



## Transitional justice in Libya

Stumbling paths with the absence of community vision and political will



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## Introduction:

It is difficult to talk about transitional justice and its tracks in a country like Libya, a country that has been through several armed conflicts at different times and where governments, legislative authorities, and armed groups are numerous.

Although Libya has not known internal armed conflicts or the civil wars in its recent history since its independence in 1951 and despite the armed nature that accompanied the change and revolution in Libya in 2011 and beyond, this did not prevent at first any promising democratic transition, in 2012 the first democratic elections were held in Libya, which established a legislative and executive authority and pushed Libya toward stability. However, the democratic path stumbled in favor of the military track, which resulted in a constitutional crisis in the country and the duplication of legislative and executive authority there.

Naturally, any stage of democratic transformation or change in the political system necessarily requires a legislative, societal and political path to transitional justice. This will help to support democratic transformation by revealing the truth, reparation, accountability, and institutional reform in order to achieve genuine national reconciliation that will help to address social fragmentation and push the country toward stability and development.

But in Libya, successive authorities have failed to adopt a real project of



transitional justice based on solid foundations, although some timid fail attempts to put the wheel on the track have emerged, but it was chaotic and represented the lack of political will among the most notable characteristics of the Libyan transitional justice process.

## The Interim Council legislation “a stumbling start”

The beginning of the track was with the interim National Transitional Council (NTC) which was the first political consensus authority after the revolution, although it was not elected, but it had already taken the initiative at a very early stage to issue the first transitional justice legislation on 2/26/2011, Law No. 17 of 2012, on the establishment of national reconciliation basis and transitional justice, which came in 18 articles, and it was a proposal from the Ministry of Justice through an expert committee, but it was not discussed by civil society organizations or victims, and in fact, was an incompetent law that was unable to confront the heavy legacy of abuses inherited by the former regime and was unable to address the recent violations that have marked the revolution and change in addition to overlooking the issue of institutional reform which was never stipulated in the law.

What was important in this law was its establishing of the Truth and Reconciliation Commission, but its composition came totally in a judicial form, in which women, young people, minorities and victims were not represented, which made the Commission powerless, uncertain and unable to deal with complicated realities.

The law has not really had a real impact and has not contributed to pushing toward a state of stability, consolidation of democratic transformation and treatment of the community's crack since it was not a comprehensive, integrated law; it was just an urgently issued act and was not subject to community consultations or open debates.

The same legislative authority issued later subsequent legislation, ones that even included dealing with specific incidents, which the Act was unable to address, inter alia, by amnesty from some crimes and release of indiscriminately arrested prisoners during and after the armed conflict in 2011, which required a spe-

In conjunction with it, the NTC passed another legislation No. 38 of 2012 on some transitional procedures that reinforces the concept of impunity, and gives the opportunity to those who have committed violations to escape accountability as article IV of the Act provided that: "There is no punishment for the military, security or civilian operations that the February 17 revolution required in order to make the revolution succeed and in order to protect it.

cial legislative treatment so the law No. 35 of 2011 concerning amnesty was issued<sup>1</sup>.

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Dr. Wahid al-Farshishi has considered that the recognition of the revolutionaries' legitimacy in criminal tracing operations represents a threat to the path of transitional justice that may deviate toward retaliatory justice<sup>3</sup>.

And a continuation of the legisla-

1- An analytical study of Professor Azza Al-Makhour, lawyer (national legislations related to transitional justice and national reconciliation)

2- An article on the chaos of transitional justice in Libya ((Saif al-Islam as an example)), the sixth issue of the legal agenda

3- Guide to Transitional Justice in Libya, publications of the Arab Institute for Human Rights.

tive disinformation policy and the absence of a specific strategy that shows the legislator's purpose, the Transitional Council issued another law, which emptied the Transitional Justice Law from its content and established a new concept, namely, discrimination between victims, as political prisoners were referred to their own legislation, although the Transitional Justice Law includes them, and thus the Law No. 50 of 2012 on prisoners was issued, The law specifically is concerned with those who deprived of their freedom in prisons and private detention camps because of their opposition to the former regime, whether military or civilian, from 1.9.1969 to 15.2.2011, this law established a concept, that it is acceptable to issue legislation for specific cases of violation<sup>4</sup>.

## General National Congress legislation "continuing chaos"

Even when the legislative power was changed and the National Congress was elected in 7.7.2012, the same legislative policy remained in place; the beginning was with Act No. 29 of 2013 on Transitional Justice and National Reconciliation.

This text has established that the concept of transitional justice includes some of the effects of the February 17th revolution, namely (attitudes and actions that led to the collapse of social fabric and actions that were necessary to fortify the revolution and were included some behaviors which are in accordance to its principles). This text has broadened the definition of the concept of transitional justice in the Libyan case, including crimes and violations committed by revolutionaries or combatants under the flag of the Transitional National Council or other authorities. Thus, the law did not limit itself to dealing with violations of the former regime, but anyway its consequences remained relatively non<sup>5</sup>-existent.

The results of the investigations have not been published despite the fact-finding Commission's formation, on one hand, and the legislative authority has disavowed its content by issuing parallel legislation that is supposed to be at the core of the transitional justice work, whether before it was issued and after it has

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been issued it led to its failure and after it was issued it emptied it of its content. <sup>6</sup>

For example, the Law No. 13 of 2013 on political and administrative isolation, which severely excluded those who worked under the Qaddafi's regime and held political positions, The Act had created a deep division of society and was supposed to leave this issue to institutional reform, a fundamental pillar of transitional justice through which through it corrupt people and who did harm to public money are removed, it also came in a selective and non-objective criteria, failed to establish a mechanism for its application and violated civil and political individuals rights and promoted discrimination between citizens through a broad criteria<sup>7</sup>.

The General National Congress did not violate the former legislative authority traditions of discrimination between victims and the issuance of legislation for specific cases of violation, as it passed Decree No. 59 of 2013 concerning the Abu Salim massacre and distinguished it from other crimes and considered it a crime by decree, not by law. The Commission was given the competence to investigate and to give it the entitlement of genocide and the resolution focused on compensation and financial bene-

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7- Evaluation of Libyan Legislation for Reconstruction (Report, Researches and Research Project) University of Benghazi and University of Leiden, Netherlands

The National Congress did not only distinguish this crime by its decision but also reinforced this by Law No. 31 of 2013 concerning the report of some provisions concerning the Abu Salim massacre, where it canceled the previous decision, considering it a crime against humanity and focused on benefits<sup>8</sup> and compensations.

## House of Representatives legislation “Legislation issued during a political division”

Even the House of Representatives which was elected in 25.6.2014 was not different from its predecessors in its absence of legislative policy and vision, which was embodied in the promulgation of Act No. 6 of 2015 on amnesty, which provided for conditional amnesty for all Libyans who committed certain crimes from 15 February 2011 until the promulgation of the law declaring that criminal proceedings have been terminated, sentences their consequences have been dropped.

One of the most prominent conditions established by law for amnesty is the written pledge of repentance, the restitution of the proceeds of crime, reconciliation with the victim, the delivery of weapons and instruments used in the Commission of the crime, and the return of the situation to its origin in offenses of attacking property and movable property.

The law also does not apply to all crimes. The amnesty excluded its applicability to terrorist crimes, crimes of drug-trafficking, crimes of arrest and indecency, murders for identity, kidnapping, torture, border crimes and corruption (article III).

What made this law more critical is that it came at a time of political division and military conflict and that it was necessary for such a period to seek to redrafting and activate the entire transitional justice project, not to issue an amnesty law that was widely debated on its effectiveness<sup>9</sup> and timing.

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## Transitional Justice in the Constitution bill

The Constituent Assembly has tried to formulate a constitution bill dealing with the issue of transitional justice and national reconciliation in the transitional measures chapter from articles 197 to 200, and it is clear from these texts that these measures are not linked to a specific time era, and they responded in general to include all violations of human rights compensation, and organized a mechanism for restitution of real estate and movable property but did not oblige the legislature to pass a law for Transitional Justice<sup>10</sup>

## Transitional Justice in the Libyan political agreement

Even the political agreement which was signed in 17 December 2015 in Skhirat was not perceptive in dealing with the transitional justice issue and deal with it improperly, as it is noted generally that it reduced the essence of “transitional justice” which is “reparation” in favor of the idea of “settlement at any cost,” which was amplified in the agreement although normally there is no reconciliation without justice.

That included the absence of compensation and the absence of hearings to find out the facts, as the agreement was limited to demanding the activation of the Transitional Justice Law No. 29 for the year 2013 and did not discuss drafting of a new bill to amend the law defects, and due to change in circumstances and the development of the accompanying events

And the agreement also introduced bodies without a precise definition of its functions as a body to reveal the truth, a Commission for Human Rights, and a body to monitor violations, and this with no doubt would cause confusion in the performance of these bodies, uncontrolled overlapping, and lack of coordination.

This political agreement also lacked to determine the activation of a mechanism transitional justice, reconciliation, fact-finding, and documentation. <sup>11</sup>, and neglected to identify the basic

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11- The political agreement within the eyes of a human rights activist, by the writer



steps and mechanisms in vital issues, and one of the most prominent issues of those are issues of detainees, prisoners, missing and displaced persons<sup>12</sup>

## The future of transitional justice in Libya

As proved by monitoring the transitional justice course in Libya and following-up its details, it is clearly evident that it is not enough that the authorities are elected to ensure the transitional justice law's success, as holding extensive consultations with civil society and victims representatives to create a societal will should occur, and that neglecting the participatory nature of the transitional justice leads ultimately to the failure or at least stumbling of its course.

The path of the transitional justice will not succeed in light of the legislative authorities' exploitation of the situation and circumstances in order to adopt legislation that would serve political trends and tendencies in particular, as this would result in its deviation from their true objectives and would necessarily lead to the transformation of this legal mechanism from justice to revenge and settling scores<sup>13</sup>

Fatima Al-Zahraa Naqi published in the legal agenda

12- The political agreement within the eyes of a human rights activist, by the writer Fatima Al-Zahraa Naqi published in the legal agenda

13- A study entitled Evaluation of the Transitional Justice Law No. 29 of 2012 regarding

In addition, all aforementioned above, the basic factor which is the weakness of state institutions and their vulnerability and inability to work regularly, and the deterioration of services, instability and economic and security chaos and repeated military clashes that happen from time to time contributes to blocking the course and lead to the political will's failure or its inability at least.

Finally, despite the multiplicity of authorities and variety of political backgrounds and successive governments, they are all similar in their absence of political will to adopt an integrated project for transitional justice, legislative policies are random and confused and based on a political reactions, and all transitional authorities do not have a real and decisive political will to embrace the project in the light of the absence of freedom of opinion and community's and victims' will, and absence of their participation in public consultations and open community dialogue that shall create a real strong community is willing to contribute to building an integrated, balanced and applicable transitional justice project.