

# A Law of Diminishing Returns: Transitional Justice in Post-Revolutionary Libya<sup>(1)</sup>

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This paper focuses on transitional justice in Libya since the fall of Colonel Gaddafi. It finds that unlike many countries that suffer from a paucity of transitional justice legislation, numerous relevant constitutional declarations, laws and decrees have been promulgated in Libya. But the process has also faced serious issues, most notably the absence of legislative planning and strategy, the lack of effective dialogue between the parties involved in the legislative process, and the low quality of drafting. The paper concludes that comprehensive transitional justice in Libya depends on achieving consensus among the regional and international actors involved in Libyan affairs as well as securing four main requirements. These are identified as: a stable constitutional system that prioritizes transitional justice; the unification of state institutions; comprehensive countrywide reconciliation; and a national consensus on the most appropriate transitional justice program.

Libya

Transitional Justice

Arab Spring

Libyan Revolution

Democratic Transition

Since 1969 both individual Libyans and several groups thereof have suffered numerous and protracted violations of their political, social and economic rights. The rapid collapse of the regime after the Revolution coupled with social and cultural fragmentation have resulted in a range of social injustices.<sup>(3)</sup> The exceptional situation in which the Libyan state has found itself after decades under the watchful eye of Colonel Gaddafi has complicated efforts to establish a system of transitional justice. The problems did not end with the fall of the regime: over the course of the civil war many new violations have taken place, most of which constitute war crimes or crimes against humanity. Moreover, the presence of militias and other armed groups has proven a significant obstacle to disarmament, justice and accountability.

All this has been further exacerbated by the failure of successive post-revolutionary governments to bring the security situation under control and the involvement of some government bodies themselves in violations, including ongoing illegal arrests and detentions, torture, and extrajudicial killings.

Libya is not unique in this. Since the 1990s the world has witnessed various political transitions preceded and accompanied by a heavy legacy “ranging from rape and domestic violence to collective atrocities of state-sponsored dirty wars and ethnic cleansing.”<sup>(4)</sup> Ruti Teitel correctly notes that in times of political mobilisation to oust dictatorships, “one burning question recurs. How should societies deal with their evil pasts? This question leads to others that explore the question of the relation of the treatment

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3 On 25 February 2011, the UN General Assembly’s Human Rights Council resolved to form an independent international Commission of Inquiry into Libyan human rights abuses, which came into being on 15 March 2011. Its three members were Asma Khedher (Jordan), Philippe Kirsch (Canada) and M. Cherif Bassiouni (Egypt). Under Resolution S/15-1 the Commission was tasked with investigating and documenting all claims of IHR law violations and, if possible, identifying those responsible, and in particular with making recommendations on how to achieve accountability. Since the UNHRC had referred these cases to the ICC, the Commission was also expected to look into incidents that might be dealt with under international criminal law. The Commission’s final report, published on 2 March 2012, covers all of the human rights violations it had recorded during the armed conflict of 2011, including those ongoing after the fall of Gaddafi. It considers the role of three different forces: regime and loyalist forces, revolutionaries (rebels), and NATO. All of the violations discussed are closely linked to transitional justice and have worsened in recent years, making the need for a comprehensive transitional justice program ever greater while simultaneously making it more difficult to implement such a program.

4 Nancy Scheper-Hughes, *Violence in War and Peace* (Oxford: Blackwell, 2004), p. 459.

of the state's past to its future.<sup>(5)</sup> How is the social understanding behind a new regime committed to the rule of law created? Which legal acts have transformative significance? What, if any, is the relation between a state's response to its repressive past and its prospects for creating a liberal order? What is law's potential for ushering in liberalization?"<sup>(6)</sup>

Transitional justice is therefore key to the stability of the Libyan state.<sup>(7)</sup> The Libyan experience will also be of exceptional value for transitional justice programs in other regional post-conflict countries like Yemen and Syria. Studying transitional justice in Libya draws attention to the following questions: is passing laws the best way of achieving transitional justice? Is transitional justice legislation alone sufficient to guarantee an end to killing, conflict, displacement and arbitrary detention? What are the different models of transitional justice implemented in Libya? Why

has transitional justice legislation failed to achieve positive results within the last seven years? Is this failure attributable to shortcomings in the legislation itself, to the absence of the necessary conditions for transitional justice, or to both? We conclude by reviewing the possibilities of implementing a comprehensive transitional justice plan in the short and medium term.

This paper seeks to answer these questions. It is divided into three sections. The first section discusses the various laws concerned with transitional justice passed in Libya since the February uprising first began. The second section analyses the reasons for legislation's failure to implement a comprehensive program of transitional justice. The third section examines the short and medium-term requirements of transitional justice.

## I: Transitional Justice Legislation

If some countries suffer from a paucity of transitional justice legislation, a quick glance at the Libyan statute book shows that it has the opposite problem: legislative congestion. Successive Libyan legislatures have issued a whole range of constitutional declarations, laws and decrees pertaining to transitional justice, including (by date of issue):<sup>(8)</sup>

- Law 5/2011 establishing the National Council for Public Freedoms and Human Rights
- Law 16/2012 adding certain provisions to Law 10/2012 disbursing a financial sum to Libyan families
- Law 17/2012 establishing the rules of national reconciliation and transitional justice
- Law 35/2012 pardoning certain crimes
- Law 37/2012 making it a criminal offence to glorify the dictator (repealed)
- Law 41/2012 amending Law 17/2012 establishing the rules of national reconciliation and justice in Libya
- Law 50/2012 on compensation for political prisoners

5 Hamadi Redissi suggests that transitional justice raises three primary questions. "Firstly: what is the fate of the old regime's decisionmakers? Secondly: how to deal with security and military figures responsible for human rights violations? Thirdly: should the property of those who took bribes and other corrupt figures close to the old regime be confiscated?" Hamadi Redissi, "Tūnis Bayn Tad'īm ad-Dīmuqrāṭiyyā wa-Tafakkuk ad-Dawla," *Siyasat Arabiya*, vol. 18 (January 2016), p. 12.

6 Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000), p. 3.

7 Moulay Ahmed Moulay Abdelkarim states that "By 'transitional justice' is generally meant a range of judicial and non-judicial measures, procedures and mechanisms employed in order to return the rights-related, political, social and institutional situation to normal in a given country. It encompasses those countries that have experienced or are experiencing a state of political crisis such as civil war or a state of emergency." See, Moulay Ahmed Moulay Abdelkarim, "al-Usus al-Falsafiyya li-Mafhūm al-'Adāla al-Intiqāliyya," *Tabayyun*, vol. 11 (July 2013), p. 17.

8 This list is complemented by a long list of relevant decrees including: General National Congress Decision 17/2012 establishing the principle of institutional reform and exclusion from political and administrative offices (*al-'azl as-siyāsiyy wa'l-idāriyy*); Transitional National Congress Decision 18/2012 naming the chair and members of the Truth and Reconciliation Investigative Committee; Legal Affairs Decision 2/2011 forming the Committee for Documentation and Investigation of the Crimes of the Old Regime; Legal Affairs Decision 3/2011 forming the Committee for Documentation and Oversight of Detainee, Mercenary and Missing Persons' Affairs; Decision 85/2012 making provisions for and honouring martyrs and missing persons; Decision 53/2013 on the tragic events that occurred in Benghazi; Decision 59/2013 on the Abu Saleem Prison Massacre; GNC Decision 1/2014 forming and establishing the functions of the Investigative Committee; Cabinet Decision 119/2014 on redress for victims of sexual violence; and Justice Ministry Decision 904/2014 regulating the redress for victims of sexual violence fund.

- Law 51/2012 amending a provision of Law 25/2012 pardoning certain crimes
- Law 52/2012 establishing limitations on certain offices (overturned pursuant to Constitutional Appeal 16/59AJ)
- Law 63/2012 establishing the Anti-Corruption Commission
- Law 10/2013 criminalising torture, forced disappearance and discrimination
- Law 13/2013 on exclusion from political and administrative offices
- Law 29/2013 on transitional justice
- Law 1/2014 providing for the families of the martyrs and missing persons of the 17 February Revolution
- The General Amnesty Law (6/2015)

Naturally, there is no space in this paper for in-depth discussion of all of these laws. We can, however, look in detail at the most important examples.

The first piece of legislation concerned with transitional justice was Law 17/2012 establishing the rules of national reconciliation and transitional justice. This law consists of 18 articles and is divided into two sections. The first section (Article 1) defines transitional justice as “a package of legislative, judicial, administrative and social measures addressing events that took place under the old regime in Libya and the violations of human rights and basic human freedoms carried out by the state, and efforts to address by amicable means enmity between certain groups within society.” There is no clear timescale given: Article 2 states that “the provisions herein shall be applicable to events occurring from 1 September 2011 until such time as the desired effect hereof is

achieved. Said provisions shall not be applicable to those persons who concluded a negotiated settlement under the old regime. Nor shall they be applicable to conflicts in respect of which a judicial ruling has been issued and executed.” Article 3 goes on to specify the aforementioned “desired effects” for individuals and for society.<sup>(9)</sup>

The second section is given over to the Truth and Reconciliation Investigative Commission. Article 4 provides for the formation of a body operating under the Transitional National Council (TNC) and headquartered in Tripoli. This commission has its own legal personality and independent budget. Article 14 establishes the principle of financial or reputational compensation for all those harmed by the crimes of the old regime. So far, however, the law has not been put into force: no implementing regulations have been issued, and the necessary administrative framework has not been put in place.

Shortly thereafter, in early May 2012, the TNC issued Law 35 pardoning certain crimes. This law amnestied crimes committed before it came into force, terminating any associated criminal proceedings and annulling all sentences and other attendant legal effects under the following conditions:

- Where the money has been returned (in cases involving embezzlement of public money);
- Where the perpetrator has reconciled with the victim or been officially forgiven by their closest male relative (*walī'd-dam*);<sup>(10)</sup>
- Where the perpetrator or accused person has voluntarily handed over the weapons or instruments used in the crime;
- Where the perpetrator had submitted an official repudiation (*i'lān tawba*) of his actions to the relevant criminal court.

9 The aims given are:

1. Consolidating social peace.
2. Preventing human rights violations.
3. Reassuring people that justice exists and is effective.
4. Establishing the responsibility of different state bodies for human rights violations.
5. Documenting incidents subject to transitional justice and handing the details over to relevant bodies.
6. Compensating victims and those harmed.
7. Effecting social reconciliations.

10 TN: Under Islamic law and Libyan tribal custom, a murdered person's closest relative is their *walī'd-dam*: the person responsible for their [spilt] blood (i.e. responsible for taking vengeance). Under Libyan law this person can decide to pardon a murderer, in which case the state cannot proceed with a prosecution.

Some crimes were explicitly excluded from the amnesty:

- Crimes committed by members of Gaddafi's immediate family, his in-laws, and his 'agents' or 'aides' (*a 'wānuhu*).<sup>(11)</sup>
- *Hudūd* crimes<sup>(12)</sup> referred to the judiciary.
- Kidnapping, torture and violent rape.
- Acquiring and selling narcotics or psychotropics.
- Poisoning water or food supplies or dealing in spoilt food or medicine.

In order to guarantee that those included in the amnesty would not reoffend, Article 3 of the law stipulated that its provisions would cease to apply to any beneficiary in the event that they committed any new deliberate crimes within five years of its going into effect.<sup>(13)</sup> And to guarantee neutrality, Article 4 emphasises that the judiciary will be responsible for settling any issues arising from the implementation of the law, subject to general rules. Article 5 also contains a positive provision: that "the provisions herein shall not prejudice the right of the injured party to restitution or compensation."

The TNC was also responsible for Law 38/2012 on transitional justice procedures. Unfortunately, this law reinforced the idea of letting perpetrators escape punishment and accountability. Article 4 states that "there shall be no punishment for those military, security or civilian activities required by the 17 February Revolution and carried out by the Revolutionaries in order to ensure the success of or protect said Revolution." For many supporters of the old regime this law seemed like a prime example not of transitional but of retributive justice.

In 2012 the TNC's term ended and the first post-revolutionary General National Congress (GNC) was elected. In clear contradiction to the idea of amnesty, the GNC promulgated various laws punishing supporters of the old regime. Law 13/2013 on exclusion from political and administrative offices, for example, barred anyone who occupied any position of importance under the Gaddafi regime from holding political or bureaucratic office for a period of ten years. Its definition of political or bureaucratic office was expansive, going much further than any international precedent.<sup>(14)</sup> It created a deep rift in society between victors enjoying all their rights and vanquished with no rights at all. This exacerbated political and military conflict and made the success

11 Zawati notes that the term *a 'wān* is very flexible and can apply to almost anyone depending on the personal interests and political inclinations of those applying the law: Hilmi M. Zawati, "Prosecuting International Core Crimes under Libya's Transitional Justice: The Case of Saif Al-Islam Gaddafi and Abdullah Al-Senussi," in: Alice Diver and Jacinta Miller (eds.), *Justiciability of Human Rights Law in Domestic Jurisdictions* (Cham, Switzerland: Springer International Publishing, 2016), p. 226.

12 The article stipulates that "[i]n the event that the persons benefiting from it commit a new deliberate crime within five years of the date that this law enters into force, the pardon provided for herein shall be annulled and [said persons] shall be returned to custody; those who had been sentenced shall complete their sentences or the unserved portion thereof, and criminal proceedings against those whose trials were terminated pursuant to this law shall resume on the condition that this be announced in the media."

13 TN: *Hudūd* crimes are serious crimes under Shari'a carrying major corporal punishments: adultery, false accusation (*qudhf*), apostasy, theft and banditry. Law 70/1973 for example provides for the flogging of adulterers as stipulated by the Shari'a tradition; Law 13/1425 allows courts to order a thief's hand cut off.

14 Article 2 stipulates that 'those persons covered by the provisions of Article 1 herein shall not be permitted to hold the following offices:

1. Chairmanship or membership of state or local legislative, oversight or constituent committees;
2. Sovereign [i.e. senior] state offices;
3. National and local executive offices, from President or Prime Minister to Department Director [*Mudīr Idāra*];
4. Chairmanship or membership of boards of directors; administrative, executive or oversight positions from Department Director upwards in official bodies, institutions, government bodies, banks, public companies, [companies] owned fully or partially by the Libyan state or one of its institutions, whether it conducts its activities within the country or abroad;
5. Membership of a panel of judges [i.e. sitting as a judge in any court];
6. Leadership positions in the security establishment or the military;
7. The offices of ambassador or consul to international and regional organisations; other diplomatic offices; likewise technical attaches;
8. Chairmanship or membership of decision-making bodies within parties, entities, institutions or commissions of a political character;
9. Chancellorship of universities, academies, colleges or institutes of higher education;
10. Auditing positions;
11. Senior positions in any media body.

of a comprehensive transitional justice programme much less likely,<sup>(15)</sup> particularly given that it was issued at the behest of armed groups that took control of the GNC after besieging and ultimately storming the Ministries of Justice and Foreign Affairs.

This law established vague criteria by which political rivals could be excluded from public office for ten years, and in the absence of clear rules, has been used selectively to penalise some of those who worked for the Gaddafi regime – without any kind of objective underpinnings, without regard for the principle of equality before the law, and without a well-defined implementation mechanism. It also created a new principle of retroactive effect and laid the groundwork for punishment not of deeds but of categories of people. It therefore violates individual civil and political rights and some of the most important human rights, such as the right to defend oneself and the right not to be punished for an unproven crime. Those who fall victim to the law are stripped of a fundamental constitutional right: the right to a free and fair trial before facing any punishment. It also threatens to further weaken the Libyan state by depriving it of many of its most qualified staff.<sup>(16)</sup> And in addition to the fundamental contradiction involved in simultaneously adopting a system of compensatory justice and a system of retributive justice,<sup>(17)</sup> most transitional justice legislation in Libya has been marked by a “to the victor the spoils” mentality.

In 2013 the GNC passed a new, comprehensive transitional justice law (Law 29/2013), which begins by defining transitional justice. This law comprises 34 articles distributed over six sections: general provisions; the Truth and Reconciliation Committee; inspecting institutions; compensation; investigations and trials; final provisions.

According to Article 3 of this law, its provisions apply to incidents between 1 September 1969 and the end of the transitional period, defined as the election of a legislative assembly in accordance with the Permanent Constitution. The law is thus still in force

as of the time of writing because the draft constitution has still not been adopted by popular referendum, meaning that the state institutions emanating from it remain provisional – including the legislative assembly. Its goals are numerous: it legally recognises the 17 February Revolution as righteous and the old regime as corrupt and despotic, and seeks to preserve social peace, prevent human rights violations, establish the extent to which different state organs are responsible for such violations, document incidents of interest to transitional justice, compensate victims, and examine institutions.

The law also expands the definition of transitional justice, extending it to crimes and violations committed by revolutionaries or those fighting under the banner of the TNC or other bodies – that is, it is not limited to the crimes of the old regime. This praiseworthy development was intended to put to rest the criticism that previous laws had neglected to deal with violations accompanying and following the 17 February Revolution. It also states that transitional justice extends to “1) positions and actions that damaged the social fabric and 2) acts necessary to bolster the Revolution but marked by certain behaviours incompatible with its principles.”

Law 29 also provides for the formation of a Truth and Reconciliation Investigatory Commission attached to the Parliament. The Commission is empowered to investigate human rights violations within the mandated period and make recommendations on how to proceed (including referring them to the judiciary). It is compelled to submit a comprehensive report detailing the incidents it has investigated and identifying those responsible as well as the reconciliation efforts it has made. It also submits a report recommending further measures in those cases it has investigated. By default its sessions are open to the public except where it decides otherwise because of security considerations or to protect public morals. Finally, it enjoys priority over the courts in investigating incidents: the judiciary cannot decide disputes that are being heard by the Commission

15 Article 1: “The General National Congress affirms in principle the necessity of reforming those institutions of the Libyan state directly responsible for human rights violations and likewise those persons directly responsible for the corruption of political, economic, social and administrative life in Libya from 1 September 1969 until liberation was declared on 30 October 2011, by excluding them and preventing them from exercising political rights or holding sovereign positions within the state, subject to compulsory legal restrictions and in accordance with the principle of non-discrimination.”

16 Amid the tug of war between competing legislative organs, on 2 February 2015 the Parliament suspended this particular law.

17 For more detail on the central pillars of these two systems see: Abdelhay Moudden, “al-‘Adāla al-Intiqāliyya wa’s-Sultāwiyya al-Mulabrala: Namūdhaj al-Maghrib,” *Omran*, vol. 5(2013), p. 130.

until it concludes its investigations, and if an incident subject of a court dispute is submitted to it then court proceedings must immediately be suspended.

The law also establishes another commission empowered to examine state institutions (security, judicial, military and financial as well as any other institutions the Cabinet sees fit to subject to scrutiny). This commission is likewise granted the power to hand over cases to disciplinary authorities, the public prosecutor or the Cabinet for further action.

Finally, Law 29 creates a victim restitution fund, with the specific sums and methods of payment to be defined by implementing regulations issued by the

Cabinet. The power to try relevant cases is restricted to civilian criminal courts, removing jurisdiction in cases involving crimes committed by the military or for political or military ends from military courts. Steps are also taken against the mass granting of citizenship after the February uprising: the law provides for a legal committee to review decisions to grant nationality.<sup>(18)</sup> But although this law is more comprehensive than its predecessors and enshrines many of the central principles of transitional justice, it has still not been put into practice: no implementing regulations have been issued and no implementation mechanism put in place.<sup>(19)</sup>

## II: The Failure of Transitional Justice Laws

There are many reasons for the failure of transitional justice projects in Libya. Some involve the breakdown of the political transition process, while others are closely linked to the transitional justice legislation itself. Successful political transition is a necessary if not sufficient condition for a transitional justice program to be viable. Regrettably, in Libya transitional justice has not been part of an integrated plan for social peace.<sup>(20)</sup> In the first part of this section we will discuss the negative repercussions of the breakdown of the political process for transitional justice. In the second part we will consider the various shortcomings of the transitional justice legislation, including the absence of legislative strategy and planning, the limited discussion between different legislative bodies and the poor drafting of laws.

On the one hand, the particular features of the Libyan case –the extensive legacy of violations committed

under a despotic regime where a single man dominated political life and undermined all other institutions – have inevitably exacerbated the complications and difficulties of transitional justice. Successive governments have used up all their energies dealing with political fragmentation, security issues and frictions between different tribes or ethnic groups, as well as in attempts to meet citizens' basic needs. As a result, the implementation of transitional justice laws has fallen to the bottom of the list of priorities.

On the other hand, Libya suffers from a deep-rooted tribalism hostile to the law and to equality between citizens, and regional disputes feed narrow localist thinking and particular interests at the expense of the concept of the state. This increases Libya's exposure to the risk of separatism. The ominous decline in the security situation and the wide dissemination of weapons and militias outside legitimate state

18 “Article 29: annulling decisions to grant citizenship.

A Legal Committee shall be formed by means of a decision from the President of the General National Congress to consider decisions granting Libyan citizenship. It shall have the power to undertake whatever measures necessary to do so, in particular to recommend the following:

1. Withdrawal of Libyan citizenship from all those granted it under a decision issued later than 15/02/2011.
2. Withdrawal of Libyan citizenship from all those granted it by the old regime for political reasons or because of their political leanings.
3. Withdrawal of Libyan citizenship from all those granted it in contravention of the provisions of legislation in force at the time of the grant.

Withdrawals shall take place pursuant to a reasoned decision from the executive authorities, in accordance with the general rules governing loss of citizenship. The relevant authorities shall be obliged to implement decisions issued by this Committee. The Committee shall have the right to exercise all necessary powers to achieve this, including appealing on grounds of unconstitutionality laws and decisions under which Libyan citizenship has been granted.”

19 Point 7 of the Sarraj Initiative promises to “implement transitional justice mechanisms, redress harm, and implement a general amnesty in order to achieve comprehensive national reconciliation.”

20 On the importance of transitional justice as part of the management of the post-conflict period, see: Donna Pankhurst, “Issues of Justice and Reconciliation in Complex Political Emergencies: Conceptualising Reconciliation, Justice and Peace,” *Third World Quarterly*, vol. 20, no. 1 (1999), p. 254.

structures,<sup>(21)</sup> the weakness and novelty of civil society, and the fragility of state institutions (to the point that they are incapable of performing their functions competently and effectively)<sup>(22)</sup> also place Libya at particular risk. Furthermore, struggles between neighbouring countries and international powers have entrenched and expanded the scope of political and military conflict: one recent report from the European Council on Foreign Relations states that “[t]he role of foreign states in Libya’s civil war has long been murky, yet hugely significant. Interventions designed to serve foreign states’ political or regional interests have been a constant feature of the country’s post-revolutionary fractiousness and strife.”<sup>(23)</sup> The failure of the UN and other regional and international organisations to deal with political and social divisions have consigned transitional justice initiatives to an early grave.

Although more than seven years have passed since the 17 February uprising, political and institutional divisions remain the order of the day. The persistence of these divisions has been the greatest obstacle to efforts to achieve transitional justice. The victory of the National Coalition Party in the 2014 elections and the refusal of some of the other parties to accept the results added to the deep, structural reasons for fragmentation and hence produced greater divisions between Libyans. These divisions, initially political and ideological, soon became material and geographical. This has manifested in competing legislative and executive bodies: an independent House of Representatives and government (HoR) in eastern Libya supported by Haftar’s forces, and the Government of National Accord (GNA) in Tripoli (led by Faiz Sarraj, prime minister under the Skhirat Agreement) supported by various armed groups. This has inevitably meant divisions within most public institutions. Not only politics and ideology

are involved here but both local and international political, security and economic interests. This division is one of the most serious challenges facing the reconciliation and transitional justice process in Libya. A state having sovereignty over all its territory is a basic requirement for any legislation to be implemented, even legislation of less crucial import than that concerning transitional justice.

Alongside all this, the tribal and ethnic makeup of Libya has stymied national reconciliation. Libya’s social structure is predominantly tribal, and tribes played an important role in the Revolution.<sup>(24)</sup> Unfortunately, years of divide-and-conquer policies under the old regime intended to guarantee control over society have left behind a bitter legacy. Gaddafi was able to foment tensions between various tribes and areas of the country, tensions that have persisted after his fall from power. Tribal alliances during the Revolution produced social divisions and have left behind deep clefs in the Libyan social fabric. These clefs have impeded democratic transition and the implementation of transitional justice laws seen as biased in favour of particular tribal groups. Sometimes they have developed into armed clashes, both during and after the Revolution.<sup>(25)</sup> This has created deep and enduring fault lines in the body politic and in society. There are now loyalist cities and tribes and opposition cities and tribes. Examples of this include the conflict between Amazigh-majority Zwara and its Arab neighbours in Jumayl and Riqdalin, the fierce hostility between Misrata and Tawergha, the feud between the tribes of Zawiya and Warshefana, and the fully-fledged war between Awlad Suleiman and the Qadhadhfa.<sup>(26)</sup>

The chaotic security situation has been one of the most serious obstacles to the transition process since Gaddafi’s ouster. One of the enduring dangers in Libyan society has been the broad availability of

21 For more detail on the breakdown of the security situation and what the author calls the ‘gap of authority’ following the ouster of the Gaddafi regime, see: Ramazan Erdağ, *Libya in the Arab Spring: From Revolution to Insecurity* (New York: Palgrave Macmillan, 2016), pp. 47-64.

22 Zawati, p. 231.

23 Tarek Megerisi, "Libya’s Global Civil War: Policy Brief, European Council on Foreign Relations", June 2019 (accessed on 26/07/2019 at <https://bit.ly/2WLhzHA>).

24 C.f. Thomas Hüskén, *Tribal Politics in the Borderland of Egypt and Libya* (New York: Palgrave Macmillan, 2019).

25 Ahmida says that “there are at least three errors: security and unofficial forces’ control [over territory] at the expense of official institutions; the absence of a national constitution; and opposition to institutionalization.” Ali Abdullatif Ahmida, *Dawla Mā Ba ‘d al-Isti‘mār wa l-Taḥawwulāt al-Ijtima‘iyya fī Lībiyā* (Doha and Beirut: ACRPS, 2012), p. 24.

26 Bashir Ali Al Kout, “Furaṣ Taḥqīq al-‘Adāla al-Intiqāliyya wa l-Muḥākama al-‘Adāla fī Lībiyā fī Zill at-Taḥawwulāt ar-Rāhina,” *al-Ijtihād al-Qaḍā‘iyy*, vol. 3, no. 13 (December 2016), p. 144.

weapons of every kind – light, medium, and heavy – and militias’ use of this vast arsenal to pursue political and economic goals. As soon as the common enemy (the regime) had been dispensed with, armed groups quickly turned on one another, creating complex security problems. The circulation of weapons has stymied even state-building efforts, never mind national reconciliation and transitional justice initiatives. The situation is complicated further by the fact that these weapons are concentrated in the hands of tribal or religious militias outside the control of the central government and closely linked to foreign regimes or intelligence services. The disarmament, demobilisation and reintegration process is thus ineluctably linked to the implementation of transitional justice mechanisms. And troublingly – despite the many years that have passed – militias and armed groups are more brutal and more dominant than ever, not only in the countryside and provincial towns but in major cities (above all Tripoli).<sup>(27)</sup>

This has been exacerbated by the weak institutional structure of the Libyan state. The old regime undermined the competence and effectiveness of state institutions. For almost 40 years, Gaddafi marginalised both civil and military institutions in favour of the so-called Revolutionary Committees (*al-Lijān ath-Thawriyya*) in order to guarantee complete control over state and society. One of the most vital institutions to have been undermined in this way is the judiciary: the regime integrated non-judicial institutions like the Public Prosecutor’s Office, the Government Litigation Authority, the Public Advocacy Department and the Law Directorate into the judicial arm in order to undercut any claim to judicial institutional independence. Exceptional courts and political intervention in judicial affairs became defining features of the legal system. While

judges were freed of this particular set of political shackles after Gaddafi’s ouster, the judiciary has nonetheless faced serious challenges in the post-revolutionary era. Many judges and lawyers (both defence and prosecution) are afraid to work in the absence of a regime capable of protecting them. Numerous judges have been threatened, and some judges and prosecutors have been assassinated or kidnapped by defendants. This has meant that the judiciary cannot carry out its duties, particularly in light of the frightening increase in human rights violations – forced disappearances, arbitrary arrests, deaths under torture, assassinations, kidnappings, destruction of public and private property – the great numbers of refugees and victims of forced displacement, and the various prisons and detention centres outside state control.<sup>(28)</sup>

It is only fair to note that these failures are not only due to domestic problems. Various international and regional factors have also impeded re-stabilisation. The UN has not carried out its mandate in Libya. Despite significant efforts made by successive Special Representatives of the Secretary-General (SRSG), it has not been able to help Libyans escape the vice-like grip of the crisis. This reflects above all else conflicts between international and regional powers and their inability to agree on a settlement<sup>(29)</sup> as well as shortcomings in the UN Support Mission in Libya (UNSMIL). UNSMIL has been led by four different officials, each with a very different idea of how to solve the conflict, and the short time available has not allowed any of them the opportunity to fully grasp the details of the Libyan crisis or develop integrated approaches to problems and put them into practice on the ground.<sup>(30)</sup> Two of those chosen did not speak Arabic, making their mission much more difficult; the same applies to many lower-ranking employees. And the revelation

27 Interviews conducted by the author with various Libyan activists and academics between 2014 and 2018. See also: HRW, “Libya: Events of 2018,” in: *World Report 2019*, 22 September 2018 (accessed on 02/04/2020 at <https://bit.ly/3bnkvzi>)

28 C.f. *Abuse Behind Bars: Arbitrary and unlawful detention in Libya*, UNHRC, April 2018 (accessed on 02/04/2020 at <https://bit.ly/2xWUXvm>).

29 “To make progress on any new roadmap, however, UN envoy Salamé will need to receive the full-throated support of the states that have been most involved in Libyan diplomacy: France, Russia, the UK and the U.S. among permanent members of the Security Council; Libya’s neighbours, including Algeria, Egypt, Tunisia and Italy; regional powers further afield such as Qatar and Turkey; and regional institutions such as the European Union (EU), the League of Arab States and the African Union.” See: International Crisis Group, “Restoring UN Leadership of Libya’s Peace Process,” 18 September 2017 (accessed on 02/04/2020 at <https://bit.ly/35R2uIw>)

30 UNSMIL’s leaders in succession:

Tarek Mitri: 12 September 2012 – 14 August 2014

Bernardino León: 14 August 2014 – 4 November 2015

Martin Kobler: 4 November 2015 – 22 June 2017

Ghassan Salamé: 22 July 2017 – 2 March 2020.



that Bernardino León – former Special Representative and head of UNSMIL – engaged in secret negotiations with the UAE during his time in Libya has made the Mission’s neutrality seem exceedingly suspect.<sup>(31)</sup>

Interventions by regional and international powers have also had a serious impact on prospects for a solution in Libya.<sup>(32)</sup> Various countries have provided support to specific factions, either to further regional aims or to spite other powers. Libya has thus become a theatre of proxy warfare, impeding any political solution or comprehensive reconciliation. A few countries have gone beyond media or financial interventions and confronted revolutionary change in Libya directly, even providing military support and materiel to particular political and military forces on the ground and thereby worsening violent unrest and political and security chaos. Egypt and the UAE have provided assistance to Haftar and the HoR government in the East in order to undermine the Islamism dominant in the GNA: Cairo and Abu Dhabi believe that Islamist forces are the greatest threat to their regional political project. Doha and Istanbul, meanwhile, have given substantial support to the other side. The same applies to European forces: France is backing Haftar while Italy supports the GNA in Tripoli.

Alongside all this comes transitional justice legislation both badly drafted and poorly executed. Post-revolutionary legislation in general has suffered from several flaws. It has become a political tool susceptible to manipulation and improvisation according to political and ideological whims. While the GNC and its Islamist parties prefer an approach that makes a comprehensive break with the Gaddafi regime, the HoR has taken a more conciliatory approach. This clash of visions and concepts appears clearly in the different transitional justice legislation issued by these different institutions.<sup>(33)</sup>

Law 35/2012 pardoning certain crimes and Law 38/2012 on certain procedures concerning the transitional period (both issued by the TNC), Law 29/2013 on transitional justice (promulgated by the GNC), and the General Amnesty Law of 9 September 2015 (issued by the HoR) all provide for amnesties – despite UN Resolution 1970 (26 February 2011), which refers all Libyan cases to the ICC, calls for the Libyan authorities to cooperate with the ICC Prosecutor, and imposes travel bans and asset freezes on sixteen named people (members of the Gaddafi family and certain high-ranking officials involved in major crimes). Law 17/2012 does not mention criminal prosecution despite this being the foundation of any transitional justice mechanism, and Law 29/2013 likewise avoids discussing the topic despite Article 3 enjoining “accountability for human rights violations committed under cover of the state or an institution thereof or an individual operating with support therefrom.” Note the vague phrasing, which is open to multiple interpretations and throws the door open to criminalisation and mass trials, risking a shift towards retributive justice. As far as this legislation is concerned (and thus the Truth and Reconciliation Committee established under it), “violations” are unique to the Gaddafi era: those that have taken place after his ouster and been recorded by international organisations are dismissed. All this promotes selective, retributive justice and undermines the transitional justice process.

Supporters of the Gaddafi regime typically take a very negative view of all efforts to enact transitional justice legislation. There is a widespread belief that the purpose of these initiatives is to allow the victors to take revenge and to consolidate political power rather than to pursue a comprehensive system of justice that strengthens the unity of Libyan society.<sup>(34)</sup> No connection has been made between the program of exclusion from political office and political reconciliation. Quite the opposite: the law provides for a form of accountability rooted in retribution and

31 Leaked emails showed secret coordination between León and the Emirati government (which supports a one specific faction in the Libyan conflict). León was subsequently appointed as the first Director-General of the Emirates Diplomatic Academy, a position commanding an annual salary exceeding \$500,000 as well as various benefits. David D. Kirkpatrick, “Leaked Emirati Emails Could Threaten Peace Talks in Libya,” *The New York Times*, 13/11/2015.

32 Azmi Bishara argues for a reconsideration of the role played by external factors in democratic transformation, which he suggests has been ignored by many researchers more interested in domestic factors: “It is no longer possible to neglect the external factor in cases of transition: it is impossible to contend with them today without understanding it.” Azmi Bishara, “Mulāḥazāt ‘an al-‘Āmil al-Khārijīyy fi’l-Intiqāl ad-Dimuqrāṭīyy,” *Siyasat Arabīya*, vol. 38 (May 2019), p. 11.

33 Belkouch notes the vital importance of consensus on the underpinnings of transitional justice: “In all cases where there is no [common] foundation enjoying the agreement of the most important political factions, transitional justice projects are fruitless – as in Yemen or Libya.” Habib Belkouch, “al-‘Adāla al-Intiqāliyya wa’l-Intiqāl ad-Dimuqrāṭīyy fi’s-Siyāq al-‘Arabiyy,” *Siyasat Arabīya*, vol. 18 (January 2016), p. 82.

34 Mark Kersten, “Transitional Justice Without a Peaceful Transition – the Case of Post-Gaddafi Libya,” in Arnim Langer and Graham K. Brown (eds.), *Building Sustainable Peace: Timing and Sequencing of Post-Conflict Reconstruction and Peacebuilding* (New York: Oxford University Press, 2016), p. 312-316.

unidirectional justice targeting those linked to the defeated regime.<sup>(35)</sup> It has thus magnified divisions within the country, thereby reducing the transitional justice program's prospects of success.

Moreover, the philosophy governing Libyan transitional justice legislation has many flaws of its own. All laws prior to Law 29/2013 were incomplete, covering some aspects of transitional justice while neglecting many others. Law 29/2013 itself, meanwhile, suffers from numerous problems that have impeded implementation. It was issued in a hurry, without consulting public opinion – that is, without sufficient media attention or discussion – giving weight to the belief that it was the result of pressure placed on GNC members by armed militias.<sup>(36)</sup> Moreover, there was no attempt to include civil society organisations or victims of violations before and during the Revolution in discussion of what the law should look like.<sup>(37)</sup>

The legislature's choice to use the term “national reconciliation” (*muṣālaḥa waṭaniyya*) rather than “transitional justice” was likewise unfortunate, causing the public a great deal of confusion because it gave them the impression that this law meant pardoning and not punishing those responsible for killings, torture and rape. As a result the law never enjoyed the kind of popular support needed for successful implementation of any transitional justice legislation. The drafters also neglected various questions relating to the Truth and Reconciliation Commission, failing to assign it premises or the necessary manpower. The Commission itself was flawed: its membership was made up exclusively of retired or working judges without including political scientists, psychologists or sociologists as it should have. Judges alone do

not possess the necessary professional background to lead the transitional justice process, and the nature of judges' work perhaps makes them less than ideal figures to implement transitional justice mechanisms. Victims likewise seem to play a very limited role in the Commission's work. They are not mentioned in this law except with regard to compensation. This does not provide sufficient space for in-depth study of the legacy of human rights violations via open hearings or for victims to express their own opinions.

Moreover, the law has only been partially implemented: on the ground it has suffered the same fate as other statutes of its kind. Although a Commission has been appointed, the results of its investigations have not been published. The legislature has deliberately undermined the law, issuing parallel ordinances of direct relevance to transitional justice – whether prior legislation laying the groundwork for its failure or subsequent legislation that robs it of any meaning. Some of its articles have been the source of deep and lasting controversy. The article concerning authoritative grants of citizenship, for example, has caused serious problems for ethnic minorities, particularly the Tuareg and Toubou peoples. Its defenders argue that the Gaddafi regime used grants of citizenship in order to attract non-Libyan mercenaries to fight in its ranks, in which case by revoking citizenship the state is simply striking down a grant that was illegitimate in the first place. But Tuareg and Toubou leaders claim that those who obtained citizenship papers during and after the Revolution are native Libyans long denied them by the old regime; granting them citizenship thus corrected their status.<sup>(38)</sup> This

35 Fraihat correctly notes that “The “culture of the victor” that has prevailed since the collapse of the Qaddafi regime has sharply divided Libyan society. National reconciliation cannot be achieved as long as the rigid and polarizing division between *azlam* (regime loyalists) and *thawar* (anti-Qaddafi revolutionaries) prevails.” Ibrahim Fraihat, *Unfinished Revolutions: Yemen, Libya, and Tunisia after the Arab Spring* (New Haven: Yale University Press, 2016), p. 24.

36 Tawfik emphasizes the importance of transparency and of society participating in the drafting and implementation of transitional justice legislation. She notes that “the National Unity Law that established the Truth and Reconciliation Committee was totally revised seven times. Three hundred amendments were made to the first draft after months of consultations in public conferences, ministerial meetings, and sessions of the Parliament's Justice Committee running to some 130 hours, as well as hearings drawn on by this Committee in which some victims of violations and their representatives participated and discussions between the Committee and the Parliament. Transparency and participation were not only a feature of the drafting process but also of the work of the Reconciliation Committee. It was agreed that the hearings of the Committee and its subcommittees would be public and open to popular participation except in exceptional cases where considerations of justice required otherwise.” Rawia Tawfik, “Hal ad-Dawla wa'l-Mujtama' fi Miṣr Musta' iddān li'l-'Adāla al-Intiqāliyya: Durūs min Janūb Afīrīqiyā,” *Siyasat Arabiya*, vol. 6 (January 2014), p. 97.

37 The GNC has adopted this approach in discussion of some legislation, which had a positive effect on the Elections Law and the Public Offices Law as well as the Constitutional Committee Law. Interviews conducted with Ahmed Ghanem, Rule of Law Official at UNSMIL, in Tunis between 2015 and 2017.

38 Meetings with Toubou and Tuareg representatives on the Constitutional Committee in Tunisia and Oman, 2015-2017.

dispute, exacerbated by the article, proved a major impediment to the work of the Constituent Assembly.<sup>(39)</sup>

### III: Opportunities for Transitional Justice in Libya

Most students of transitional justice describe it as a fundamentally political process relying on interlocking efforts by politicians, the state bureaucracy and particularly the judiciary, the security establishment and civil society activists – as well as support from the international community. This author believes that any comprehensive transitional justice in Libya will require several preconditions to be met and agreements to be made both on Libyan soil and between the regional and international powers involved.<sup>(40)</sup> There are perhaps four basic requirements: a stable constitutional regime valorising transitional justice; a single unified set of state institutions; a set of important reconciliations on the ground; and a national consensus on the ideal transitional justice program.

The first requirement is, theoretically, close at hand. After a monumental effort, the Constituent Assembly has managed to produce a draft constitution meeting the difficult conditions for ratification.<sup>(41)</sup> All that is needed now is the political will to successfully hold a referendum allowing the constitution to be formally adopted. The final draft of the constitution makes limited reference to transitional justice: only Article 181, a relatively short article within Section 11 (Provisions for Transition) is directly pertinent. This article stipulates that:

“1) The state shall undertake to implement transitional justice measures; a law shall be issued to govern fact-finding, compensation for

harm done, accountability, and examination of institutions.

2) A Transitional Justice and Reconciliation Commission shall be created whose composition shall be determined by law in a fashion guaranteeing representation for all the constituent communities of Libyan society, neutrality, independence and competence, [and establishing] the duration of its work; [this Commission] shall undertake to design and implement transitional justice programs as part of a comprehensive national reconciliation.”

This article is imperative because it commits the state to the requirements of transitional justice and the creation of an independent institution for this purpose. Also important is the stipulation that all segments of Libyan society should be represented in order to ensure the process’s social legitimacy, that this body should be independent, and that its work should be explicitly linked to a comprehensive national reconciliation.

Alongside this article there are several others of significant relevance to transitional justice. Article 36 (Crimes Against Humanity), for example, which prohibits all forms of behaviour constituting crimes against humanity, war crimes, genocide or terror, stipulates that there is no statute of limitations on such crimes and that they are excluded from any amnesty. This may limit the Transitional Justice Commission’s ability to use pardons to put the past to rest and move

<sup>39</sup> The author participated in several meetings held in Oman and Tunisia under the auspices of the UN and other international organisations in order to solve disputes between different groups. The rights of ethnic minorities (known in Libyan political discourse as “linguistic constituent communities”, *mukawwināt lughawiyya*) were the most important source of these disputes.

<sup>40</sup> Azmi Bishara rightly notes that reduced US involvement has had important negative repercussions for Libya: “The United States continues to greatly regret its choice to intervene militarily, because it would have preferred stability under Gaddafi to the chaos that has since emerged. Since the war the US has not taken any steps to strengthen the fledgling democracy. It was swept into an aerial intervention against the Libyan regime, but quickly realised that the alternative was instability and the spread of Islamist forces, leaving the field to the European countries.” Bishara, p. 21. The US has contented itself with piecemeal programs supporting civil society and the rule of law or promoting civil culture and minority rights, largely leaving the political process to the UN and European and regional forces; this has had negative effects thanks to the conflicting interests of these powers.

<sup>41</sup> Because of political power struggles, the Constitutional Declaration and its amendments include certain exceedingly strict conditions unprecedented in other constitutional processes, whether in periods of democratic transition or under stable political regimes. The 60 seats on the Commission were divided equally between the three historic regions: Cyrenaica (East), Tripoli (West), and Fezzan (South). Some seats were also reserved for women and the three linguistic minority communities (the Amazigh, Tuareg, and Toubou). The Declaration requires the agreement of these communities “in respect of any provisions concerning them”. Adoption of the new constitution likewise requires a two-thirds majority of delegates followed by a two-thirds majority vote of citizens in a popular referendum.

forward. Article 61 (The Right to a Trial), meanwhile, guarantees all citizens the right to legal recourse and to a fair trial before a lawful and appropriate judge (*qāḍin ṭabīʿīyy*), and states that no law or government decision is exempted from judicial oversight: “nor shall any behaviour that prejudices or threatens rights or freedoms be excluded [therefrom].” Article 62 provides for a number of other guarantees including presumption of innocence and forbids extrajudicial punishment as well as stipulating that “no violation shall command punishment or sentence prejudicial to liberty except those acts committed after this law enters into force; any punishment shall be personal and appropriate to the crime and its perpetrator.” Article 182 (Reconstruction) stipulates that “the state shall give priority in its programs to the reconstruction of those cities and villages that have suffered the effects of military activities and armed conflict, depending on urgency, in a fashion accounting for development requirements country-wide; the state shall create the necessary mechanisms for this.” It is also important to note that the draft constitution does not provide for the exclusion of the old regime’s supporters: the drafters considered it more important to create a document that could unite Libyans rather than dividing them.<sup>(42)</sup>

Once the constitutional structure is in place political divisions on the ground must cease. In order to pave the way for transitional justice it is urgently necessary to unify the institutions of the state, particularly the three “sovereign institutions” (*muʿassasāt siyādiyya*): the army, the police, and the judiciary. Barring this, fragmented institutions and militia barbarity will mean that any attempts to implement transitional justice will be dead on arrival. Alongside political will, transitional justice requires a stable political and security situation allowing the country to rebuild, move the reconciliation process forward and consolidate the rule of law. Transitional justice cannot exist without stability and peace. It is impossible to imagine a functioning judiciary in a country where the state does not control the security situation. The courts cannot go about their business when there is no

guarantee that judges will be safe or that judgements will be executed. This will require a coordinated effort to address the paramilitary problem. As it stands there are many distinct armed groups, and although some are formally affiliated with official bodies (the Ministry of Defence, the Interior Ministry), this affiliation is typically superficial, a means of gaining legitimacy: in practice the state has no effective control over any of these groups.<sup>(43)</sup>

It is also important that we learn from transitional justice programs implemented in the global south in countries suffering similar problems to those of Libya. With such a complicated situation and such weak state institutions we cannot afford to reinvent the wheel. The South African experience stands out here as a ground-breaking experiment in terms of both the mechanisms employed and the results achieved. This has been recognised by both Tunisia and Morocco. “The Tunisian Ministry for Human Rights and Transitional Justice sought the help of the South African Ministry of Justice in forming a committee along the lines of the Truth and Reconciliation Committee created in South Africa in 1995. In 2003, Morocco established its own Justice and Reconciliation Commission to investigate human rights violations between 1956 and 1999.”<sup>(44)</sup>

Thereafter a comprehensive program of transitional justice will require a series of reconciliations: political, social, economic and ethnic. A political reconciliation between those who supported the Revolution and those who supported Gaddafi, helping to mend a social fabric torn apart by violent political factionalism. A social reconciliation bringing together tribes or cities that have fought bloody conflicts with one another and addresses the attendant population displacement, providing a final and comprehensive solution to divisions within the body politic. An economic reconciliation between those deprived of wealth and power and those elites who have monopolised it whether under Gaddafi or after the February Revolution – and returning stolen assets to the public purse, allowing the state to compensate

42 Personal interviews conducted with members of the Constituent Assembly Constituent Commission, 2015-2018.

43 Al Kout, p. 140.

44 Tawfik, p. 91.

those in greatest need.<sup>(45)</sup> And an ethnic reconciliation between the different communities (Arab, Amazigh, Touareg, Toubou and others) ending injustice and putting into practice the principles of citizenship and equality. Integrating different tribal, religious and ethnic groups is a key prerequisite of unity and justice.

Finally there must be a political will conscious of the importance of transitional justice for a stable state and society.<sup>(46)</sup> Passing laws is not in itself enough if the state does not put all its energy into the transitional process. This will be followed by national consensus on transitional justice and its importance to individuals, communities and society as a whole, and emphasis on the importance of societal participation in law-making. Laws must be drafted with universal participation in such a way that they reflect in-depth national discussions: any transitional justice project must be a national project bringing everyone together. Before being drafted and imposed by the legislature any law must be inspected and discussed by all sections of society – by civil society organisations, victims' associations and families, activists and experts – before mechanisms are developed appropriate to the specific features of the Libyan situation.

The idea, aims and mechanisms of transitional justice must also be explained to tribal, religious and local leaders so that they can pass them on in turn to the public. Tribal sheikhs and notables enjoy a prominent position in Libyan society, particularly outside big cities; religion likewise plays an important role in Libyans' lives and prominent religious personalities will be able to attract the support of broad swathes of society. It is also important to win the backing of academics, writers, media figures and opinion leaders. Failure to do so has scuppered several transitional justice programs in recent years.

As far as implementation is concerned, it must be emphasised that transitional justice is a comprehensive system – that the parameters of every part must

be laid out in such a way that no individual part contradicts either the system as a whole or any other individual part. Truth committees must have total independence. This can be achieved by making sure that civil society organisations form a significant part of their makeup<sup>(47)</sup> and choose their representatives independently, as well as by making sure that a quorum is required to take decisions, ensuring that these representatives cannot be marginalised. Sources of funding that do not depend on the agreement of particular government bodies must be guaranteed by law, and the committees must be allowed to determine their own internal procedure, with the law obliging them to be entirely open and transparent except in exceptional circumstances where secrecy is necessary to protect those appearing before them. They must also be obliged to publish their findings directly rather than passing them on to administrative, parliamentary or judicial bodies. And the law must provide for mechanisms by which these findings can be developed into practical measures – either by referring cases to the judiciary or providing compensation – and ensure that state bodies will carry out these measures, putting in place appropriate penalties to deter non-compliance.

Truth committees should also have priority in investigating complaints, disputes and cases relevant to transitional justice and involving violations and crimes that fall within its remit. Only civilian courts should have jurisdiction in such cases, regardless of the identity of the perpetrators or the circumstances in which they took place. It would also be sensible to create a mechanism to oversee supplementary investigations carried out by the Public Prosecutor's Office or investigating judges, involving representatives of the truth committees and civil society; complaints and testimony submitted via this mechanism should then be referred to a higher judicial body capable of intervening to correct the course of investigations or trials if necessary.

45 It is important that a balance is struck between getting back embezzled money and reassuring local businessmen that their property is safe. Here it may be useful to draw on the Tunisian experience of transitional justice. Some of the measures adopted in Tunisia allowed public money to escape, with negative repercussions for the Tunisian economy despite the relative success of the transitional justice process. See: Redissi, p. 13-14.

46 The lack of political will torpedoed nascent attempts to create a transitional justice system in Egypt after the ouster of Mubarak. For more detail see: Reem Abou El-Fadl, "Beyond Conventional Transitional Justice: Egypt's 2011 Revolution and the Absence of Political Will," *The International Journal of Transitional Justice*, vol. 6 (2012) p. 318-330

47 The Moroccan transitional justice process shows the importance of the role played by truth committees in redressing harm and consolidating and strengthening political reform. See: Kamal Abdellatif, "al-'Adāla al-Intiqāliyya wa't-Tahawwulāt as-Siyāsiyya fi'l-Maghrib: Tajribat Hay'at al-Inṣāf wa'l-Muṣālaḥa," *Siyasat Arabiya*, vol. 5 (November 2013), p. 97-100.

With regard to compensation and redress, assessing material and psychological compensation for harm caused to victims or their relatives should be the responsibility of truth committees or an independent commission formed for this purpose. Compensation set by truth committees or the independent commission should be implementable without approval from any executive, legislative or judicial body; the state should provide the necessary funding out of its budget.

An independent body should also be created comprising representatives of the people as a whole and of civil society organisations, in order to produce plans for the reform and restructuring of state institutions relevant to transitional justice and establish a timeframe for their implementation. This body should also investigate corruption cases and establish what measures should be taken in respect of them – including criminal proceedings or internal disciplinary measures. It should have the power to propose new laws necessary for it to achieve its goals and submit them directly to the legislature. And its decisions (but not its proposed laws) should be binding on government entities even without approval from the executive or the legislature, with non-compliance punishable by law.

If all these conditions are met, the groundwork will be laid for a successful, integrated program of transitional justice ushering in a united, independent and democratic Libya in which the law is sovereign. As the conflict deteriorates and ever more appalling crimes are committed, political and social stability is inconceivable without citizens supporting a comprehensive plan putting the past to rest and effective measures to prevent these crimes from happening again under the new state's institutions. If Libya is successful, then its model will serve as a beacon to other countries in the region entering post-conflict periods.

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