legacy, but also to taking exclusionary positions condemning revolutionary forces, especially the religious ones amongst these, because of their presumed role in such failure.

In retrospect, it appears that Libya's politicians who had positions in the transitional political institutions have failed collectively. Not only were they unable to deliver on the expectations raised by the 2011 revolution's promises, they also failed to maintain a unified and secure state. Admittedly, they had to face deep crises of state-building and huge *challenges* (see section 3), including a rentier economy and mentality; corruption; weakness of civil society; ethnic, tribal and regional loyalties and conflicts; religious extremism and the divided international community. While any state needs politicians, Libya's post 2011 experience suggests that to adopt legislative responses which actually overcome disagreements, it would be wise to consider how to also involve other governance actors.

6.6. Role of semi-political and non-political players: February Committee, CDA, a.o.

In some cases, following the failure of the transitional political institutions, other governance actors provided more balanced legislative responses. The prime example is the 2014 February Committee that proposed a stronger executive authority than that enshrined in the 2011 Constitutional Declaration. This could be seen as learning from the transitional experience, and demonstrating the ability of legislators to assess Gaddafi's legacy more objectively. The fact that the Committee consisted not only of representatives of political factions of the GNC but also of highly respected academics and lawyers contributed to its success. The Committee decided to be guided by established rules and practices in government systems, and perform its tasks in a professional manner. To this end, it adopted regulations organizing its work, ensuring separation from the GNC by, for example, not receiving any payment and not holding any sessions in the GNC's headquarters. It communicated with the public via an online platform where it published daily updates on its work and received feedback and suggestions. In the end, it managed to perform the required task within the time frame set.

The CDA is another example. Despite having to work in a very challenging environment, it succeeded in producing a Draft Constitution that is largely balanced. It managed to address most of the issues, including key ones, in a sufficiently plausible way. Nevertheless, some important issues on which the CDA's position may not be the most appropriate remain, as this report and our report on national identity has noted in several places. Yet, all in all, the fact that the CDA is an elected body where various components of Libyan society are represented is a good reason to see its draft as an important point of departure, and to allow it to be put to a referendum. If it is rejected, the CDA will have an opportunity to reconsider its position on key controversial issues, and reach out more to groups unrepresented, i.e. Amazigh and Gaddafi loyalists.

Libyan bureaucracy, the research shows, has managed, in the midst of the institutional divide, to remain united or limit the effect of the divide. The Authority for State Property and the Authority for Real Property Registration are examples of such still unified institutions. Examples of initiatives to limit the effect of the political divide include the coordination of exams between the two ministries of Education and the initiative to coordinate between the Security Directorates of Tripoli and Benghazi. While the success of the bureaucracy is perhaps due to abstaining from politics, it is interesting to

note that their efforts are endorsed by the relevant political leaders. Both Fawaz Al-Serraj, President of the Presidential Council, and Abd Al-Salaam Al-Badri, Deputy Prime Minister of the Interim Government confirmed this.

We now turn to the conclusions regarding the controversial issues.

6.7. System of government: monarchical or republican

Empirical data show that the general public expects and supports a republican system. Consequently, opting for a monarchical system was initially out of the question. At some point, as a result, apparently out of the frustration with the long-drawn-out transitional period and constitution making process, the issue resurfaced. This increased support for the restoration of the 1951 Independence Constitution, which established a monarchical system. While the CDA discussed the option, it eventually voted in favor of a republican one. In fact, all legislative responses reviewed in this research opted for the latter.

6.8. System of government: parliamentary, or presidential or semi—presidential

Empirical data show broad support for a presidential system. The analysis of legislative responses showed that what has actually been adopted cannot be classified as a presidential, quasi-presidential system, or parliamentary system. The Constitutional Declaration clearly reflected the dominance of the "revolutionary" legislature over the "dreaded" executive, and was thus similar to the so-called National Assembly system, also called the system of "unity of power". The Political Agreement adopted the system designing a Presidency Council with broad powers, balanced by powers of the HoR-legislature, yet both complicated by powers attributed to a senate-like HCS. In its 2017 draft, the CDA opted for a strong, directly elected president, empowered to the extent that he/she can dominate parliament by dissolving it (see 6.9) Both systems are difficult to classify within any of the three conventional systems. While this research also does not recommend any of these systems, it emphasizes two requirements that will need to be met:

1) providing for a sufficiently strong executive with its own specified powers and clear responsibilities;
2) regulating a balanced relationship between this executive and the legislature so that the latter can make laws and exercise broad control over the former based on clearly delineated powers and responsibilities as to prevent any overstepping.

The next section shows how we assessed the options adopted/proposed in the Constitutional Declaration, the Political Agreement and the Draft Constitution with regard to these two requirements.

6.9. Legislative-executive relationship

Motivated by a desire to break with the Gaddafi legacy (see 6.4), the NTC as a legislature became dominant, too dominant as experience showed. As such, neither of the two requirements was met. The February Committee (see 6.6) proposed a more balanced system of government by calling for a directly elected president with important powers. However, apparently seeing such a proposal as a threat to their position, the GNC did not adopt it, although the HoR did, but then failed to have it implemented.

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The Political Agreement contains provisions that, in a sense, frustrate the powers of the executive branch. For example, the requirement of consensus among the PC's President and his deputies, who actually came from conflicting backgrounds, made it virtually impossible to take decisions. This led the President to take decisions without observing this requirement, risking not only the validity of his decisions if judicially challenged but the entire Political Agreement. The Agreement also obligated the PC to seek a binding opinion of the High State Council (HSC) in important matters. In addition, the relationship between the PC, HSC and the HoR, as regulated by the Political Agreement, has, in reality, been characterized by ambiguity and dispute.

Finally, the 2017 Draft Constitution proposed a system of government with a stronger and more independent executive authority. It proposed electing the President of the Republic in direct popular elections, and assigning him/her broad and varied powers, including the right to submit a dissolution of the HoR or Senate through a court decision to a public referendum. On the other hand, the draft provided for a procedure for both chambers to call for impeachment of the president, which then needs decisions by the Prosecutor-General and a special court. While this could be argued to be sufficiently balancing the two powers, our research regards the President's powers as somewhat broader and easier to implement.

6.10. The independence of the judiciary

A judiciary that is independent from the executive and legislative branches so that it can monitor the legality of their decisions and actions is crucial for national governance. All legislative responses since February 2011 have emphasized this. Our empirical research demonstrates that in some crucial cases such independence has been lacking. Explicit emphasis on judicial independence and its safeguards in the constitution therefore remains vital. In this regard, the 2017 Draft Constitution should be praised for devoting two chapters to the judiciary and the Constitutional Court. However, the real challenge is to realize such independence in a country plagued by deeply polarization and lack of security.

6.11. Suitability of democracy

Our empirical research shows that governance actors are generally in favor of a democratic system for Libya. Most surveys also show a clear preference for elections and democracy, even though confidence in elected bodies is low. Understandably, the public at large appears rather disappointed with the performance of democratically elected institutions. Hence, among ordinary people the question of its benefit, and whether today's Libya is ripe for democracy, often arises. In the East, undemocratic practices, such as the appointment of a military leader and replacement of elected municipal councils with appointed mayors, were accepted, willingly or not. However, the prevailing trend of legislation, from the 2011 Constitutional Declaration to the 2017 Draft Constitution, is consistent about preserving the democratic features of the state. Given that empirical data actually confirm this project's vision (see 2.1), democracy is an appropriate choice of political system for Libya.

6.12. Political parties

For decades Libya had a ban on political parties, until 2011-2012 when they were permitted in view of national elections. Since then political parties have been valued as an expression of political freedom and democratization, and many parties have been established. However, in practice, their performance has led to criticisms, disappointments and accusations. In October 2015, the CDA presented a draft which even proposed a four-year ban on all political parties. After extensive

deliberations, the CDA found that party formation and pluralism are cornerstones of democracy, so it stipulated, in the 2017 draft, that the election of the HoR be based on lists of political parties. For the Senate elections, however, it has provided that candidates shall represent their regions, and there is to be no candidacy on party basis.

6.13. Participation of Islamist parties

Islamist parties and political groups are among the major currents in Libyan politics. They gained a strong position in the GNC through the first national elections, and in Zidan's coalition cabinet. Their adversaries have blamed them for the failure of the GNC, for the fall of Zidan's cabinet, and for the refusal to transfer power to the elected HoR in 2014 when they won only a few seats. The present political divide is also often attributed to them, even though reality is far more complex. Still, calls have been made to exclude them from political participation. One recent legislative response to such calls is the HoR's law, reportedly issued on 13 May 2019, banning Muslim Brothers and, possibly, their political arm, the Justice and Construction party. Such a measure runs counter to the concepts of party formation and inclusive political participation. This research concludes that exclusion should only be resorted to when a party fails to respect the principles of national unity, transparency of funding, and renunciation of violence and hate speech. Therefore, the legislative responses establishing inclusive participation, such as the 2017 Draft Constitution, are completely appropriate.

6.14. Form of the state: to be included in next phase on subnational governance

The first issue of disagreement, mentioned in this report (see 4.1) concerns the form of state: unitary or federal. While this is, of course, an issue of national governance, it is closely connected to subnational governance, on which in depth research is being undertaken in this project's third thematic research phase, which runs until October 2019. This will deal with controversial issues related to subnational governance, in which problems of regionalism and federalism take center stage. The following issues of disagreement have been distinguished: the politico-administrative division or levels of subnational governance, the composition of governing institutions at these levels, the devolution and deconcentration of powers to subnational governance units, the regional distribution of economic and financial resources, and the capacity of subnational government institutions.

Annex 1. List of key interviews

No.	Name	Position	Date	Place
1	Mahmud Said Ambarik	Leader of the Democratic Civil Civic Party	3 December 2018	Benghazi
2	Abd Al-Salaam Al-Badri	Deputy Prime Minister – the Interim Government	11 December 2018	Benghazi
3	Yusuf Fanush	Member of the February Committee, Member of the HoR	18 December 2018	Benghazi
4	Abdallah Al-Thinni	Prime Minister, Interim Government	2 January 2019	Al-Bayda
5	Ali Said Al-Barghathi	Secretary of the NTC	12 December 2018	Benghazi
6	Abd Al-Hafiz Ghoqah	Vice-President of the NTC	12 December 2018	Benghazi
7	Ibtasim Bahih	Member, the CDA	9 December 2018	Benghazi
8	Ibrahim Al-Muqsabi	Director, the Civil Society Commission	17 December 2018	Benghazi
9	Abd Al-Muneim Al-Fakhri	Member, the CDA	22 December 2018	Benghazi
11	Rabia Sharir	Journalist	21 December 2018	Benghazi
12	Ali Al-Habari	Governor, Central Bank (East)	19 December 2018	Benghazi
13	Naiman Al-Buri	Chairman, Alsaray Bank	20 December 2018	Benghazi
14	Amal Buqaiqis	Deputy Director, Anti-Corruption Commission (East)	31 December 2018	Benghazi
15	Faraj Said	(Former) Chairperson, National Oil Corporation (East)	11 December 2018	Benghazi
16	Ashur Shawail	Former Minister of Interior	24 January 2019	Benghazi
17	Khalid Al-Sharif	Judge	25 December 2018	Benghazi
18	Mahmud Siyalah	Minister of Foreign Affairs, GNA	6 January 2019	Tripoli
19	Fawaz Al-Serraj	President of the Presidential Council	6 January 2019	Tripoli
20	Amad Al-Bunani	Justice and Construction Party	22 December 2019	Tripoli
21	Ayman Bin Yunis	Minister of State, Institutional Restructuring, GNA	7 January 2019	Tripoli
22	Layla Al-Lafi	Head of the Women's Support and Empowerment Unit, GNA	7 January 2019	Tripoli
23	Al-Kuni Abuda	Head of the February Committee	7 January 2019	Tripoli
24	Fadeel Lameen	Chairman of the Libyan National Dialogue Preparatory Commission	8 January 2019	Tripoli
25	Al-Sadiq Al-Kibir	Governor, Central Bank (Tripoli)	7 January 2019	Tripoli
26	Ali Al-Hadi	Director, the Authoriy for Real Property Registration	9 January 2019	Tripoli

27	Hafed Gaddur	Ambassador to the European Union	5 January 2019	Tripoli
28	Nouri El Abbar	(Former) Chairperson of the Supreme Election Commission; Decision Support Centre	5 January 2019	Tripoli
29	Abd Al-Salam Abhih	Judge, the Supreme Court	8 January 2019	Tripoli
30	Safwan Al-Masuri	(Former) Deupty Leader, National Alliance Party	9 February 2019	Tripoli
31	Izza Al-Maqhur	Member, the February Committee	12 January 2019	
33	Misbah Al-Akari	Director, the Financial Markets Department, Central Bank	20 January 2019	Benghazi
34	Ibrahim Al-Darsi	Attorney General, Benghazi	20 January 2019	Benghazi
35	Al-Mabruk Al-Fakhri	Judge, the Supreme Court	15 January 2019	Benghazi
36	Fathi Al-Majbari	Deputy President, the Presidential Council	31 January 2019	Tunis
37	Fawzi Aqab	Memeber, the High State Council	17 February 2019	Tripoli
38	Aqilah Saleh	Speaker, House of Representatives	24 January 2019	Al-Qubba