

L. Libya

1. Background

After the downfall of the regime of Muammar Gaddafi, a new state is developing in Libya. Academics at the Max Planck Institute have been studying the country's political and judicial system since 2006, when the son of the self-proclaimed "leader of the revolution", Saif al-Islam Gaddafi announced the creation of a modern constitution.

In the years 2008 and 2009, the focus was on Libyan constitutional law. In regard to the constitution, Libya was organised in a remarkable way. Political decision-making took place at so-called "Basic People's Congresses" to which every Libyan who was entitled to vote belonged. Any representation of the people by members of congress, for example in terms of parliamentary democracy, was seen as distorting the will of the people. Thus a parliament, parties or a government in the classical sense did not exist. The 350 "Basic People's Congresses" presented their decisions with imperative mandate to the "General People's Congress", which convened several times per year, and this is where the decision-making was coordinated. A constitution did not materialise until 2011, even though one had already been announced in the revolutionary constitutional declaration of 11 December 1969. Policies similar to constitutions were spread out over four laws in 1977, 1988, 1991 and 2001. Occupying public office was also insecure in the ministries known as "secretariats", for example. Each position could be filled with someone new at any time. The law-related decisions made by congress were also insufficiently prepared. The participants often felt insufficiently informed; there was frequently not enough time for functional debate.

The desire to reform the political system increased in 2008 and 2009. The main emphasis, as evidenced by the discussions, was the strengthening of legal security and fighting against judicial corruption. In 1998/1999, the commission compiled a draft constitution but the handover to the Basic People's Congress was blocked. There were further attempts at reform in

March 2009; Saif Al-Islam Gaddafi announced the adoption of a constitution, yet this was never introduced.

The revolution, which began in Benghazi in mid-February 2011 and swept the entire country shortly after, targeted decades of despotic rule in particular. The revolution resulted in an interim constitution from the National Transitional Council in which human rights are clearly stressed as a reaction to the previous despotism. Based on this interim constitution, structures of the new Libyan state are starting to form; in the meantime, parliament has taken over government duties and is working on a constitution for Libya. A group from the institute is involved in this process.

2. Projects

The transformation of Libya into a constitutional state raises many questions. Most Libyan politicians, lawyers and judges do not know about modern forms of statehood, neither from their own personal experience nor from their studies and are not informed about international law standards in the constitutional and judicial sector. During the revolutionary changes, a fact-finding mission led institute staff to Benghazi where they held the first information and advisory discussions with representatives of the National Transitional Council and its executive committee, judges and lawyers, members of revolutionary committees, imams and other population groups. The mission, financed by the Federal Foreign Office of Germany, aimed above all to analyse which requirements are to be expected after the fall of the Gaddafi regime. In addition, institute staff led the first advisory discussions to ascertain, for example, whether the National Transitional Council represented a capable “de facto regime” under international law.

In March 2012, the discussions with the National Transitional Council intensified and cooperation with many Libyan institutions was agreed upon, including the National Transitional Council, the highest Libyan constitutional court and the University of Benghazi.

In the discussions, led by the Libya Team on location in Tripoli and Benghazi with representatives of the National Interim Council and executive committees, judges and lawyers, members of revolutionary committees, imams and other population groups, it became apparent how great the need for knowledge transfer really is.

A clear plan of how to contribute to the successful transformation of Libya originated from this. The working group's project deals with state-building and judicial reform. The aim of the project is to make a positive contribution to Libya's transformation into a democratically formed constitutional state.

a. State-building sub-project

Several seminars in Libya and a study trip made by Libyan politicians to Germany serve as a way of communicating knowledge about the structure and function of democratic constitutional states. The participants gain knowledge on a number of areas which arose during the transition process. Flexible advice visits in Germany and Libya aim to support Libya's key figures by providing them with neutral legal expertise on various constitutional and legal topics. The main themes of the study visit are the separation of powers, function and competency of parliament and government as well as the monitoring of compliance with constitutional norms via the Federal Constitutional Court of Germany and other institutions.



Opening of the Tripoli Conference by the Deputy Chairman of the National Transitional Council, Salem Gnan

To support the development of the constitution, the members of parliament and the constituent assembly are therefore to be trained in the area of separation of powers, fundamental rights, the position of international law in the national legal system and decentralisation.

From 21 to 24 May 2012, one of the conferences organised by the working group took place in Tripoli. At the conference, over 80 participants discussed various areas of the forthcoming constitutional process. The panels dealt with human rights issues, decentralisation and the role of Sharia in the new constitution, amongst other things. International experts from other Arab countries (Egypt, Tunisia) also presented their legal opinions with Libyan experts from the universities in Tripoli and Benghazi. The conference attracted widespread media attention and the working group's mediating role in identifying and approaching constitutionally relevant issues was praised by the Libyan participants at the event.

b. Judicial reform sub-project

The planned judicial reform demands that judges and potentially other lawyers working in the field of justice be trained in international law (e.g. fundamental right to justice according to ICCPR) and constitutional law (initially on a comparative basis).

The seminars carried out by the working group aim to convey constitutional principles and reinforce the corresponding attitudes and values of judges and other legal professionals working in court (public prosecutors and lawyers). These actors must learn the international standards of their profession, which the population and the international community are expecting them to meet. These standards are contained in international law but also in the applicable Libyan law and in documents such as the Constitutional Declaration of 3 August 2011. They concern first and foremost regulations for adhering to fundamental and human rights and lawyers must learn how to deal with this. In particular, the fundamental right to justice (fair trial principles), principles of judicial independence, the relationship between the institutions and ethical rules are included. Constitutional principles must be demonstrated to Libyan lawyers so that the efficient transformation into a constitutional state after the constitution comes into force can be successful.

The judicial reform sub-project helps the named actors to acquire a systematic understanding of the fundamental changes to their work and apply the relevant norms correctly. The main aim of the sub-project is ultimately to strengthen the judicial sector by embedding rule of law in the courts in order to create trust in the new, democratic state. The Libya Team is currently producing a handbook on constitutional principles as a teaching material.

3. Further planning

There are plans to considerably expand the projects in Libya through the insitution as of 2013. Alongside the additional constitution and legislation consultation, extensive teaching programmes based on the Iraq project are envisaged. The focus here is on educating in the field of rule of law and human rights protection.

