Searching for Justice in Post-Gaddafi Libya

This report presents preliminary findings of the Libyan-Dutch research project “Access to Justice and Institutional Development in Libya (AJIDIL),” carried out collaboratively by the Van Vollenhoven Institute for Law, Governance, and Development (Leiden University) and the Benghazi Research and Consulting Centre (University of Benghazi).

AJIDIL explores people’s access to justice and the working of law and legal institutions in post-Gaddafi, post-conflict, democratic Libya. The report focuses on several specific concerns, such as doubts about home ownership, the practice of people’s lawyers, or judicial interpretation of Sharia. These case studies are placed in the wider context of law, governance, insecurity, and the role of international rule of law promoters in Libya.

The AJIDIL project has been commissioned by The Hague Institute for Global Justice and is part of a larger research project conducted by The Hague Institute on achieving sustainable peacebuilding, funded by the City of The Hague.
Searching for Justice in Post-Gaddafi Libya

A Socio-Legal Exploration of People’s Concerns and Institutional Responses at Home and From Abroad

Jan Michiel Otto
Jessica Carlisle
Suliman Ibrahim
Nasser Algheitta
Jazia Gebril
Amal Obeidi
Khalifa Shakreen
Mohammed El-Tobuli

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People’s Problems, Practices and Patterns of Justice Seeking: Towards a National Knowledge Base

Jessica Carlisle and Jan Michiel Otto

11.1 From Case Studies and Interviews to a More Comprehensive Analysis

The case studies conducted to date by the AJIDIL research team have begun to provide in-depth information about access to justice in Libya, and a tantalising insight into the complexity of justice seeking and state and non-state institutional responses to potentially legal problems.

Two years after the success of the 17th February Revolution, Libyans can be seen trying to resolve three categories of injustices (see 2.4), i) those resulting from the politics of the Gaddafi regime, including disputes over the ownership of property expropriated under Law 4/1978 (see Chapter 8), compensation claims from the illegally detained (see Chapter 9) and the demand for truth and compensation from the families of the victims of Abu Salim (see Chapter 10); ii) those which occurred during and as a result of the 17th February Revolution, for example, cases of dismissal by the Integrity and Patriotism Commission (see Chapter 5); and, iii) “ordinary” injustices, such as criminal trials (see Chapter 6) and family disputes arising from divorce (see Chapter 7).

AJIDIL’s research on these case studies started to evaluate the work of several state and non-state institutions: the courts, the public prosecution, people’s and private lawyers, the police, government-sponsored compensation committees, tribal councils, civil society, militias and the family. Our findings have begun to provide some detailed information both about the interactions between justice seekers and these institutions, and between the institutions themselves during a post-revolutionary period.
The clear advantage of continuing to pursue the case studies approach is the opportunity this gives the AJIDIL team to further contribute concentrated research into issues that are of concern to policy-makers, contributing information about justice seekers’ behaviours and institutional responses with regard to potentially legal problems.

Projected case studies are likely to include a focus on victims of theft and assault, employment disputes, the scope for justice in cases of gender-based violence, and the problems encountered by migrants as a result of their legal status. Future research will also consider the work of institutions such as police stations, prosecutors’ offices, the administrative and civil courts, local councils, and the Council of Wise Men (*majlis al-hukuma*), a body of tribal leaders which has played an important role in conflict resolution since the end of the revolution.

However, although the detail resulting from the case studies will continue to provide analyses that will be valuable to policy-making, in order to obtain a broader overview of justice seeking in Libya and to contribute meaningfully to policy discussions, the AJIDIL research plan for 2013-4 will also include a quantitative nation-wide survey regarding access to justice.1

### 11.2 National Access to Justice Survey (NAJS)

The NAJS survey will broadly ask: What are the potentially legal problems that respondents have experienced in the last ten years, and what percentage of the population has experienced them? How and where did people try to resolve these problems? What then happened: what were the barriers, how were respondents treated, what were the outcomes? The survey will also ask about Libyans’ perceptions of the legal system. It will be conducted by the Benghazi Centre for Research and Consulting of Benghazi University in co-operation with the Van Vollenhoven Institute of Leiden University.2

The NAJS survey will be the first of its kind in Libya and will be broadly modelled on the UK “Paths to Justice” survey and the subsequent Dutch “Paths to Justice in the Netherlands” survey.3 The purpose of the NAJS is to

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1 This survey is being developed under direction of Dr Fathi Ali as a project funded and supported by the Libyan government (see 1.5.2).

2 The design of the research will be the result of the combined expertise of the BRCC/BU AND VVI/LU. It will also draw on input from international advisers with specific experience in conducting access to justice surveys, lessons learnt from similar surveys that have been done in other countries, and the support of an academic advisory committee.

3 Genn (1999); for a presentation of the aims, methodology and results of the “Paths to Justice in the Netherlands” survey see http://tinyurl.com/sjpql-078.
provide useful data regarding the use and perceptions of state and non-state institutions by justice seekers in order to assess the specific circumstances of justice seeking in post-conflict Libya. The Najs findings will consequently provide information about the advantages and disadvantages of using the state legal system (the police and courts) and non-state institutions (such as tribes and militia) from the perspectives of people who have had potentially legal problems over the past ten years. This information will then be available to inform policy decisions in the justice sector.

The survey will be conducted by means of around 40 minute-interviews with 2,050 people across Libya who will be asked about problems they themselves have experienced. The sample will largely reflect the demographics of the nationwide population (gender, age, location); it will also take into account the need to capture the views of communities perceived as being pro-revolutionary or loyalist on important transitional justice issues. However, it has been agreed that it is beyond the scope of the survey to accurately represent the opinions of minority groups such as the Tebu and Amazigh populations, or of migrants. A further study specifically targeting such groups in Libya may be commissioned in the future, if this is necessary.

Najs wil specifically ask people when their problems began and for a full account of which state and non-state institutions have become involved in them. This will allow us to consider respondents’ and institutions’ behaviours, both before and after the revolution. The survey will further ask about the conclusions, or continuation, of these problems and respondents’ levels of satisfaction with these outcomes. The survey will additionally explore respondents’ levels of trust in various institutions and their sense of what constitutes justice.

11.3 Landscape of People's Problems

Our work on Najs is presently at a developmental stage, in order to ensure that the survey will include the widest range of potentially legal problems, institutional responses and likely outcomes to problems; that the wording of the questions are appropriate; and that there will be comprehensive memory prompts encouraging interviewees to maximise recall and reporting (Genn 1999, 15). We anticipate that in order to design a survey that reflects the complexity of behaviour in the field of potentially legal problems across Libya, this developmental stage will take several months of extensive gathering of data in the field. Focus group discussions and in-
depth interviews will consequently be held in, and in the towns around, Tripoli, Benghazi and Sebha.

We expect that the focus groups will lead to the documentation of categories of problems (e.g. family, criminal, employment), specific types of problems (e.g. assault, car crash, theft), state and non-state institutions (e.g. family, court, tribe) and conclusions (e.g. court ruling and enforcement, no action, self-help). The most important categories and types will be selected for inclusion in the survey.

11.4 Where Libyans Go with their Potentially Legal Problems

The final list of “institutions” people might use when they have a problem will be finalised based on information gathered during the focus groups. However, drawing on the expertise of the AJIDIL research group so far, we currently have a working list of a dozen: family and social networks, tribe, religious leaders, local government, police, militia, civil society organisations, private and people’s lawyers, the courts, the national human rights institution, national government and bureaucracy, and parliament and ministers.

We anticipate that people are likely to use more than one of these institutions while trying to have their problem dealt with, either going from one to another in succession, or appealing to more than one simultaneously as they “forum shop” for a resolution. Moreover, the NAJS will enable the AJIDIL team to analyse the extent to which people feel free to choose which institution they wish that becomes involved in their problem, and how satisfied they are with the outcome.

The family and social network is often the first source of support and help to which disputants turn. There are some forms of dispute, such as failing marriages or arguments about the raising of children, which seem obvious problems to attempt to settle within the family (see Chapter 7). In addition, the family – together with friends and acquaintances – can become involved in all forms of disputes in an attempt to resolve problems swiftly and according to the disputants’ sense of justice. The importance of family and social networks has remained constant throughout the Gaddafi regime, the 17th February Revolution and into the democratic period. However, a lack of family support, or its active opposition to making a claim, may have an effect on what resolutions are regarded as realistic, or whether claims are made at all.
The influence of the *tribe* might equally facilitate, or impede, the resolution of a problem to a justice seeker’s satisfaction (see Annex II). The tribe can provide collective support in dealing with problems through demonstrating solidarity. Tribal affiliation is often reinforced by members’ contributions to a collective fund – into which payment is made on a regular basis – which can be used to financially settle claims. However, when problems are resolved between tribes this may involve the imposition of standards of “justice” upheld by the tribe’s leadership that do not reflect those of the justice seeker.

The role of *religious leaders*, namely imams and sheikhs, in addressing problems has not much featured in the AJIDIL research findings yet, but we anticipate that it may nevertheless be significant. It may be that this involvement is limited to certain types of problems – such as within the family – but this should not be assumed.

The influence of *local government* on people’s attempts to access justice is also of interest to the Najs. In the immediate aftermath of the 17th February Revolution, local council members reported people bringing them justice problems of all types. More recently, council members in the main cities have expressed their frustration about lack of support and funding (see 2.3.6).

The involvement of the *police* is critical if people want to take problems such as theft, assault, murder, traffic accidents, and many others, to court. Alternatively, justice seekers might prefer to utilise *militias* in order to get their problems resolved, or both. This decision might be informed by confidence in the legitimacy or efficiency of either institution, by having personal connections with members of either, or by force of circumstances, depending on what kind of problem someone has.

Since the revolution, hundreds of *civil society organisations* (CSOs) have emerged, advocating for particular groups and problems, and sometimes filing legal claims. CSOs are actively involved in all three categories of injustices as distinguished in this report (see 11.1) in different sorts, and at various stages, of justice seeking.

As a new democracy, Libya recently established a *national human rights institution*, the National Commission for Public Freedoms and Human Rights. This commission receives, records, and investigates complaints about human rights violations; it is likely to be included in the national sur-

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4 This was illustrated during a discussion between members of the Benghazi local council and the AJIDIL research team in July 2012.
vey in order to assess to what extent and for what purposes such institution is actually known and used by Libyan justice seekers.

The use of lawyers, both members of the private bar and the people’s lawyers, are linked to use of the courts, although some problems might be concluded in lawyers’ offices and not all court hearings require lawyers (see 7.3). NAJS will provide information about why justice seekers chose to be represented by private or people’s lawyers, whether this choice is informed by the type of problem they have or their financial situation, and how satisfied people are with the work that each do on their cases. In addition, the data will be a rich source of information about the perceived efficiency, fairness and failures of various court circuits across Libya.

An alternative avenue that justice seekers might take could be to seek political measures and interventions towards the resolution of their problems through appealing to members of the national government and bureaucracy, or to representatives in parliament or government ministers. The importance of personal connections in the use of these institutions and the types of assistance that they bring will be of interest when considering the equity of current access to justice in Libya.

11.5 Three Different Stories

This section illustrates the preferences and circumstances shaping justice seekers’ use of these institutions for their disputes by some of the fieldwork data that the AJIDIL team have already gathered during their research over the past year.5 These accounts indicate the importance of time and position to the choices that people make in trying to get justice; they also describe change and continuity in justice seekers’ behaviours before and after the 17th February Revolution.

Such fieldwork experiences should also help the AJIDIL team, when analysing the mass, nationwide data provided by NAJS, to identify differences and commonalities in access to justice across regions, between genders and for each generation. For, the NAJS is also intended to track changes in people’s behaviours over time by asking which institutions they preferred in different periods, i.e. under the former regime, during government by the NTC and since the election of the GNC.

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5 The following accounts were gathered by Dr Carlisle during her fieldwork in Tripoli throughout mid-2012 to mid-2013, and Dr Ibrahim, Dr Gebril, and Dr Carlisle during focus groups in Benghazi in Spring 2013.
11.5.1 Tales from two cities: views of disputes in Benghazi and Tripoli

The middle-aged and older generations have experience of problems that may have run on for decades. The stories that these generations have told the Ajidil research team illustrate how justice seekers often have attempted to resolve a problem using a number of institutions, assessments of institutions’ relative strengths and weaknesses, and reflections on how justice is situated within Libya’s social and political realities.

11.5.2 Opportunities to use force in property disputes: 1979 and 2012

Fuad’s story took place during the Gaddafi period. He offered to tell his story as an illustration of the effects of the former regime’s policy of expropriating and distributing property. His vivid telling of what had happened to him provides an interesting example of how resourceful justice seekers may attempt a succession of strategies to achieve what they want. It also offers a detailed description of his navigation through the institutional maze of the late 1970s.

He was a young man and living in the United States with his young family when Law 4/1978 was passed. At that time he was renting out his house in Tripoli, the only property he owned, to a doctor who had, in turn, sublet it. By the time Fuad returned in 1979, his original tenant had died and the remaining tenants had stopped paying rent to his cousin, who Fuad had left in charge of his affairs. His cousin had tried to collect payments via the committee with responsibility for locally overseeing the implementation of Law 4 (see 8.3), but these had been erratic and so he had given up. Moreover, the inhabitants refused to leave the house, even though he threatened them. His neighbours told him that one was a doctor and the other a pharmacist and that both were Egyptians. Under the terms of Law 4 Fuad should, therefore, have had a strong case for restitution of his property since it was his sole residence and the occupants of it were foreigners.

However, in the late 1970s Fuad faced successive obstacles in having his legal right enforced. When he went to complain to the local committee in charge of implementing Law 4, they offered to allocate him a new house. He retorted that he did not want a new house; he wanted his own house back. The committee then agreed that they would find a new house for the current occupants. He went back to the committee every day for two to three weeks, but nothing came of it. He then discovered that a close friend from his youth had become the head of implementing Law 4 at the national level and managed to meet him after a six-month wait. This was clearly a
very emotive exchange. The head said he would make sure Fuad’s situation was brought to the attention of the General People’s Congress and asked him to, “Be quiet, be calm.”

The GPC passed information about his case back to the local level. However, this resulted in Fuad again being offered another house. This made him very angry and he threatened to take the house back by force. At this point, however, Fuad still had connections established before the Gaddafi regime, which he thought might be able to help him, in particular an old friend who was then the chief of police in Zawiya. This old friend sent him to see the chief of police in Tripoli where he gave a statement. Finally, Fuad seemed to be on the right track. The chief of police wrote an instruction to the local police station instructing them, “If what he says is true, you should eject the Egyptians because they are single [unmarried].” However, when Fuad took this to the head of the local Law 4 committee he was told, “put it in the water.” Fuad again complained to the police who told him that this exchange was inevitable; any such a command was in reality worthless. The police officer he spoke to had himself lost his home under Law 4. Fuad recalls that this policeman was also upset and suggested that he should respond with violence to get his property back.

Fuad says that he felt that he had come to the end of the line as far as securing any kind of help, “No government, no law, no one would help me. What could I do for myself?” He decided to take matters into his own hands and to try to eliminate the main tenant. “I thought about ways to kill him. I wasn’t sleeping. I decided to do it by car.”

He subsequently waited for the man to drive out of the house before ramming into him with his own car. Fuad very badly damaged the other man’s car and said that the man saw who it was and tried to run away. Fuad attacked him in the street. He then went back to the small cafe where he had been waiting earlier and claimed to have been there all along when the secret police came looking for him. The owner knew him well and vouched for him. He was held by the police for four to five hours but then released after speaking to someone with connections to the regime. The police could not find sufficient evidence, so this matter was not pursued. However, the occupants remained in his house.

Fuad remembers talking to people and being widely encouraged to use violence in order to conclude his problem. At this point it seems that he felt that every state institution that might have been of any assistance had failed him; he does not seem to have considered going to court. Eventually he met a taxi driver who had joined a revolutionary committee and was expecting to be given priority in land distribution after registering for an
allocation. Fuad explained that the revolutionary committees “had the most power” during this period. The taxi driver took Fuad to his branch of the committee where he gave a speech in support of evicting the Egyptians from the house. Fuad said that the doctor initially refused to be relocated because the new house did not have a telephone, but the revolutionary committee eventually moved him out. Fuad and his family have remained in the house ever since.

Fuad’s story about using his connections to get back his property is echoed in what people often say about what happened in property disputes after the 17th February Revolution. The government’s lack of monopoly of violence given the continual presence of militia on the streets, and the weaknesses of the army and police, has given some families the opportunity to seize lost properties back by force. There are numerous stories of militia forcibly evicting occupants since the revolution.

A widow in her early 60s, Samia explained in early 2013 that her family lost nine villas as a result of Law 4/1978. Samia said that this property was the bulk of her and her siblings’ inheritance: her father had meant to leave them to his children. Samia has been struggling financially since her husband died. The cost of living is rising steadily in Tripoli and she felt the need for more income. After the revolution an opportunity arose via a friend of her son who was involved in a militia. He arranged for the reclaiming of two of the nine villas by force. Samia has since become involved in an organisation lobbying for former property owners’ rights in order to organise the return of the remaining seven properties. She notes that some people cannot be forcibly evicted from occupied properties since there is considerable fear that the occupants may be armed, or may have connections with groups that have weapons.

Fuad’s and Samia’s stories are interesting accounts of the extent to which determined justice seekers may “forum shop” their way through a number of institutions in order to reach their aims. It is also a salutary reminder that force, whether embodied in institutions allied with or against the state, may be the most effective route to a settlement.

11.5.3 State and tribal justice in dealing with murder: 2008 and 2012

Access to justice for the victims of violent crimes may equally be sought through non-state institutions, in cases in which the victim’s family may face a choice between tribal or court intervention.
Sawsan recalled a murder case that occurred in Benghazi before the 17th February Revolution, which the victim’s family felt has not resulted in justice, although the perpetrator was imprisoned. The murder, she remembered, was motivated by robbery and the murderer was a neighbour of the victim. She recollected that the offender’s family tried to resolve the problem “traditionally” by approaching the dead man’s relatives directly. Such an attempt at reconciliation between families would usually be brokered by the offender’s tribe. Senior representatives of the tribe – all middle-aged or older men – approach the aggrieved family and try to bring about reconciliation between the two families by arranging a meeting at which an apology will be offered and a sum of “blood money” paid in compensation to the victim’s family. If an agreement is reached this may mitigate the legal penalties imposed on the murderer in the criminal courts (see 6.1).

However, Sawsan explained, this wronged family angrily refused the offer of settlement, demanding that the law should take its natural course and that the offender should be given the severest possible sentence. In 2008, the perpetrator was sentenced to life imprisonment. By 2011 he was out again having been freed from prison during the 17th February Revolution. He subsequently joined a revolutionary militia and has since been untouchable. Sawsan described the victim’s family’s feeling that the man who killed their relative had “only” been in prison for three years. She said that they are unrepentant about the route they chose to try to achieve justice, but they now feel abandoned by the state, since it allows the killer to remain at large.

11.5.4 Traffic accidents as a daily event: continuity before and after the revolution

The avoidance of tribal involvement in problems and the failings of the legal system were a central theme during a conversation amongst a group of women in Benghazi in early 2013. The topic under discussion for part of this meeting was road traffic accidents. Libya is reported as having the highest number of traffic fatalities in the world, with 2,728 deaths recorded for January to November 2012.6 Dealing with the implications of these deaths, or the serious injuries that can result from incidents on the road, may involve both the claims for compensation, and criminal charges. In

a room of around 15 participants during the meeting in Benghazi, three women volunteered stories about serious incidents on the road.

During the discussion, Nahda complained that traffic policemen are always biased against female drivers. In support of this statement, she described having been involved in a serious accident in which a large truck ploughed into the side of her car, wrecking it completely. The driver of the truck was speaking on his mobile phone when the accident happened and eyewitnesses agreed that he was at fault. Nahda was shaken, but uninjured, and wanted to press a complaint. In the end, however, she said that she was forced to give up her claim after the truck driver made use of contacts he had within the Benghazi police force.

Other women nodded in agreement. One added that she knew of a similar story in which only one of the drivers involved in a three car pile-up was forced to take responsibility for the accident, although it was known that the driver of one of the other cars involved – a man who had connections with the police – had been just as culpable. A third participant noted that some wealthy families prefer to pay out compensation when their members are involved in traffic accidents, regardless of who was to blame. This is to try to avoid the involvement of either the police or tribes in resolving the resulting problem.7

11.6 Towards a National Access to Justice Survey

The three stories above demonstrate that interviews and focus group discussions may alert us to people’s problems, practices, and patterns of justice seeking. They form part of the developmental stage of the NAJS, which is estimated at eight months in total. Focus group teams in different regions are still to be trained, a great number of justice-seekers and justice-providers are still to be interviewed, individually and in groups, before we have enough material to start designing the questionnaires. The transcription and analysis of data from the group discussions and personal interviews will also take time.

These data will be discussed in a workshop with a technical expert in questionnaire development and international experts in quantitative sociological studies. As soon as the survey is designed and the machine-read-

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7 See Chapter 6 for an analysis of being subject to the criminal justice process after car accidents involving fatalities; Annex II for tribal involvement in concluding disputes following a death.
able questionnaires are completed, interviewers will be trained for approximately one week. Then piloting will start in different regions, before the NAJS can finally be conducted, and the interviewers will go out and visit the homes of their randomly selected respondents.

We anticipate that after extensive preparations the data which NAJS will finally produce will be valuable for Libya’s burgeoning community of socio-legal scholars, for Libya’s policy-makers in the justice-sector, for legal professionals, and ultimately be helpful in improving people’s access to justice in Libya. It is hoped that the anonymised data can also be made available to international actors who aim to provide rule of law assistance in Libya and are eager to learn more about their target groups.