Action Fiche for Libya

1.   IDENTIFICATION

Title/Number	Strengthening democracy, good governance and civilian culture in the security and justice sectors		
Total cost	EU contribution EUR 10 millions		
Aid method / Method of implementation	Project approach – *joint management with International Management group (IMG)*		
DAC-code	15210	Sector	Security system management and reform

2.   RATIONALE

2.1.   Sector context

The overthrow of Muammar Qaddafi was an important achievement, but it marks only the beginning of what is likely to be a long and fraught process of rehabilitation and transition. Under his reign, institutions were not allowed to become effective. Regulatory frameworks were weak, organisational structures not well organised, decision-making processes, reporting and communication channels not established with limited systems of accountability and transparency. This has developed in a specific organisational culture where the rule of law, protection of people, and service orientation were very low on the agenda. Lack of sector policies and strategic planning undermined the efficiency of public expenditure.

Considering the extensive patronage system, not all existing public sector employees may be qualified and "reformable". Under Qaddafi, excessive centralisation of decision-making and funds allocation undermined governance and at the same time promoted the existence of parallel systems. Policing services were primarily focused on protection of the Qaddafi regime that resulted in no respect and trust from communities.

After the revolution, militias that fought against the Qaddafi forces were not integrated into the army and have continued to be active. Local armed forces protect communities in the absence of institutions (police and courts) able to deliver rule of law. These armed groups comprised of community members. As such, those communities that experienced significant fighting (e.g. Misrata and Zintan) are highly militarised. In some areas, relations are undermined by conflict between different armed groups, usually over influence (e.g. in Bani Walid) or the promotion of a particular ideology (e.g. Islamic groups in Sirte and Derna).

These thuwwar groups are believed to be part of the community and to have represented communities in the conflict. It will take time for the benefits of

institutional development to be felt, during which time people may already be over-reliant on unprofessional and unaccountable security processes at the intra-community and inter-community levels. Indeed the need for public perception of the safe and secure environment is crucial.

The recent events in Benghazi revealed the profound desire of Libyans to move now onto a structured security system and get rid of the numerous militias, some of them not even recognised by the officials' institutions, and not part of the Supreme Security Council (SSC), to have a proper police in clear and unified uniforms providing the security they deserve. The gap created by the government with its citizens by putting financial priority on the thuwwars is now creating tensions because in parallel the police is still not well equipped, not really supported by the government and not paid enough compared to the monthly stipend given to the thuwwars as well as all other benefits. This desire more and more expressed by the civil society, albeit not in an organised manner, has to be heard and reflected in the government strategies and policies. The Benghazi protests led the President of National congress to officially call for disintegration of all illegal militias.

An effective Disarmament, Demobilisation and Reintegration (DDR) process is needed. Facing the passivity of formal institutions versus the exasperation of citizens, tribes in the East have issued a decree stating that weapons should be surrendered or people will be expelled from the tribes. Moreover, there is a screening exercise plan developed by the Training department of the Ministry of Interior where out of 135,000 thuwwars, 17,000 will be integrated by the end of 2013 to operational department for position of general duty policemen.

The Ministry of Interior is responsible for the Libyan internal security and civil protection. As a consequence of the internal chaos linked to the presence of hundreds of armed militias, internal fights between tribes and unstable borders, the internal security responsibility is often shared with the Ministry of Defence, which results in some conflicts of jurisdiction in the absence of any structured inter-ministerial co-ordination. The Ministry of Interior, as the rest of the public sector, lacks a structural support body and institutional organisation (Cabinet, administrative personnel or major subordinates).

The Ministry of Interior is in an advanced stage of developing a five years plan aimed at building up the structure of the police organisation and administration. The five priorities announced by the Minister are: illegal migration, drugs trafficking, integration of thuwwars, border management and trainings.

In addition, two work plans have been finalised, one on the outlines of the strategy for the Ministry of Interior for that interim phase and the second is a training plan for the department of training. The training plan will be accompanied by an action plan based on needs assessments and will be discussed in a workshop with all international donors as well as representatives of civil society. The Ministry of Interior created a committee chaired by the Head of the Legal Department to develop a new draft law of police which is now with the Prime Minister office. Consultations with the civil society will be carried out as well on this draft law. All these initiatives reveal willingness and commitment for significant changes. However, an important factor of Ministry of Interior restructuration depends on the ability of the government

to reform the civil service. Currently 1.6 million people are on the public sector payroll; while at most 600,000 would be needed.

In the former regime, the judicial authority did not enjoy independence. The judicial body comprises, judges, prosecutors, state lawyers, people's defenders department (legal aid), and members of the legal department in the government, and all are considered by law to constitute one single corps. The members of all the aforementioned departments can rotate or be moved to serve in another department. This was often used by the former regime as a punishment tool for judges and prosecutors who were not in line with the orders of the executive authority. There are plans to separate the judiciary from the prosecutor's office but they have not been implemented so far. The act n. 4 issued by the National Transitional Council (NTC) excluded the executive authority from being a part of the Higher Council of the Judiciary, which was a good step towards the independence of the judiciary. Now the Ministry of Justice has no control over the judicial authority and its current role is to prepare trials in terms of maintenance, mobilisation and protection.

The High Judicial Institute (HJI) represents the principal training and resource centre for the Libyan Judiciary falling under the authority of the Ministry of Justice. The institute has an induction course for newly appointed judges. The institute carries random training for the already working judges; a curriculum for continuous legal and judicial education for the judiciary does not exist. According to a survey conducted by the team which comprises 25 actors of the judicial body, over 90% feel that the continuous judicial and legal education is highly needed within the judiciary.

The judicial police carry the security during the trials besides other tasks. It is reported that the security of judges, prosecutors, courts and prosecution offices is a big issue and they cannot function independently under security threats. These threats either come from the thuwwars or the public. The judiciary is under tremendous pressure from the public, the thuwwars, and the government. The notions of rule of law and fair proceedings are not fully digested neither by the public nor by the judges and confusion between justice and vengeance are still common.

The traditional system is well established in communities in and outside the bigger towns and plays an important part in protecting people and providing an informal justice system on local level as well as a perception of security for the people. The community does trust those informal systems and they are highly respected. For instance in Benghazi, traditional justice is working, written agreement are made to settle disputes. But it does not necessarily follow minimum standards and lack of follow-up on cases is also an issue. Support can definitely be provided to upgrade their skills and foster a sustainable respect of minimum standards.

Until a fully legitimised new government takes over it is considered crucial for the stability in the country that basic protection, policing and provision of justice continues, and the state can still fulfil its key functions. In this crisis situation urgent and immediate response to the recovery needs of the shattered and weak justice and security sector is of utmost importance. The character of this programme should be therefore to provide immediate response to stabilise the environment, address conflict and provide rule of law visible to all communities.

Transitional justice process and national dialogue are crucially needed to prevent future escalating of violence and continuous arbitrary executions of alleged "pro Qaddafi loyalists". On-going human rights violations and impunity for the perpetrators of earlier abuses are still very present. Partial justice that does not address crimes committed by supporters of the revolution may lead to escalation.

The disenfranchisement of minorities, the focus of the Government to fight illegal immigration at times, targeting immigrants who have been in country for years and are perceived as such as Qaddafi loyalists requires urgent actions to stop and prevent abuse; by "educating" civil society, civil servants, police officers on minimum standards and rights to protect minorities.

Empowerment of civil society and establishment of an "open government" policy is also crucial to create a change from the Qaddafi era based on sole centralisation of decision-making. In Libya, civil society and institutions are new. Current civil society access to government relies on personal connection rather than structured dialogue. The Libyan government expressed willingness to develop structured policies toward opened dialogue between institutions and citizens.

The proposed intervention focusing on democratic transition and institution-building and stronger partnership with the population is in line with the two Joint Communications of the European Commission and of the High Representative of the EU for Foreign Affairs and Security Policy "A partnership for democracy and shared prosperity with the Southern Mediterranean"[1] and "A new response to a changing Neighbourhood"[2]. This programme will support activities at nodal points where each sectors of security interlock. The multi-component programme is designed to adopt an integrated approach in line with EU Security Sector Reform policies and the EU "Holistic" approach of security sector. Its approach is cumulative and conditioned through a short term component to address immediate priorities with the main objective to contribute to the stabilisation of the overall security situation and a long term approach aiming at developing institutions, building up a cut from the Qaddafi era in the people perception and in the management and structures of the stakeholders' institutions. The programme follows a path addressing at short term social issues, at middle term technical ones and at long term operational ones. Each component (short and long term) will begin at the same time and are thus cumulative but are interlocked in such a manner that there are also conditioned to each other. For instance, the long term one (building institutional capacity) can only develop properly if the short-term results are implemented such as integration of thuwwars, modalities in transitional justice, empowerment of civil society, initiative of a national dialogue between institutions and civil society and open government policies are implemented.

Libyans know what they want and are not dependent on financial support from development partners. They have a certain vision and some structures are in place that can provide a first sufficient platform to build on at a first phase.

---

[1]   COM(2011)200 of 8 March 2011.
[2]   COM(2011)303 of 25 May 2011.

In Libya, the EU is regarded with high expectation and as neutral. Over the past months, Libya was overwhelmed by numerous offers made through bilateral and multilateral discussions. Exasperation is perceptible and expressed by the interlocutors. There is a serious need for co-ordination and harmonisation and the EU could provide this role to support Libya in linking best practices and expertise of different EU Member States with specific needs expressed by Libyan authorities.

Technical Assistance and professional advisory services will be needed in a flexible manner.

2.2.   Lessons learnt

This programme is a response to the need for support to the security sector in Libya. No security sector reform and rule of law programmes have been implemented by the EU before in Libya. The sector analysis presented above is based on the insight gained through assessments and inputs from the Libyans and international stakeholders. The programme's design draw on experience in other countries within international community and the EU in particular supporting recovery and state building after a regime breakdown. This also includes lessons learned from Security and rule of law EU formulation programmes conducted in the region specifically Jordan, Morocco, and Lebanon but also in other region such as Georgia. The programme focus on accompanying initiatives taken by the government such as strategies developed and action plan to ensure a perception of ownership and effective co-operation.

In addition, EU on-going civil society projects supporting reconciliation in Libya were considered. The project "All inclusive dialogue process", implemented by the Centre for Humanitarian Dialogue (CHD) has drawn some lessons learned from their activities so far. The study identifies six key challenges encountered by the project: getting in and establishing a presence; selecting local partners; understanding the possibilities and limitations for inclusive dialogue; defining the goal and purpose of a dialogue effort; co-ordinating with international partners; and evaluating impact. The overall conclusion is the need for modest and incremental approach, and not to take for granted our partners' commitment to inclusion, human rights and reconciliation.

The programme will have an incremental approach. It will address both service delivery and systemic issues, working both at local and national level, developing synergies between the two, increasing the chances to get results. It will foster structured dialogue between the civil society and the government in order to keep the momentum of change.

2.3.   Complementary actions

The EU has been involved in a number of activities related to the security context. As requested by the NTC at the international conference in Paris on 2 September 2011 the EU has taken the sector lead on border management. The results of the integrated border management needs assessment were made available in early June 2012 and submitted to the Libyan authorities for endorsement and subsequent donor co-ordination discussions. The Political and Security Committee (PSC) of the Council of the EU has instructed the European External Action Service (EEAS) to

draft a Crisis Management Concept (CMC) that will set out options for a civilian Common Security and Defence Policy (CSDP) mission to address border security. This programme will be fully co-ordinated with any CSDP action on border management in Libya, ensuring that the interventions made in the security sector by both instruments are mutually reinforcing.

The EU Delegation is supported by a security sector reform adviser and a police adviser seconded from EU Member States. They should soon be joined by a defence adviser and a justice adviser.

In response to the problem of unsecured conventional weapons and ammunition at storage areas across the whole country a draft Council Decision on supporting the Libyan authorities on physical security and stockpile management (PSSM) of conventional weapons and ammunition is currently being developed. This action will be funded through the Common Foreign Security Policy (CFSP) budget.

The EU is funding several programmes dealing with migration issues. An overall evaluation will be carried out and will inform the programme.

A public administration capacity building facility has been put in place early 2012 as a flexible, demand driven technical assistance instrument for administrations and essential public institutions.

The Technical vocation education and training programme (TVET) foreseen for 2012 will help support post-conflict integration of former fighters.

An Exceptional Assistance Measure under the Instrument for Stability in favour of Libya (€13.4million) supporting capacity building for crisis response, criminal investigation, Unexploded Ordnance (UXO) clearance and the protection of vulnerable groups. The decision has been adopted on 31 August and the signature of the contracts is under way.

All these programmes will inform each other and synergies could be developed with the Police and Justice programme.

Regarding other donors, several actors have been involved in ad hoc police training (France, Germany, Italy, Jordan, Qatar, Turkey, United Arab Emirates, United Kingdom and United States of America). United Kingdom is developing a more ambitious programme with which co-ordination and division of labour will be crucial.

2.4. Donor co-ordination

Presence of the donor's community in Libya is growing rapidly. The United Nations, through UNSMIL (United Nations Support Mission in Libya) , is entrusted with the overall donor co-ordination of the international community's assistance. Given the overwhelming of Libyans institutions with numerous assistance offers, stronger co-ordination and division of labour is required.

UNMSIL had just recently re-structured the donor's co-ordination for the Security Architecture under which four major sectors are listed, National Security

Architecture, Border Security, Defence Reform and Police Reorganisation. Intelligence and de-radicalisation might be added. DDR co-ordination will be in a separate working group as for UNSMIL decision. Libyan authorities are not yet in the leadership.

In addition, EU will carry out donor co-ordination with the EU Member States both in country and at Headquarters level.

3.   DESCRIPTION

The programme shall support the Government of Libya in securing stability in two phases: a short term one paving the way and providing time needed for the institutions to undertake sustainable justice and police reforms. The second phase will focus on building institutional capacity. Those phases are interlocked, cumulative and conditioned.

3.1.   Objectives

The **overall objective is** to promote rule of law in Libya through strengthening democracy, good governance and civilian culture in the security and justice sectors.

The **specific objectives are:**

-   To reinforce operational working methodologies for justice and security actors in line with EU and international standards and promote public accountability and civil oversight mechanisms over the security sector.
-   To foster an effective transitional justice process.

3.2.   Expected results and main activities

Component 1: Short Term (up to 18 months)

Expected Results:

1. Police capacities enhanced to maintain public order in a democratic and service oriented manner.

Activities include but are not limited to:

a.   Training of police on democratic management crowd control, patrolling, personal security and maintenance of public order in line with democratic standard.
b.   Support to thuwwars integration process based on the government plan.
c.   Establishing of police community relations toward service rendering approach.
d.   Empowering civil society/independent facilitators to foster dialogue between police and communities.
e.   Train judicial police on securing of courts and judicial staff, penitentiary standards and norms for detainees and witness protection management.
f.   Support towards development of a 5-Years development programme for Police reorganisation and modernisation.

2. Foundations for an integrated and comprehensive transitional justice mechanism strengthened

Activities include but are not limited to:

a. Support to establish temporary provisions to initiate concrete actions in DDR and provide the needed incentive for the development of a mid/long term DDR policy/strategy.
b. Technical assistance to the Office of Public Prosecutor, Criminal Police and Judges on international criminal law and investigations techniques.
c. Support for developing systemic criteria for vetting procedure according to best standards.
d. Support to the Fact Finding and Reconciliation Commission established by Law 17 /2011.
e. Support tribal informal settings to foster DDR and local justice and security.
f. Legal review of gross violations of minimum standards in the Libyan legal framework (criminal code, police law and internal affairs and rule of law).

3. **Dialogue between citizens and institutions in security and justice sector initiated**

Activities include but are not limited to:

a. Trainings and advisory services to the Public Relation departments of key relevant institutional stakeholders to develop public communication strategies.
b. Support the government in developing open government policies and structured consultation process with citizens.
c. Train civil society organisations and government officials on dialogue methods; transparency and ethics including fight and prevention of corruption.
d. Workshops, public debates with citizens on security and justice.
e. Support women groups activists on developing public awareness on women's right, women and security, women access to police and justice.
f. Support national dialogue initiatives initiated by tribal leaders and the elders.

Component 2: Medium to Long-Term (up to 48th Month)

Expected Results:

1. **Institutional capacity of the Ministry of Interior improved.**

Activities include but are not limited to:

a. Twinning and technical assistance for developing a comprehensive and integrated Ministry of Interior /national security sector strategy.
b. Development of related Action plan with achievable objectives, monitoring mechanism and timeline provision.
c. Support to develop human resource policy and staffing strategies including manpower empowerment (job descriptions and performance management system, appraisals).

2. **Libyan Police reorganised to be service orientated and with improved capacity.**

Activities include but are not limited to:

a. Support to improve organisational policies, internal procedures.
b. Support to improve organisational structure, command and control.

c. Development of management skills.

d. Improve access to police (with a priority on access for women and vulnerable minorities).

e. Support development of systematic and integrated training plan for police and improve capacity of the training department.

f. Support to fight against drugs on prevention, prosecution and rehabilitation levels.

g. Support criminal investigations department on investigative techniques, crime intelligence and criminal database.

h. Support to fight organised crime and improve international co-operation.

3. Justice administered by the Libyan judicial institutions improved

Activities include but are not limited to:

a. Support to the strengthening of the rule of law framework in Libya with technical advisory services on new constitution provisions, trainings, study visits.

b. Comprehensive strategy and continuous training plans and education curricula for judicial staff.

c. Support Ministry of Justice to develop a national justice strategy and plan of action (that includes a penal policy/ strategy for the Prosecutor Office).

d. Enhancing of institutional capacity, levels of legal knowledge and skills, and the overall levels of competence of the judicial institutions in Libya.

e. Support ethic, transparency and accountability systems for justice institutions.

f. Support comparative approach, international expertise and regular exchange of experiences of the members of Libyan judiciary with international experts.

3.3. Risks and assumptions

The major risk relates to the level of participation of thuwwars in the integration process and willingness to become part of formal police structures.

A related risk relates to effective political willingness to dismantle armed thuwwars and militia and to follow through with an organised and structured integration process including criteria based screening process.

Another important risk relates to the possibility of widespread corruption driven by a dependency culture despite ethic, accountability and transparency provisions set up in the Programme.

The political priorities and administrative capacities of the future new legitimate Libyan Government as well as of the regional and local institutions in making full use of the Technical Assistance offered is needed for a smooth implementation.

The absence of a proper vetting process creates the risk to hamper public confidence and legitimacy of the "new" institutions. Moreover, the retention of staff and lack of clear management strategy without screening process may conduct to the resistance of the most experienced staff to any changes.

Finally, it is essential that the new Libyan Government facilitate the issuance of recognised entry permissions for the international experts in order to carry out the programme.

3.4.   Cross-cutting issues

The programme developed provides opportunities for fostering women's positions by supporting the development of unified curricula for the Women Police Academy as well as gender mainstreaming through training and human resources policies developed in both Ministry of Internal Affairs and Ministry of Justice.

It also provides focus on minority's rights and vulnerable population by supporting access to justice (that includes police) for those particular groups, public awareness campaigns and education of law enforcements officers on those issues.

Governance is an aspect that was neglected over the past decades and need to be addressed at all levels in support of building effective government institutions.

Human rights principles and standards will be incorporated in all activities and training material.

3.5.   Stakeholders

Indirect and direct beneficiaries are **civil servants, institutions and citizens.**

Direct and indirect stakeholders are:

Ministry of Internal Affairs that includes:

–   Police departments;

–   Supreme security committee (SSC);

–   Ministry of Interior cabinet and departments.

Ministry of Justice that includes:

–   Judicial police;

–   High judicial training institute;

–   High council of the judiciary;

–   Office of the public prosecutor.

National Libyan Bar Association

Tribal Leaders

Prime Minister Office that includes:

–   Warriors affairs commission (WAC);

–   Demobilisation, disarmament and reintegration (DDR).

Ministry of Martyrs and Missing Persons

Ministry of Health

Ministry of Planning and International Co-operation

4.   IMPLEMENTATION ISSUES

4.1.   Method of implementation

The programme will be implemented via Joint Management through the signature of an agreement with the "International Management Group" (IMG) in accordance with Article 53d of the Financial Regulation. IMG is a Europe-based international organisation that has extensive experience in the police and justice sectors and in post-conflict areas. They also offer the possibility to work with officials from Member States and some of their platform partners are specialised in the sector. IMG complies with the criteria provided for in the Financial Regulation. The European Commission intends to sign a Standard Contribution Agreement with IMG.

IMG will install a co-ordinating office in Tripoli headed by a senior co-ordinating international expert (the "Co-ordinator"). IMG will mobilise expertise either from the European Public Sector or from the private sector. During the inception phase the Co-ordinator will agree with the EU Delegation and the Libyan main stakeholders on detailed implementation methodology.

The change of management mode constitutes a substantial change except where the Commission "re-centralises" or reduces the level of tasks previously delegated to the beneficiary country, international organisation or delegatee body under, respectively, decentralised, joint or indirect centralised management.

4.2.   Procurement and grant award procedures

All contracts implementing the action are awarded and implemented in accordance with the procedures and standard documents laid down and published by the relevant International Organisation and which shall offer guarantees equivalent to internationally accepted standards.

4.3.   Indicative budget and calendar

The programme will be financed by the European Union with a contribution of EUR **10 million** covering 100% of the programme budget.

The indicative breakdown of the budget is as follows:

Indicative budget	**EUR**
International and local experts and staff, office and running costs	10,000,000

Total	10,000,000

The operational duration of the Action is 48 months. Activities are foreseen to start in January 2013.

4.4. Performance monitoring

During the inception phase the Co-ordinator will propose a lean method to monitor performance of the Technical Assistance. Results Oriented Monitoring will also be carried out in addition to the internal monitoring by the Delegation.

4.5. Evaluation and audit

Mid-term and final external evaluations as well as audit will be carried out by independent consultants recruited directly by the Commission in accordance with EU rules and procedures and in line with specifically established terms of reference.

The Commission reserves the right to carry out verification missions, in agreement with the contribution agreement.

4.6. Communication and visibility

The selected international organisation will ensure visibility of the programme in co-ordination with Commission Services and in line with EU visibility guidelines.