

Extractive Industry and Conflict Risk in Libya

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Civil Society Dialogue Network

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Introduction

The 'Arab Spring' uprising, a wave of revolutionary protests that began in December 2010, toppled many regimes in North Africa, including in Libya. The specific causes of the uprising – be they political, cultural, social, or economic – are still to be researched. In the case of Libya, the political uprising led to an internal conflict, with gross human rights violations on both sides, civil unrest and the internal displacement of people. This internal conflict is related, among other things, to confrontations between different cities and geosocial groups (social groups from certain geographic areas rich in natural resources) based on historical grievances.

Over the years, an extensive body of literature has pointed to a link between human rights violations, social injustice, environmental damage, and conflict. More recently, research has focused on the impact that certain businesses can have on the stability of a country, especially in relation to their practices in the country of operation. This led to the Organisation for Economic Co-operation and Development (OECD) Declaration on International Investment and Multinational Enterprises in 1976, followed by the OECD Guidelines for Multinational Enterprises in 2011,¹ and the United Nations Guiding Principles on Business and Human Rights, also in 2011.²

Since its independence in the fifties and the nationalization of foreign petroleum projects in the seventies, Libya, like many developing countries, actively pursued a policy of permanent sovereignty over natural resources. This sovereignty was regarded as fundamental to Libya's economic development and for the redistribution of wealth and power in relation to the industrialized world. The United Nations General Assembly Resolution No. 2158 of 1966 recognizes that 'the natural resources of the developing countries constitute a basis of their economic development in general and their industrial progress in particular', and advocates for permanent sovereignty over natural resources to safeguard such development.

The central problem that Libya has experienced in implementing such sovereignty is that, to date, only one authority, the central government, has controlled the process. The central government reserved the right to supervise and 'police' the implementation of these sovereignty rules. The legacy of a totalitarian state control and management of natural resources and their extractive industries, accompanied by the national policy of absolute centralization of the last four decades, has been a direct contributing factor to conflict in Libya.

After the February 2011 revolution in Libya, the formal shape of the central authority changed, but the concept of permanent sovereignty over natural resources implemented solely by the central authority has not changed. Foreign partners have generally respected the Libyan State's sovereignty over its territory, people, and wealth and have adhered to the legal and political framework established by the Libyan State in managing its foreign relations. In doing so, foreign partners, and to a degree the international community at large, have been able to rely on their host state's policy and practices to justify/defend any claims of complicity with the regime in the abuse of its power, including in relation to the distribution of wealth, or the violation of human rights.

¹ Organisation for Economic Co-operation and Development, *OECD Guidelines for multinational enterprises, 2011 Edition* (OECD Publishing, 2011), accessed 22 November 2012, available at <http://dx.doi.org/10.1787/9789264115415-en>

² United Nations, Special Representative of the Secretary General J. Ruggie, *Guiding principles on business and human rights: Implementing the United Nations "Protect, respect and remedy" framework*, A/HRC/17/31 (March 2011), [online], accessed 22 November 2012, available at <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>

This is a problem that civil society in Libya today has highlighted calling for a 'triple horizon relationship' between the Libyan State, civil society and foreign partners (including the EU). This relationship aims to preserve the integrity and independence of all parties and to build a genuine partnership dialogue to prevent a repeat of past events.

This paper focuses on the extractive sector in Libya and its potential link with instability and conflict. The discussion is set out in three parts: Part 1 looks at the main characteristics of the Libyan economy and legal and political system to shed light on the functioning of the Libyan extractive sector and identify some of the issues that may be a source of concern as regards stability and conflict in Libya; Part 2 outlines some of the conflict-related risks in relation to the extractive industry; and Part 3 sets out some key recommendations from Libyan civil society to the EU as a real partner Libya's development.

Part 1: Libya's extractive industry

1. A petroleum economy

Petroleum is an integral part of the Libya's social and economic plan as a source of income, industry and identity. Petroleum exploration began in Libya in 1955 and Libya's first oil fields were discovered at Amal and Zelten in the Sirte basin in 1959. With the commercial discovery of oil in Libya, its economy became dependent on this single commodity as its primary source of income, despite its significant non-petroleum mineral wealth including gypsum and the largest iron ore reserves in the world. However, the economic and political importance conferred on the petroleum industry internationally resulted in a neglect of the mining industry. According to the International Monetary Fund, the hydrocarbon industry accounted for over 95 per cent of Libya's export earnings in 2010.³ In the late 1960s Libya realized the significance of non-petroleum mineral wealth, such as iron ore (believed to be the largest iron ore reserves in the world) and gypsum, and issued the Libyan Mining Code of 1970, which outlines the rules and regulations governing the exploitation of natural resources. However, the economic and political importance conferred on the petroleum industry internationally resulted in a neglect of the mining industry

Libya holds around 46.4 billion barrels of oil reserves, the largest in Africa, and close to 55 trillion cubic feet of natural gas reserves. Around 40 companies have been granted rights to explore for hydrocarbons in Libya in an area of about 600,000 square kilometres. Oil production in Libya in the early 1960s was over three million barrels per day. From the 1970s to the late 1990s, Libya experienced a very unstable political relationship with the West and several economic sanctions were imposed; however, petroleum production sustained a relatively good level in accordance with the Organization of the Petroleum Exporting Countries (OPEC) general policy of between 1.2 to 1.6 million barrels per day. In 2010, this figure was approximately 1.8 million barrels per day (crude plus liquids).⁴ After a full eight months suspension of Libya's petroleum production caused by the unrest that followed the February 2011 revolution, production had risen again to nearly 1.5 million barrels per day as at July 2012. Consequently, Libya is considered to be one of the most important producers of high-quality, low-sulphur oil and gas and is well placed to take advantage of both European and Mediterranean markets. Libya is also one of the most important actors in OPEC and has an important standing in the world's petroleum economy.

This productive, fast, and easily accessible natural resource freed the Libyan leadership from relying on taxation and, consequently, from courting public opinion. As a result, the Libyan State adopted a centralized style of government that lack transparency and accountability and that concentrated natural resource wealth in the hands of the regime.

2. Location of hydrocarbon basins

Libya has five hydrocarbon basins, three in the east (Sirte, the Cyrenaica Platform and Muzuq) and two in the west (Pelagian Shelf and Ghadames).

³ *PetroStrategies, Inc* [online], accessed 24 October 2012, available at: http://www.petrostrategies.org/Learning_Center/libya.htm

⁴ For more information see US Energy Information Administration, *Country analysis brief: Libya*, [online], accessed 24 October 2012, available at <http://www.eia.gov/countries/country-data.cfm?fips=LY>.

Sirte Basin: The Sirte Basin is in east-central Libya and is by far the most productive basin. It contains 43.1 billion barrels of oil equivalent, which amounts to 89 per cent of all petroleum reserves discovered in Libya. Sirte is ranked 13th among the world's petroleum basins.⁵

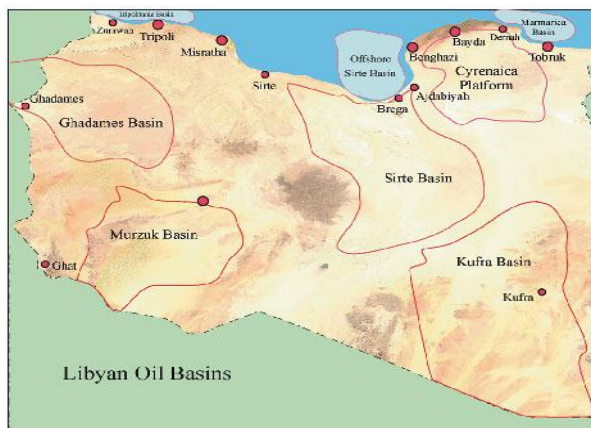
The Cyrenaica Platform: Located in northeast Libya to the east of the city of Benghazi, the Cyrenaica Platform has no commercial discoveries, but has potential in the form of a series of troughs and uplifted blocks.

Murzuq Basin: The Murzuq Basin generates approximately 20 per cent of Libya's oil production. It lies around 800 kilometres south of Tripoli forming a large intracratonic basin between Algeria, Niger, and Chad. Because of its remote position, lying predominantly in the Sahara, it is relatively unexplored with poorly developed infrastructure. However, a number of important discoveries have been made in the basin, including the giant Elephant oil field, which in 2010 was producing an average of 126 thousand barrels of oil equivalents per day (Mboepd).

Pelagian Shelf Basin: A number of discoveries have been made off the coast of Tripoli in the Pelagian Shelf Basin. Success rates for discoveries offshore are higher than onshore and the area is considered highly prospective, although predominantly for gas.

Ghadames Basin: The western Ghadames Basin stretches into neighbouring Algeria where the sediment thickness reaches about 7,000 metres and the majority of the basin's discovered reserves are located.

Figure 1: Map of hydrocarbon basins in Libya⁶



3. Legal structure

The Libyan legal system can be generally characterised as a civil law system. The Libyan Civil Code, which was enacted after Colonel Gaddafi's 1969 revolution and the repeal of the Libyan Constitution of 1951, is the foundation for all other Libyan legislation. It also serves as the basis for all civil and commercial engagement.

⁵ Open Oil Wiki, *Libya oil almanac, An open oil reference guide*, [online], accessed 24 October 2012, available at http://wiki.openoil.net/index.php?title=Main_Page

⁶ Source: Whaley, 'Libya – The next chapter', *GeoExpro Magazine*, Issue 6, Vol. 8, 2011, [online], accessed 24 October 2012, available at http://www.geoexpro.com/article/Libya_The_Next_Chapter/366a0f99.aspx

Under Libyan law there is a distinction between public law and private law: public law governs the legal relationships to which the State is party, while private law applies to the legal relationships between private individuals. The formal sources of Libyan law are set out in the first article of the Civil Code:

- written laws adopted by the legislative authority;
- Islamic principles of sharia;⁷ and
- customs and principles pertaining to the rule of law and rules of equity.

Despite its political instability over the last four decades, Libya has achieved a certain level of legal stability in relation to the framework governing its petroleum industry, particularly in its relationships with foreign petroleum companies. The primary legislation organising petroleum activities in Libya is the Libyan Petroleum Law No. 25/1955 ('the Petroleum Law') and its Regulations. This law was groundbreaking for its time and one of the most progressive petroleum laws in the Middle East and North African region.⁸ The Petroleum Law provides that the Libyan State has permanent sovereignty over its natural resources and that all mineral resources on private or public land are the property of the Libyan State, with no distinction between surface minerals and sub-surface minerals.

Today Libya is engaged with approximately 40 foreign petroleum exploration companies. Companies based in the EU, including Eni, Total, Repsol, Shell, and British Petroleum (BP), are the main players, controlling almost 60 per cent of the market, followed by Asian and American companies. The development contract model used in Libya does not award ownership rights over petroleum 'in situ', but instead relates to the provision of financial resources for petroleum operation in the designated area.

According to Libyan law, the National Oil Corporation, which is a State-owned company, is considered to be the first party to all Exploration and Production Sharing Agreements (EPSAs). EPSAs were introduced in the Libyan market following the nationalisation of petroleum concessions in the early 1970s. The National Oil Corporation is required to invest in accordance with the provisions and conditions set out in those agreements, which give the National Oil Corporation between 75 and 91 per cent of the petroleum exploration shares. The Petroleum Ministry is responsible for approving all agreements between the National Oil Corporation and a second party.

4. Governance, transparency and national policy

The Libyan State has always played a dual role in managing petroleum industry relations, balancing the interests of foreign investors with those of local non-governmental stakeholders. The Libyan State has been extremely keen to provide transparent management processes and respect the legislative framework for licensing protocols, exploration and production with foreign investors. However, the same cannot be said for its relationships with non-government stakeholders. Good governance involves a commitment to real and serious accountability and transparency in all financial and non-financial operations, not just with foreign investors. When scrutinising Libyan Government practices over the last four decades, it is almost impossible to find evidence of the principles of good governance. In contrast, absolute power was concentrated in the hands of Gaddafi.

Libya's commercial, corporate and anti-corruption laws contain strict provisions in relation to accountability and transparency, and impose penalties for corruption. In contrast, State practices over the last four decades reflect a full centralization of all authority in the person of

⁷ The official school of religious law in Libya is the Maliki.

⁸ J. Gurney, *Libya: The Political Economy of Oil (Political Economy of Oil-Exporting Countries)* (Oxford, USA: Oxford University Press, 2006)

the 'Leader' and the application of unconventional accountability methods to protect his power. As a result, for many years, accountability and transparency in Libya were defined as how faithful and transparent the Libyan people were towards their leader.⁹

After the revolution of 2011, the central sovereignty previously embodied in Gaddafi has been transferred to the transitional government and the National Transitional Council (NTC). The current political system in Libya is not giving proper weight to the need to develop national standards of accountability and transparency, except in the context of protecting its revolutionary legitimacy. In addition, the transitional government has not yet arrived at a clear plan for addressing the social and economic difficulties that prompted the revolution and the conflicted related to the extractive industry, leaving the country vulnerable to further conflict and civil unrest.

The new Government of Libya has inherited certain characteristics that expose Libya to a high risk of future conflict including:

- a lack of harmony and coordination between bodies of law, limited institutional capacity with poor transparent procedures, and an inadequate national monitoring and evaluation process related to natural resources and the extractive industry, which has led to an absence of effective mechanisms for conflict management; and
- a failure to identify and consult (and share information) with new stakeholders in the extractive industry because of limited capacity regarding communication and planning and the a limited ability to recognize the range of interests within the industry, which is related to Libya's long history of centralized management. As a result, national policies and practices have failed to take into account local rights to, and practices regarding, natural resources and their extractive industry.

To address these shortcomings, the new government is expected to take action to ensure equitable and transparent measures are put in place to guarantee equal access to petroleum contracts and public funds, as continued unequal access to, and mismanagement of, these recourses is a significant potential driver of conflict. The development of strategies for managing relations between the companies extracting natural resources, local communities, employees and their unions, and the host government is very important for preventing conflict. Risk assessments should also be undertaken to consider the potential for future conflict.

5. Presence of new stakeholders

The 'Arab Spring' countries of Tunisia, Egypt Libya, Yemen and Syria share a number of similarities with regard to the socioeconomic and political basis of the revolts that took place,

⁹ The former Libyan regime adopted the exceptional judiciary system since its early day at the beginning of 1970s. In 1971, Revolutionary Commander Gaddafi established the revolutionary courts, which operated outside the ordinary judiciary and legal system and which persecuted and executed thousands of opposers of the regime who dared to criticise or question the political regime and its economic policy. In 1988, the former regime replaced the Revolutionary Courts with the Libyan People's Court, which was also followed by the extraordinary politicised system for the same purposes. This Court ceased to be used from 2005 when the former regime reorganised its policy and international relations to gain more recognition. For more totalitarian practices, The Revolutionary Command Council of 1969 established Revolutionary Committees in 1975, which worked outside the judicial, executive, and legislative authorities and reported directly to the 'Leader' when exercising its authority over: 'i. monitoring [all] activities through its offices inside [all] the civil and public institutions and reporting directly to the revolution leader; ii. appointment, dismissal and punishment of ministers, judges, prosecutors, lawyers, academics and anyone who was considered to pose a risk to the 1969 Revolution; iii. specific tasks focusing on the protection of the 1969 Revolution and its leadership; iv. supervision of all educational methods and exclusion of everything that constituted a risk to the 1969 Revolution.

as well as the current phase of transition. The drastic changes taking place in these countries have exposed the fragility of the previous status quo and the weakness of state institutions. At the same time, the old power structures have proved tremendously resilient and were not completely dislodged. While it is too early to grasp the full meaning of the transformations taking place, it is critical at this juncture to assess the prospects for development in these countries under the new socio-political conditions and through the new actors that are emerging. These new actors, or stakeholders, are expected to play an increasingly prominent role in the region in the future.¹⁰

In the case of Libya, since the revolution, there has been a strong presence of new stakeholder groups that are vocalizing serious interest and concern with respect to natural resources and the extractive industry. These non-governmental stakeholders are playing a double role of stabilizing and protecting the extractive industry, while also causing huge potential political and social conflict in the industry.

The new stakeholders in Libya can be identified as follows:

Civil society organizations (CSOs): Since the beginning of the Libyan revolution, civil society organizations have played a strong role within Libyan society. CSOs have worked hard to create a legitimate political and legal representative for the revolution, which produced the NTC and helped to support its position in Libya. CSOs also played a vital role in promoting democratic political and legal norms, which were absent for many years in Libyan society, and which certainly facilitated the success of the first legislative elections in Libya in July 2012. Today CSOs continue to play a key role in supporting the rule of law, human rights and democracy in Libya's current transitional phase.

Rebels: After 17 February 2011, many young men in Libya took up arms to defend civilians in their cities from the forces of the former regime. As the new Libyan State has not yet found an effective way to integrate them into civil society, they form a large compression force on the government and on political and economic life in Libya. Libyan State institutions are still weak; therefore, the rebels still play an important role in protecting Libya's borders, the petroleum fields and different political institutions. Hence, the rebels play a role in peace and security and disarming the rebels could create major instability and insecurity in Libya.

Political parties: On 2 January 2012, the NTC issued election Code No. 20 for a transitional legislative assembly, which was followed on 2 May 2012 by Code No. 29 regulating political parties' practices in Libya. These codes come after more than four decades of criminalisation of political parties' activities in Libya. Today there are more than 250 political parties; however, these parties have yet to reach real political maturity and to put forward reforms and plans for rebuilding the political, economic and legal institutions in Libya. Despite this, some of these parties enjoy significant popular support.

Local communities: The residents of cities and villages surrounding oil extraction sites are living in exceptional difficult social, economic, and security conditions and are demanding more rights over extractive industries.

¹⁰ S. Colombo, et al., 'New socio-political actors in North Africa: A transatlantic perspective', *German Marshall Fund Mediterranean Paper Series (2012)*, accessed 22 November 2012, available at http://www.gmfus.org/wp-content/blogs.dir/1/files/mf/colomboetal_northafrica_feb12_final_web.pdf

Despite the new government adopting poor legislation, a large number of the new stakeholders¹¹ who have integrated into civil society have started exerting serious pressure on the government to improve social, economic and environmental accountability; develop a legal, financial and non-financial disclosure processes; and define the responsibilities of the State by:

- **protecting against human rights abuses** (caused by the promotion of revolutionary legitimacy) by the State or by third parties (armed groups or foreign investors), during commercial, civil and political activities, by adopting and implementing appropriate policies, regulations, and adjudication;
- **enhancing corporate responsibility standards**, with particular respect for human rights, the rule of law and the impact on conflict dynamics, which means to act with due diligence to avoid the violation of the rights of others; and
- **providing a transitional justice mechanism** to fulfil the State's responsibility to provide victims (both from the last 4 decades and the recent conflict) with greater access to effective remedies, both judicial and non-judicial.

Part 2: Conflict related to the extractive industry

Conflict related to the extractive industry in Libya varies widely from place to place and over time within different regions in Libya. Conflict manifests in many ways, ranging from breaking rules and acts of sabotage to violence, and can develop quickly, with little or no warning. The political and social frustrations faced by Libyans over the last four decades, together with the continued mismanagement of natural resources and lack of accountability and transparency in the new Libyan government, are potential causes of future conflict in Libya, which could take the form of civil war and even break-up of the state. This part looks at the geosocial, political, and economic drivers of conflict related to the extractive industry in present day Libya.

1. Conflict related to geosocial groups

Conflict in Libya is often related to confrontations between geosocial groups. Since the Libyan Revolution in 2011, Libyans in the east and south of the country have been calling for the return of the State structure of the 1951 Constitution, under which Libya was divided into three federal states. These appeals are not made by the inhabitants of specific cities or members of certain tribes but by social groups from certain geographic areas. These 'geosocial groups' are demanding more rights over the management and distribution of the natural resource wealth on their lands. The first and most well-known group is the Federal Bloc led by a member of the former Libyan royal family, Alsanousi. The other major geosocial groups are in the Wahatte, Ghadames and Kufra regions.

Living conditions around major petroleum fields

Wahatte:

The Wahatte region's cities (Jalo, Ohjla and Shoukera) are located in the south of the

¹¹ In this regard, Lawyers for Justice in Libya has issued several statements, cf www.libyanjustice.org. See also the Federation for Civil Society in Benghazi (according to its executive director Dr Ibtisam Bhih), the Libyan Lawyers Organization in Tripoli and the Libyan Judges Organization. As for independent activities, for a recent remarkable statement in this regard see www.libya-al-mostakbal.org/news/clicked/27363.

Cyrenaica region and in the heart of three of the most important petroleum basins (Sirte) in the northwest, Kufra in the south, and (Cyrenaica in the northeast) with more than 40 per cent of the country's production and 70 per cent of the proven reserve. Wahatte has an estimated population of around 70,000 habitants. Despite this, there is only a small number of clinics, which provide only basic medical care, and only one hospital, which has been under construction for more than 15 years and has no medical equipment or supplies. The people living in these cities have to travel 500 kilometres north to Benghazi for medical treatment. There is a very high rate of unemployment in the region and neither oil companies nor the State have a policy of hiring and investing in human resources from the local communities. Nevertheless, the habitants of these cities are suffering from oil and water pollution and, since the revolution, have witnessed a serious deterioration in the security situation.

Ghadames:

Located in the heart of the Ghadames basin and 650 km from the capital Tripoli, Ghadames is considered one of the oldest cities in North Africa with a high potential for tourism. It has only one small, old hospital servicing a population of around 250,000 in the city and surrounding villages. Ghadames suffers from very high unemployment despite the fact that it has access to natural resources such as water and energy sources. The city has an international airport designed according to international standards, but it is only operative for domestic flights because of lack of facilities including a small terminal. It is not safe to travel by land to Ghadames as there have been a number of kidnappings since the start of the revolution along the 100-kilometre stretch of road to Ghadames. Because of its geopolitical location as a central passage between Algeria and Libya, Ghadames has a high-risk security situation with a complete absence of State control.

Kufra:

Kufra city is located in a remote area 850 kilometres from Benghazi and 1,000 kilometres from Tripoli. Since the completion of the Greatest Man's River Project in 1996, Kufra has provided around 75 per cent of Libya's water. However, its network of water pipelines is damaged and worn out and the pipes are suffering from corrosion, which is harming the health of the local people. The city does not have an appropriate drains network; every house has to set up its own drain, which is connected directly to the street. This system is a public health risk and contaminates the city's groundwater. Kufra also lacks an appropriate school; the current school buildings are old and need substantial refurbishment. There is a high rate of unemployment in the city as oil companies do not hire and invest in human resources from the city's local communities.

Cyrenaica National Federation

Since the end of the revolution on 24 August 2011, strong demands have been made in the eastern part of Libya by a political group called the Cyrenaica National Federation for more independent authorities and a decentralized process, especially in relation to the extraction of petroleum. The Cyrenaica National Federation has mostly been calling for the retransfer of the National Oil Company and all their related operators to Benghazi where the National Oil Corporation was established in the late 1960s. On 6 July 2012, armed Cyrenaica federalists halted pumping at five oil terminals in the east of the country in protest against the allocation of seats in the national assembly. The oil terminals at Ras Lanuf, Sidra, Brega, Zuweitina and Al Hreigaarea stopped the pumping and loading oil for 48 hours after armed federalists demanded that operations be shut down.

Cyrenaica federalists, in calling for equal representation at the legislative level, are thought to be the same members of the self-appointed Cyrenaica Transitional Council's military arm, led by Hamed Al-Hass, which for 15 days blocked the main coastal highway between Sirte and Ben Jawad at Wadi Al-Ahmar in the central north of Libya on the historic border between Cyrenaica and Tripolitania. That action came to an end after the NTC announced a controversial change to the constitution creating a 60-member commission upon which, unlike

in the 200-member assembly, Cyrenaica will have equal representation with Tripolitania and Fezzan.

Zawia rebels

Located about 50 kilometres west of Tripoli, the Zawia refinery is the main refinery in Libya. It has a capacity of 120,000 barrels per day and provides 40 per cent of western Libya's oil needs. On 4 November 2012, rebels from Zawia demonstrated in front of the Zawia refinery, shutting it down for two consecutive days. The protesters did not allow the employees to enter the company or fuel tankers to leave. As a result, the Libyan capital of Tripoli experienced huge petrol shortages and petrol stations saw long queues with scores of cars lined up waiting to fill their tanks. The rebels claim that they have not received adequate compensation and that the government has not given them their full rights in relation to petroleum extraction in their area.

2. Revolutionary legitimacy

The legitimacy of a regime or government usually derives from popular support, and is considered a basic condition for governing. Under the Gaddafi regime, legitimacy was derived from force. Post-revolution, the new Libyan government is founded on a concept called 'revolution legitimacy'. This concept confers legitimacy on the new government so long as it upholds the principles, goals and character of the revolution. The concept has gained momentum as Libya has been left without solid public and civil institutions for promoting and protecting the rule of law, promoting human rights and upholding international norms in relation to transparency and accountability.

In our view, the new government has not consistently upheld the principles, goals and character of the revolution. For example, the NTC issued Decision No. 15 of 2011 establishing the Integrity and Nationalism Council. While there is a complete absence in this decision of any national standards of transparency, financial and non-financial disclosure, and accountability, it contains strict standards to be applied to Libyans seeking to apply for a job with Libyan public entities or the diplomatic or political service. Most of these standards disqualify Libyans who have had any official, personal, business or intellectual connection with the former regime, without looking at the actions of that individual in the context of that connection. This system, which judges people based on personal attributes not his or her actions, is a violation of Libyan law and the international conventions to which Libya has committed itself.¹²

The NTC also adopted the Immunity Law on 15 November 2012, which guarantees the rebels legal immunity from all crimes committed during the armed conflict in 2012. This legislation has had a huge impact on promoting impunity and unaccountability and further establishing the principles of revolutionary legitimacy.

Furthermore, by officially excluding supporters of the former regime from participation in the management of the extractive industry, the new Libyan government risks creating a new underclass, which could become a future source of conflict.

3. Conflict risks for foreign companies

In the current context of insecurity in Libya, and particularly with the proliferation of weapons and potential for regional or tribal conflict, several EU companies operating in the extractive

¹² Examples of the standards set out in this decision for Libyans to be excluded from any key post within the Libyan public sector on the basis of this Decision include: anyone who has ever been head of a student union during Gaddafi's regime; anyone who has been known for praising the former regime or the 'Green Book' whether in the media or by addressing directly the Libyan society; and anyone who has ever been in a leadership position in one of the companies or institutions run directly or indirectly by the sons of Gaddafi (Decision No. 15 of 2011).

industry have raised concerns about the absence of a national security body such as the Oil Facilities Guards. The Oil Facilities Guards was a body emanating from the Libyan National Army assigned by the National Oil Corporation to protect oil and gas fields and facilities in Libya. In its absence, militias representing revolutionaries living in cities close to those facilities/fields are undertaking this protective role.

Given the absence of control over compliance by militias, including pro-government militias, with human rights standards and the lack of investigation into their human rights violations, the situation for EU companies operating in the extractive industry in Libya is particularly risky. Especially in areas close to oil fields, such as Zintan, Jalo and Ubari, EU companies such as Eni have reported incidents evidencing a lack of reliable protection by local militias. As a result, some EU companies such as Repsol, Wintershall and Eni have decided to implement their own security procedures, including crisis teams and emergency response procedures, security management systems, and risk assessment tools, to safeguard their personnel in risk-situations. However, these companies emphasise the insufficiency of these measures and the urgent need for a national protection body to be established.

4. Absence of the private sector

During the Gaddafi regime, private commercial or professional activities were severely restricted. The regime adopted several laws that suppressed civil liberties and violated the sanctity of private property, intellectual property and freedom of expression. Although in the last ten years, some liberation of private activity took place, this liberation was not accompanied by a legal and administrative framework to support it. Notwithstanding the apparent move towards a more active private sector, the Gaddafi regime created a number of investment bodies for transportation, construction and housing, now under the direction of the new government attached to the Cabinet, which ensures the continued *de facto* control of commercial activity by the State. These public investment bodies follow the joint venture legal framework adopted by the petroleum sector for dealings with the foreign investors.

The transitional government's Minister of Economy announced at the beginning of 2012 a policy¹³ aiming at driving the economy towards an increasingly liberalized system, with a particular emphasis on the private sector and regional empowerment. However, the public sector and the new central government continue to dominate commercial activity in Libya, with there is no real plan to deal with the problems of its underdeveloped political, economic and legal institutions and an oil-dominated economy. Moreover, foreign investors, in their exploration of new investment opportunities in the new Libya, continue to target only the public sector, primarily because of problems with capacity and efficiency in the private sector.

Consequently, there is still no real private sector in Libya as even the apparently private companies are owned directly or indirectly by the State. Although a small number of private traders and independent professionals, such as lawyers, doctors, and accountants, are practising today, the private sector still lacks the real structure and strength that characterizes the private sector in other countries of the region, let alone in Europe.

¹³ Al Arabiya News [online], *From Libya TV: Foreign investments in post-Qaddafi Libya*, accessed 29 November 2012, available at: <http://www.alarabiya.net/articles/2011/08/28/164413.html>

5. Role of EU companies in minimizing conflict risk

Some companies operating in Libya have engaged in activities traditionally defined as 'corporate social responsibility', meaning the support of initiatives or projects not required by law but considered a voluntary contribution to the society in which they operate. While these activities form only part of what should be responsible and conflict-sensitive corporate engagement and do not replace a company's responsibility to respect human rights, they do play a role in minimising conflict risk in Libya.¹⁴

Eni: Eni, which is the largest foreign player in hydrocarbon production in Libya, averaging 550,000 barrels per day, contracted with the Libyan Government in 2010 to invest in a social project to build a thousand houses in El Agheila in the Gulf of Sirte, as well as related infrastructure, a shipping port and industrial facilities such as a water desalination plant.

Wintershall: Wintershall has participated in humanitarian and emergency relief efforts by making financial donations to the International Committee of the Red Crescent and Red Cross and Save the Children to carry out the dispatch of relief shipments to areas in East Libya where there has been ongoing conflict and to refugee camps on the border with Tunisia. It also contributed to the provision of medical care, treatment and rehabilitation to severely injured Libyan rebels in Germany and opened a kindergarten in Yefren city with the capacity for 220 children.

Repsol: Repsol contracted with the Libyan Government in 2007 to invest €6.5 million for the refurbishment and restoration of the hospital in Ubari city in the Murzug basin; donated two ambulances, two buses and medical materials to the hospital; and provided training to its local medical and nursing staff at the Amman University in Jordan.

OMV: In 2011, OMV opened a mental and psychosocial health youth centre in Tripoli for distressed children and adolescents aged 6 to 25 to provide therapy and recovery from mental distress and war trauma. It also provided training to the local medical staff of the centre. In May 2012, the centre provided counselling and treatment to 260 local children and adolescents and aims to increase this number to around 1,200 children and adolescents over the next two years.

RWE Dea: RWE Dea funded a programme for the blind in Tripoli to provide support to approximately 180 students and adults by teaching them Braille and how to use orientation aids. The company has also provided a progressive local and international training programme consisting of a three-year IT course and English language, with on-the-job training for new graduates.

BP: BP carried out a detailed survey inside the old city of Ghadames and around its farms to preserve surrounding archaeological sites. It also sent a number of engineer graduates to the United Kingdom for postgraduate study.

¹⁴ This section is based on interviews with the human resource departments of major international oil companies in Libya by one of the authors, Zuhair Saleh, during the course of drafting this paper (see Annex 1: List of interviewees).

Part 3: Discussion points for EU

1. Risk identification and mitigation

High dependence on petroleum for many years, without proper and transparent governance, inappropriate national policies, poor economic and political performance, and the absence of government institutions are the legacy Libya has inherited from the former regime. These factors are also the principal drivers of conflict. In-depth study by local and foreign experts, stakeholders and related institutions is needed to identify all the risk factors that could lead to conflict in the new Libya.

A good starting point for the EU would be to encourage, supervise and monitor a constructive initiative involving, inter alia, a dialogue process of transitional legislative and institutional reform initiative through gradual mechanisms. This process should start by severely questioning current national policy, governance process, and legal and socio-political factors to analyse how these factors are influencing current conflict. This process should coordinate with actual stakeholders to propose a transparent management plan for the efficient and equitable governance of Libya's natural resources with sustainable development policies and conflict-prevention strategies. This process should cover the following practical stages:

- **Co-management:** Initiate a collaborative arrangement in which all stakeholders, including official institutions, national stakeholders, and external actors, share responsibility and authority for formulating national policy for the governance of Libya's natural resources. Co-management covers a range of arrangements from institutional and legal reform to informal practical approaches.
- **Conflict management:** Propose conflict procedures designed to limit, mitigate and contain conflict, eventually enabling a transformation from conflict to lasting peace by addressing the root causes and effects of conflict.
- **Conflict prevention:** Recommend measures to prevent low-level or long-standing disputes from escalating into significant violence between different groups and to limit the spread of violence and human rights abuses.
- **Conflict resolution:** Take action to address the irreconcilable differences of a conflict and thereby enable the Libyan State to resolve the conflict and deal with other conflicts through open and foreseeable processes.

2. Rule of law and transparency

Given the characteristics of the Libyan legal system under the Gaddafi regime and, in particular, the absence of a clear mechanism for the effective implementation of its regulations, the EU should encourage Libya to develop the necessary legal and political framework to ensure the protection of human rights and rule of law in Libya, and to prevent violent conflict. This framework should focus on the transparency of the administration as a fundamental tool for stability in Libya.

The existing EU-funded project for reform of the Libyan administration through the creation of a 'public administration capacity-building facility'¹⁵ has been hailed as a step in the right direction. As part of this, it is important for the EU to make information about the evolution of this project accessible to Libyan civil society, including through the website of the EU Delegation to Libya. By way of example, in 2002 the World Council on Sustainable Development established the Extractive Industries Transparency Initiative, a global effort to

¹⁵ This project was assigned for its implementation to the International Management Group in December 2011. <http://www.img-int.org/Central/Public08/PublicNews.aspx?PublicContentId=4f974a6a-c6ac-4ea8-b808-5276f1e4f21b>

ensure that revenues from extractive industries contribute to sustainable growth and development. More than 20 countries have signed the initiative so far, Nigeria being the first to enact its provisions into national legislation in May 2007. The initiative provides for comprehensive annual audits of oil, gas and mining industries and closer oversight of the extractive sector.¹⁶ Libya should be encouraged to become a signatory to this initiative.

3. Corporate social responsibility

Given the prominent role that the Libyan State plays in the Libyan economy, and in accordance with the European Commission Communication on Corporate Social Responsibility¹⁷ and the EU Strategic Framework and Action Plan for Human Rights and Democracy,¹⁸ the EU should encourage Libya to adhere to international agreements related to corporate social responsibility, such as the United Nations Guiding Principles on Business and Human Rights, which stress Libya's commitment to protect human rights also as an economic actor;¹⁹ the United Nations Global Compact; and the 2011 OECD Guidelines for Multinational Enterprises (as a non-member/observer country). Libya would also benefit from becoming increasingly involved in the activities of the International Organization for Standardization (ISO), including by receiving training and technical assistance, so as to raise awareness among the emerging Libyan private sector about international standards, including in the area of social responsibility, as set out in the ISO 26000 Guidance Standard on Social Responsibility.

4. Security

The absence of a national armed force capable of ensuring the protection of EU companies has allegedly led the Libyan government in some cases to recruit local militias to protect the personnel of EU companies working in the extractive industry. Therefore, addressing transitional justice and the type of discrimination and security risks it is generating in Libya has to be one of the top priorities in EU-Libya relations.

Pressure should be exerted on the Libyan State to refrain from using its power to serve one side of the Libyan population, as this is directly against the establishment of a democratic State in Libya and, therefore, may undermine stability in the country. The Libyan State needs urgently to address human rights violations committed by rebels since the end of the revolution and ensure that those responsible for violations are held accountable. It is a most pressing issue, also for EU companies operating in the extractive industry, that the Libyan authorities are committed to effectively building national security forces that are trained in, and abide by, human rights standards and regulations. These issues should also, and most importantly, be included in the bilateral dialogues between EU Member States and Libya and, in particular, in discussions between those Member States that have privileged relations with Libya as a result of mutual interests in areas such as energy, trade and migration.

Libyan civil society should be kept informed of ongoing work on the EU Human Rights Strategy for Libya and consulted in this process, including regarding the rule of law and

¹⁶ Cf <http://eiti.org/>.

¹⁷ European Commission, *Communication 'A renewed strategy 2011-14 for corporate social responsibility'*, COM (2011) 0681 final (October 2011), accessed 22 November 2012, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0681:EN:NOT>

¹⁸ Council of the European Union, *European Union strategic framework and action plan on human rights and democracy*, 11855/12 (June 2012), accessed 22 November 2012, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

¹⁹ Cf United Nations, Special Representative of the Secretary General J. Ruggie, *Guiding principles on business and human rights: Implementing the United Nations "Protect, respect and remedy" framework*, A/HRC/17/31 (March 2011), pp. 6–8, [online], accessed 22 November 2012, available at <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>

transitional justice-related issues. Access by Libyan civil society to the Focal Point on Human Rights at the EU Delegation to Libya should be facilitated.

5. Opening-up of the economy

The absence of an adequate structure for private sector regulation in Libya is one of the most important reasons for economic and political tension in the pre- and post-revolution periods in Libya. The increasing power of the private sector is one of the main reasons for tension today. The EU should encourage the opening-up of the economy in Libya, its accession to the World Trade Organization, the development of its private sector and the diversification of its economic activities. Apart from development cooperation in the field of education and training, a free trade agreement would contribute to the development and diversification of the Libyan economy. Such an agreement should, however, support the private sector in Libya and contain conditionality clauses regarding respect for human rights, conflict prevention, and the rule of law, as well as provisions regarding the social impact of such an agreement on vulnerable groups in Libyan society.

The recent European Commission Communications on Trade, Growth and Development²⁰ and on Social Protection in International Development,²¹ is a welcome step and will hopefully lead to concrete steps in the design of future policies towards Libya in order to foster its inclusive growth and sustainable development. Libyan civil society should be consulted during the elaboration and implementation of these agreements and policies towards Libya, and information on these discussions should be made accessible to the general public through the website of the EU Delegation to Libya, as well as through specific consultations and dialogue sessions with Libyan civil society. Furthermore, the EU should insert and implement effectively conditionality clauses on human rights and conflict prevention, including corporate social responsibility, in all future framework or association agreements with Libya, as well as in any free trade agreements. As suggested in the EU Strategic Framework and Action Plan for Human Rights and Democracy under outcome 11, the European Commission Regulation 1236/2005 on trade in goods²² could be used as a conditionality mechanism for Libya as well.

6. EU's human rights strategy towards Libya

The EU's Human Rights Strategic Framework and Action Plan of 25 June 2012 stresses the need for the EU to promote human rights, democracy, and the rule of law in a consistent way across all of its policy areas, including those with an external dimension, and across its institutions and services. While this strategy is welcomed, in the case of Libya, the promotion of these values is yet to permeate, particularly in the areas of trade, energy, and business. In that sense, the European Commission 2011 Communication on Corporate Social Responsibility is welcomed²³ and has spurred an invitation to Member States to develop or update their priority lists at the national level to promote corporate social responsibility in support of the Europe 2020 strategy. The current multi-stakeholder consultations that have

²⁰ European Commission, *Communication 'Trade, growth and development – Tailoring trade and investment policy for those countries most in need'*, COM (2012) 22 final (January 2012), accessed 22 November 2012, available at http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc_148992.EN.pdf

²¹ European Commission, *Communication 'Social protection in European union development cooperation'*, COM (2012) 446 final (August 2012), accessed 22 November 2012, available at http://ec.europa.eu/europeaid/what/social-protection/documents/com_2012_446_en.pdf

²² Council of the European Union, 'Council Regulation (EC) No. 1236/2005 Concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman, or degrading treatment or punishment', *Official Journal of the European Union*, L 200/1 (June 2005), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:200:0001:0019:EN:PDF>

²³ European Commission, *Communication 'A renewed strategy 2011-14 for corporate social responsibility'*, COM (2011) 0681 final (October 2011), accessed 22 November 2012, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0681:EN:NOT>

been launched as part of a dialogue to develop human rights guidance for certain sectors, including oil and gas, based on the UN Guiding Principles on Corporate Social Responsibility, are the ideal framework for underpinning human rights and supporting peacebuilding in these different policy areas. The involvement of the different services concerned with corporate social responsibility within the European Commission, in addition to the European External Action Service, should be maintained during this process in order for it to be effective. Libyan civil society should also be actively engaged in this process of consultation.

7. Coherence between EU and Member States

The EU should push for greater coherence between the EU and its Member States' policies and relations with Libya in the area of human rights and conflict prevention, and, in particular, with regard to the existing regulations on business and human rights. In addition, the EU should push for transparency and the reporting of its companies operating in the extractive industry in Libya at all levels (financial and non-financial), including on human rights, along the lines of the policy currently adopted by Denmark. Given the current security situation in Libya, it is particularly relevant to encourage EU Member States to join in the United States-United Kingdom initiative on security and human rights (2000 Voluntary Principles on Security and Human Rights), so that EU companies operating in the extractive industry in Libya are aware of the potential impact of human rights violations on their activities, as well as of the impact that their decisions may have on the human rights situation in Libya.

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Libyan legislation

Libyan Constitutional Declaration of 2011
Libyan Civil Code of 1954
Libyan Commercial Code of 2010
Libyan Labour Code of 2010
Libyan Petroleum Code of 1955 and its Regulations
Environment Code No. 15 of 2003
NTC Decision No. 15 of 2011

Annex 1: List of interviewees

Human Resources Manager of Baker Hughes and ex-head of the Foreign Companies Inspection Department, Ministry of Labour, Libya (Interviewed 13 and 18 October 2012, Tripoli)

Health, Safety and Environment Senior Specialist of Eni Gas, Libya (Interviewed 21 October 2012, Tripoli)

Legal Partner of Attakadum Consultancy Firm, Libya (Interviewed 15 October 2012, Tripoli)

Health, Safety and Environment Representative of Repsol, Libya (Interviewed 17 October 2012, Tripoli)

Health, Safety, and Environment Supervisor of Total (Interviewed 22 October 2012, Tripoli)

Human Resources and Administration Representative of Eni Gas (Interviewed 14 October 2012, Tripoli)

Ex-Health, Safety and Environment Supervisor of Statoil (Interviewed 22 October 2012, Tripoli)

Process Engineer of Wintershall (Interviewed 10 November 2012, Tripoli)

Communication and External Relation Analyst of Repsol (Interviewed 11 November 2012, Tripoli)

General Manager of Nazaar Oil Services (Interviewed 11 November 2012, Tripoli)

Archaeology Researcher of Ghadames Museum (Interviewed 11 November 2012, Ghadames)

University lecturer and PhD student (Interviewed 12 November 2012, Kufra)

University lecturer (Interviewed 12 November 2012, Jalo)

Administration Coordinator of Schlumberger (Interviewed 12 November 2012, Tripoli)