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Wierda, M.; Ibrahim, S.M.K.

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Revenge, Revisionism, or Reconciliation? Libya after the Arab Spring

MARIEKE WIERDA AND SULIMAN IBRAHIM

“Dreams have consequences. There is no turning back. A Revolution is not a painless march to the gates of freedom and justice. It is a struggle between rage and hope, between the temptation to destroy and the desire to build... Its temperament is desperate. It is a tormented response to the past, to all that has happened, injustices recalled and unrecalled—for the memory of the Revolution reaches much further back than the memory of its protagonists.” - Hisham Matar

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In September 2023, heavy rains in Libya caused two dams to break. Muddy floodwaters ripped through the town of Derna, dividing it in half and destroying everything in their way, causing at least 10,000 deaths.¹ This single natural disaster killed more people than the violence that has plagued Libya since its Revolution, but in many ways, it was man-made. The failure of the dams and the decaying infrastructure result from the political rifts that have dominated Libya for a decade. The disaster has once again prompted debate in Libyan society on how to achieve justice for the lives lost, in this case due to negligence and corruption. Since 2011, Libyans have been waiting for justice for lives lost, be it during the rule of Muammar Gaddafi or during the turbulent period that followed. The absence of accountability hinders the formation of a new social contract through reconciliation.

Twelve years ago (at the time of publication), at the height of the Arab

Dr. Marieke Wierda is the current Deputy Ambassador of The Netherlands to Yemen. Previously she was a long-term transitional justice expert and practitioner, from 1997-2015, working as the transitional justice advisor to the United Nations Support Mission to Libya (2011-2015), amongst other experiences. Dr. Suliman Ibrahim is an Associate Professor of private law at Benghazi University, Libya, and the director of the Centre for Law and Society Studies in Benghazi. He is currently a visiting senior researcher at the Van Vollenhoven Institute at Leiden University in The Netherlands, where he coordinates projects on access to justice and on the role of law in Libya's National Reconciliation. This article is written in our personal capacity and does not reflect the views of any government or organization.

Spring, the Middle Eastern and North African (MENA) countries seemed to be on the cusp of a new era. Demonstrators at the time were protesting oppression and demanding justice, dignity, and democracy. This wave of revolutions could have ushered in a new era of transitional justice, which had been widely applied in the democratic transitions in Latin America and Eastern Europe in the 1990s. Transitional justice, as defined by the United Nations, encompasses “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”² The concept grew to prominence in South Africa, where an apartheid regime transitioned peacefully to a majority black regime under the leadership of Nelson Mandela’s African National Congress. Mandela believed that “reconciliation does not mean forgetting or trying to bury the pain of conflict, but that reconciliation means working together to correct the legacy of past injustice.”² Transitional justice has become a key ingredient for post-conflict state building ever since.

A recent Guidance Note of the Secretary-General of the United Nations refers to transitional justice as a “strategic policy tool to help build just and inclusive futures in fractured societies that are grappling with legacies of conflict and/or large-scale human rights violations and abuses.”³ Transitional justice (TJ),

Transitional justice, therefore, should address the root causes of conflict while also concretely improving people’s lives

therefore, should address the root causes of conflict while also concretely improving people’s lives. At the same time, the guidance note recognizes

that “social fractures and protests are on the rise, often fomented by a loss of shared truth and understanding, while increased levels of grievance, power imbalance, inequality and other forms of marginalization call into question the very idea of a shared social contract.”⁴

Today, hopes of either justice or democratic transition in the short term have dimmed in the MENA. Instead, much of the region remains in conflict or political turmoil. Conflicts continue to rage in Yemen and Libya, whereas Tunisia and Egypt have seen democratic backsliding. The conflicts that have rocked the region—in addition to migration flows and the rise of extremist groups, such as Islamic State (ISIS)—have had negative spill-over effects and shifted international policymaking attention to favor stability over accountability for past crimes. On 19 May 2023, President of Syria Bashar al-Assad was reinvited to join the Arab League after being expelled over his brutal suppression of the

“Arab Spring” uprising in his country, sparking a war that led to at least half a million dead and 13 million displaced. With Assad’s return to the Arab League, the quest of seeking justice for Syrian victims has been swept under the carpet.⁵ This decision leaves many wondering what happened to the original demands for dignity and justice that sparked the Arab Spring.

In the Arab Spring uprisings, calls for transitional justice were ubiquitous. In Libya, it was the relatives of the victims of the Abu Selim prison massacre in 1996 that sparked the Revolution, as described below. Today, Libya is trapped, in the words of Hisham Matar, between the “temptation to destroy and the desire to build.” Since 2011, the country has become increasingly divided between those who sought revenge with revolutionary zeal and those who opted for revisionism. As the history of Libya’s struggle for justice recounted below will demonstrate, over the last 12 years, Libya has continuously oscillated between these two poles. Transitional justice contains many tools other than criminal justice to come to terms with the past, including truth-telling, memorialization, and acknowledgement of, or reparations for, victims. Libya could benefit from these tools to help to build public trust in the state and forge a path toward reconciliation.

DEALING WITH THE PAST? THE HARABI COVENANT

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Libya has a long history of human rights atrocities, even prior to the rule of Muammar Gaddafi. In 1946, a few years after the defeat of occupying Italy in the Second World War, Libyans were still struggling for their country’s independence. They were also grappling with how to deal with the Italian occupation’s legacy of human rights violations. As Salim al-Owkali, a Libyan writer, put it:

For over thirty years, fascism ruled Libya, tortured, murdered, and executed its opponents, and set up the strongest mass detention camps in history. Throughout this period, many Libyans cooperated, forcibly or willingly, with this occupying force, which led to Libyans fighting each other, tribes declaring, entirely or partially, their loyalty to fascism, Libyan brigades affiliated with the Italians chasing the Libyan resistance, many Libyans working as informers in favour of the invaders, some executing their Libyan countrymen, and some seizing property that was not theirs.⁶

During the colonial period (1911–1943), around one-third of the Libyan population died due to colonial violence.⁷ At that time, Prince Idris al-Sanusi called to stop the spiral of conflicts between Libyans arising from the colonial

period. In response, the elders of the Harabi tribes and the dignitaries of the city of Derna announced a covenant known as the Harabi Covenant. The Harabi Covenant suspended all disputes until the establishment of a national government to which legitimate rights holders could submit their complaints. The Covenant considered every violation of the commitment as obstructing nation-building efforts and thwarting the struggle for independence. The Covenant's slogan was a saying attributed to Prince Idris: "*hathāt ala mā fāt*," or "let bygones be bygones," which means, figuratively, "let's forget the past atrocities." The Covenant indeed worked; in 1951, the United Nations decided to grant Libya its independence. Ever since the Covenant has been a frequent reference when Libyans debate TJ.

Those opposing TJ in Libya still cite the Covenant to question the concept's utility. While TJ emphasizes revealing the truth behind past human rights violations, the Covenant promoted forgetting as more conducive to national reconciliation. It also shows that holding perpetrators accountable for violations and repairing the harm caused to the victims may not be desirable or feasible during times of state (re)construction when there are many other challenges to focus on. Those opposing TJ also argue that it does not align with Libya's specific and unique experience, hence it lacks legitimacy.⁸

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Proponents of TJ reject these arguments. The Covenant did not prevent the victims from seeking justice but only asked them to wait until the establishment of a national government to which legitimate rights holders could submit their complaints.⁹ Admittedly, a subsequent law prevented people from seeking justice for certain human rights violations.¹⁰ Some victims still see this as an obstruction of justice and call for extending the scope of any TJ law to cover their grievances.¹¹

THE OVERTHROW OF THE GADDAFI REGIME

In 2011, Muammar Gaddafi, also known as "the Colonel" or "Brother Leader," who had ruled Libya ruthlessly and erratically for 42 years, was overthrown by a coalition of armed actors backed by NATO airpower. Gaddafi had ruled Libya through a bizarre brand of totalitarian socialism, described in his publications such as the "Green Book."¹² The crimes of the Gaddafi regime are well-documented and include hunting down and brutally killing opponents, both in Libya and abroad, under the so-called "Stray Dog" policy. The Revolution that overthrew Gaddafi was sparked by the victims of a famous massacre at the Abu Selim prison in 1996, when over 1,200 prisoners were killed in a single

day. Families did not receive any news of their deaths until 2008, and even then, only a few were offered compensation in return for silence.¹³ The failure of the state to acknowledge the whereabouts of the victims became etched in the Libyan public consciousness and became a symbol of how the Gaddafi regime disappeared political opponents. As British journalist Lindsey Hilsum put it, “generations of families in eastern Libya [where most of the victims came from] were scarred by Abu Salim, defining themselves ever after by their hatred of Gaddafi and their determination to find the truth about their lost relatives.”¹⁴ Indeed, the Abu Selim massacre amounted to a Libyan national trauma, which proved impossible to forget. The 2011 demonstrations by victims’ families before the Courthouse in Benghazi sparked the Revolution.

The Revolution began in eastern Libya before spreading to the western and southern regions. Whereas demonstrations in the neighboring countries remained largely peaceful, in Libya, the Gaddafi regime responded with characteristically brutal force. As a result, what started as a citizens’ revolt quickly turned to armed violence. Subsequently, Gaddafi’s regime fell in August 2011 at different paces in each region of the country, reflecting the Gaddafi-era strategy of divide and rule.¹⁵ Some people, areas, networks, and tribes had benefited from his rule, while others had been marginalized. For example, Gaddafi’s own tribe, Qadadfa, and others such as Warfalla and Maghraha were among those who benefited.¹⁶ People in eastern Libya felt largely marginalized under Gaddafi’s rule.¹⁷ When the protests first started in the East, Gaddafi called those who had benefited from this patronage system to arms. In this way, the Revolution deepened the divides that the Colonel had instrumentalized for so long.¹⁸ The Colonel himself met a violent and bloody death at the hands of the revolutionaries on 20 October 2011 in Sirte.

The roots of the Revolution in Libya were less about differences in ideals (dictatorship versus democracy) than historical divisions based on who supported or opposed the regime. This helps to explain the tendencies toward revisionism or revenge, both of which undermined the formation of a new social contract. The armed actors involved in the power struggle ignored the voices of many ordinary Libyans who wanted to move their country forward to stability, freedom, and prosperity. Libya plunged into disorder and chaos. Militias supporting the Revolution took the law into their own hands and engaged in vengeful acts, including widespread arbitrary detention and torture of those alleged to be associated with the former regime.¹⁹ For instance, in 2011, revolutionary militias displaced the entire town of Tawergha, accusing its inhabitants of having supported Gaddafi’s siege of Misrata, one of the centers of the Revolution.

Many remain in detention a decade later. In the period since 2011, numerous militias and weapons have spread throughout the country, undermining the rule of law and the authority of the central governing authorities. The chaos and fragmentation that plagued Libya allowed for events such as the killing of the U.S. Ambassador, Christopher Stevens, in Benghazi on 11 September 2012.

VICTOR'S JUSTICE?

In the years following the overthrow of Gaddafi (2011–2014), the new authorities enthusiastically embarked on TJ, believing it to be relevant to the Libyan context. Yet, revisions in the laws show the increasing impact of a revolutionary fervor that sought to condemn only the crimes of the former regime. This fervor called for completely breaking with the former regime's laws, institutions, and persons while celebrating and protecting those who revolted against them. This one-sided approach undermined TJ as a tool for reconciliation. Instead, it led to further divisions.

On 3 August 2011, the National Transitional Council (NTC) (2011–2012) issued an Interim Constitutional Declaration without any reference to national reconciliation or TJ. Later, the NTC adopted Law 17/2012 on the *Establishment of the Rules of National Reconciliation and Transitional Justice*. According to a prominent Libyan lawyer, al-Hadi Buhamra, a member of the law's drafting committee, the NTC subsequently introduced changes to the draft that fundamentally changed its philosophy and content. The changes left out a whole chapter devoted to criminal prosecution.²⁰ Law 17/2012 also included provisions limiting its scope to violations attributed to the former regime. The law was never fully implemented, and although it established a Fact-Finding and Reconciliation Commission, consisting only of elderly male judges, the latter remained dormant.

Other NTC legislation clearly tends to distinguish between the violations of the former regime and the subsequent ones, invoking justice only on the former. On 2 May 2012, the NTC enacted Law 35/2012 on *Amnesty for Some Crimes*, which excluded from amnesty any crimes that Gaddafi's family (wife, children, in-laws) and assistants committed. On the same day, it enacted Law 38/2012 on *Some Procedures for the Transitional Period*, ordaining in Article 4 that "there shall be no punishment for any military, security, or civilian acts that the revolutionaries committed to make the revolution a success or protect it." In the same month, May 2012, the NTC issued Law 37/2012 on *Criminalization of the Glorification of the Tyrant* that imposed imprisonment, possibly for

life, for acts including “lauding and glorifying... Gaddafi, his regime, ideas and children.” This law mirrored a law passed by Gaddafi after his own revolution in 1969, which outlawed criticism of his regime. History was repeating itself, and in the absence of genuine TJ, the inexorable legacy of oppression persisted.

Such legislation attracted criticism both nationally and abroad. A group of Libyan lawyers challenged the constitutionality of Law 37/2012 before the Supreme Court, arguing

that it restricted freedom of speech protected in the Interim Constitutional Declaration. On 14 June 2012, the Court

History was repeating itself, and in the absence of genuine TJ, the inexorable legacy of oppression persisted.

upheld their claim. In reasserting the rule of law, the new Libyan authorities received technical assistance from the international community.²¹ The United Nations established a Support Mission in Libya (UNSMIL), a Special Political Mission by Security Council Resolution—under the leadership of Special Representative of the Secretary-General (SRSG) Ian Martin—with a mandate to provide support to the Libyan authorities.²² In July 2012, Libya held its first election, establishing the General National Congress (GNC). UNSMIL called on the General National Congress (GNC), the NTC’s successor, to revisit and revise the legal framework of TJ, including not only Law 17/2012 but also the amnesty laws.

Rather than showing moderation, however, the GNC (2012–2014) introduced legislation with even more revolutionary fervor. Law 29/2013 on Transitional Justice, which replaced Law 17/2012, declared as TJ objectives the legal recognition of the fairness of the February Revolution and the acknowledgment of the former regime’s corruption, tyranny, and criminalization (Article 4). Admittedly, the scope of the law extended from 1 September 1969 to the end of the transitional period, which could be understood as including any violations committed in the post-February 2011 era. Yet, other provisions of the law cast doubt on such an understanding. The law, after unequivocally defining transitional justice as applying to the violations of the Gaddafi regime, stated that it also “includes some of the effects of the 17 February Revolution.” It defined these effects as acts that were associated with behaviors violating the Revolution’s principle but were necessary to protect the February Revolution.²³

Described in this way, these acts would not be expected to be treated the same as the widespread violations committed by the corrupt, tyrannical, and criminal former regime. The law also required such violations to be severe and

systematic, which failed to account for many violations committed by the revolutionaries. According to Article 2, a severe and systematic violation is “violating human rights through murder, abduction, physical torture or confiscation or damage of funds, if committed by an order of an individual acting out of a political motive.” While there would be no question about the severity of atrocities such as those committed by the revolutionaries against the inhabitants of the city of Tawergha, it would be quite difficult to prove that the so-called revolutionaries who committed them acted out of political motive.²⁴

JUSTICE OR REVENGE? TRIALS OF THE FORMER REGIME FIGURES

While thousands of those accused of association with the former regime languished in lengthy detentions under the auspices of militias, regularly suffering ill-treatment and torture, the authorities moved swiftly to dispense justice on the surviving senior members of the former regime, including Saif al-Islam Gaddafi (Gaddafi’s son) and Abdullah al-Senussi (former Head of Intelligence). The latter was associated with many high-profile crimes of the regime, including the disappearance of Lebanese Shia cleric Musa Sadr in 1978 and the Abu Selim massacre. He was also a long-term suspect in the Lockerbie bombing case, although the sole Libyan accused, Abdelbaset al-Meghrani, died while his case was due for a final appeal.²⁵ He always maintained his innocence. The International Criminal Court also wanted both Saif al-Islam and Abdullah al-Senussi, but the Libyan authorities indicated early on that they wished to try them in Libya.²⁶ This was particularly important for Libyans regarding their TJ process, considering that the ICC could not try Al-Senussi for his (alleged) involvement in the Abu Selim massacre, as the case fell outside their jurisdiction. Chairman of the NTC Mustafa Abdul Jalil, in a letter addressed to the ICC in November 2011, stated “the NTC affirms that Libyan judiciary has the first responsibility to try Saif al-Islam and the Libyan state is willing to and capable of trying him according to Libyan law.”²⁷

Proceedings began in the Tripoli Court of Appeal on 24 March 2014, with 37 defendants in the dock.²⁸ Saif al-Islam participated by video link from his prison in Zintan. Charges included “the killing of civilians, ordering the shooting of protesters, incitement to civil war, incitement to rape, arbitrary deprivation of liberty, distribution of drugs, repression of political rights, misuse of public money, booby-trapping vehicles and preparation of a plan for blowing up prisons, among other offences.”²⁹ The trial lasted just over two years and resulted, on 28 July 2015, in a guilty verdict and death sentence for nine defendants including

Saif al-Islam Gaddafi and Abdullah al-Senussi. However, the death penalty was not applied. The proceedings did not comply with international standards for fair trial, and, on 27 May 2021, the Supreme Court annulled the ruling and ordered a re-trial.³⁰ Several senior former regime members were subsequently released under reconciliation proceedings or for health reasons. In this instance, Libyans showed themselves capable of neither seeking revenge nor completely forgetting the crimes of the past through revisionism.

In this respect, the fate of Saif al-Islam portrays the ambivalence that many in Libyan society have shown when dealing with the past despite the injustices they suffered under the Gaddafi regime. In some ways, Saif al-Islam had indirectly contributed to the Revolution by inviting Libyan opposition figures such as Bashir al-Rabiti and some members of the Libyan Muslim Brotherhood to return to Libya and reconcile with the regime in the years preceding 2011. Some hoped that the efforts of Saif al-Islam would usher in an era with more freedoms. Indeed, they “served to foster an environment in which it became gradually more acceptable for Libyans to express their grievances in the public arena. Public protests, almost unheard of in the ‘revolutionary decades,’ became increasingly commonplace.”³¹ However, when the Revolution broke out, Saif al-Islam unequivocally sided with his father and famously threatened the Libyan people with civil war and “rivers of blood” if the regime collapsed.³²

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He was captured after falling into the hands of a militia from the small town of Zintan while attempting to escape Libya via the Sahara. In the years to follow, he was kept in relative isolation by a militia in Zintan. In June 2017, he was released but his whereabouts remained unknown. In 2021, he was permitted by a court in Sabha to run for president in any elections (on the grounds that his *in absentia* trial would entitle him to a retrial), despite the Election Commission’s attempt to rule him ineligible due to his criminal conviction. Interestingly, he was seen as a front-runner. The election, however, never took place due to, among other reasons, the rejection of some candidates, notably Saif al-Islam. Eventually, the Election Commission declared that a *force majeure* prevented the election.³³

BREAKING WITH THE PAST: POLITICAL ISOLATION

In Tripoli, the quest for vengeance against the former regime culminated in Law 13/2013 on *Political and Administrative Isolation*, which was passed by the GNC under lethal threat of the militias.³⁴ This law sought to exclude persons from public posts based on their affiliation with the former regime between 1

September 1969 and 23 October 2011, regardless of their seniority or individual crimes, or lack thereof. As a result, it even applied to persons who had spent brief periods in public functions but were known for their decades-long opposition to the former regime. It also sought to exclude others who joined the February Revolution in its early days, such as Mohammad al-Muqariaf, the then-president of the GNC who resigned following the law's passage due to his former position as ambassador to India in 1981. The law also sought to exclude Khalifa Haftar, who would later become the General Commander of the Libyan National Army (LNA) and a key political player, for being a member of Gaddafi's Revolutionary Command Council. The Political and Administrative Isolation Law was a major negative turning point, after which Libyan political factions no longer competed in the political arena but increasingly resorted to violence.

The Political and Administrative Isolation Law contributed to growing criticism of the GNC, which developed into calls for early departure. The GNC had to enact a law to elect an Assembly: a House of Representatives (HoR). When elected on 7 July 2014, the HoR was a body wherein the revolutionary forces, which had dominated the GNC, had a very modest representation. The HoR took as its seat Tobruk, a city around 1,500 km away from the capital, Tripoli, far from the seat of power of these forces. Ultimately, the few representatives of those revolutionary forces in the HoR boycotted its sessions, and the GNC, citing procedural arguments, refused to transfer power to the HoR. This resulted in a rivalry over which one of the two institutions was the legitimate legislature. Each body associated itself with a military operation: the HoR with Operation Dignity in the East and the GNC with Operation Dawn in the West. The political division of Libya was complete, and the country plunged further into violence.

POLITICAL DIVISIONS: FROM REVENGE TO REVISIONISM

The GNC and HoR differed in their approaches to TJ. The GNC continued to act as the guardian of the February Revolution, a role that entailed breaking with the former regime's laws, institutions, and figures, yet also sought justice for the victims of Gaddafi's large-scale crimes. On 19 August 2015, the GNC enacted a law allocating financial and in-kind benefits to the victims of the Abu Salim Massacre. On 14 October 2015, it also enacted Law 16/2015, which reversed Gaddafi's laws restricting private ownership of real property.³⁵ However, the approach also extended to anyone merely affiliated with the former regime and left little room for reconciliation—a key feature of Libyan TJ reforms. The

HoR, however, adopted a revisionist approach, showing far more tolerance for the former regime. It enacted Law 2/2015, which repealed Law 13/2013 on Political and Administrative Isolation, and Law 6/2015, which granted amnesty for many violations attributed to the former regime's key figures, including arguably Saif al-Islam Gaddafi. While it did not repeal Law 29/2013 on transitional justice, the HoR refrained from taking the steps necessary to implement it, despite receiving several proposals to this end. It sought to sidestep the issue of TJ.

Divergent positions on TJ are also evident in the work of the Constitution Drafting Assembly (CDA). In 2016, the CDA produced a draft that obligated the state to take all necessary measures to reveal the truth about human rights violations, including those related to cultural and linguistic rights; to disclose the fate of missing persons, victims, and those affected by military operations and armed conflicts; and to compensate any damage sustained. It also established a commission for transitional justice and reconciliation. The draft provided for the criminal prosecution of those involved in these violations. In 2017, however, the CDA redrafted the constitution and opted for fewer and more concise provisions. Some of its members saw the repeated reference to perpetrators' criminal and administrative accountability as targeting certain influential parties in the current conflict.³⁶ Indeed, groups associated with those parties tried to prevent voting on the draft by force. By leaving out this repeated reference to accountability, the CDA hoped to persuade those parties to accept the draft. Unfortunately, this was not enough. To date, the draft is still waiting to be put to a public referendum to become the country's first constitution in decades. For a successful referendum to occur and the results to be recognized, Libya must first end its political bifurcation and associated conflicts.

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ATTEMPTS TO BRIDGE THE DIVIDE: THE LIBYAN POLITICAL AGREEMENT

UNSMIL was mandated to heal the rift in Libya and thus sponsored political negotiations that resulted in the Libyan Political Agreement (LPA) in December 2015. The Libyan Political Agreement deemed the HoR as the legitimate legislature and replaced the GNC with a High State Council (HSC) with broad "advisory" competencies and formed a Government of National Accord (GNA) headed by a Presidential Council (PC). However, the LPA did not heal the divisions in Libya. The HSC was unsatisfied with an advisory role and acted as a second legislative chamber. For its part, the HoR rejected the LPA and declined to approve the GNA. It continued to recognize the Interim Government residing in the East of the country as the only legitimate government. This meant the

continuance of the divide between the GNA in Tripoli—the West of the country (the historical Tripolitania)—and the Interim Government in al-Bayda—the East (the historical Cyrenaica). In explaining the failure of the LPA, some pointed to the exclusion of key parties from the dialogue that preceded it, notably the exclusion of supporters of the former regime. This exclusion reflected the absence of reconciliation.

Excluding the supporters of the former regime had an impact on the LPA, including how it approached TJ, in that the Agreement's language once again was blatantly one-sided. The preamble declared the "condemnation of all forms of tyranny that characterized the former regime, which was an unfair and tyrannical era that represented a dark period in Libya's history as it controlled the country from 1 September 1969 until the victory of the blessed February Revolution."³⁷ It stated that the "Libyan people will always owe their revolutionaries a debt for the part they played in the country's liberation from decades of autocratic rule, or the sacrifices they made in their struggle for a free, democratic state that upholds the rule of law and respect for human rights."³⁸ It is no surprise, then, that the supporters of the Gaddafi regime saw the Political Agreement as one uniquely favorable to the February revolutionaries. Admittedly, the LPA acknowledged the violations that occurred after the February Revolution, including those attributed to revolutionary forces, and made the implementation of TJ and national reconciliation mechanisms one of its principles. Still, it linked these mechanisms to those stipulated in Law 29/2013, which, as explained earlier, discriminated against the former regime.

The LPA also included provisions to exclude another key player, Khalifa Haftar, General Commander of the East-based Libyan National Army (LNA). Khalifa Haftar had originally taken part in the coup that brought Gaddafi to power in 1969 but his capture in the war in Chad later embarrassed Gaddafi. He planned a coup against Gaddafi and fled to the United States in 1990, where he lived for two decades before returning to Libya during the Revolution. Haftar spoke out against the GNC for its neglect of the army and subordination to Islamist groups. Subsequently, Haftar attempted to suspend the GNC and appoint an interim presidential council. On 16 May 2014, under his command, the LNA started "Operation Dignity" against Islamist groups in the east, which resulted in Haftar controlling the region.

It is no surprise that the GNC members saw him as their enemy. Saleh al-Makhzoum, head of the GNC's delegation that signed the LPA, expressed his rejection of replacing Gaddafi with another military ruler like Haftar and acknowledged that Article 8 of the LPA was meant to end Haftar's legitimacy.³⁹

This article stated that the Presidential Council (rather than the HoR) would be the supreme commander of the army. It would decide on appointees to senior military posts within 20 days; otherwise, these posts would be deemed vacant, and the PC would make new appointments within 30 days. Members of the HoR rightfully concluded that Haftar, as the general commander of the army, was the target of this article and rejected it.

Due to these events, the LPA failed to end the political bifurcation. UNSMIL announced plans to review the Agreement and include previously excluded players. Yet, these plans suffered a significant setback when Haftar attacked Tripoli on 4 April 2019.⁴⁰ The attack coincided with a visit from the UN Secretary-General to Libya and resulted in the abortion of UNSMIL's plan to organize a national conference to agree on a roadmap and timetable for presidential and parliamentary elections. Still, the attack did not fully end the peace process plan. In July 2019, Ghassan Salamé, head of UNSMIL, proposed a peace plan consisting of a ceasefire; a meeting among countries involved in the armed conflict to enforce the arms embargo; and a national conference composed of economic, military, and political tracks. The GNA and LNA declared a ceasefire on 12 January 2020, but it was not fully observed.

THE BERLIN PROCESS AND THE LIBYAN POLITICAL DIALOGUE FORUM

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General Khalifa Haftar spent over a year trying to conquer Tripoli to no avail, mainly because the militias in the West chose to enlist the support of Turkey, alongside support from Qatar and Italy. Haftar himself was supported by various actors, including the UAE, Egypt, and the Wagner Group. Under the leadership of the UN SRSG Ghassan Salamé, a conference took place in Berlin on 19 January 2020 resulting in a follow-up committee composed of 10 senior military officers (five GNA and five LNA) and an International Follow-up Committee to monitor progress. The conference rejected the presence of foreign armed actors in Libya and expressed support for the UN to facilitate “an inclusive intra-Libyan political and reconciliation process.”⁴¹ This was further endorsed by the Security Council in Resolution 2510 (2020). The five plus five Joint Military Commission met in February 2020 to discuss a draft agreement on a ceasefire and associated security arrangements prepared by UNSMIL. However, they encountered difficulties, and the GNA delegation suspended its participation after the LNA attacked Tripoli's harbor.⁴²

To make the process more inclusive, UNSMIL established the Libyan Political Dialogue Forum, a body composed of the full social and political spectrum

of Libyan society, including women, who had notably been absent from earlier negotiations and institutions. Besides forming a new Government of National Unity (GNU) and a Presidential Council (PC), the LPDF Roadmap included processes for presidential and parliamentary elections as well as “a comprehensive national reconciliation process based on the principles of transitional justice and promoting the culture of amnesty and tolerance in parallel with truth-seeking and reparation.”⁴³

For a while, Libya seemed to be on the path to unity. The GNU became the sole internationally recognized government, and the PC assumed its functions, with Prime Minister Dbeibah taking a seat in Tripoli. However, this arrangement did not last long. Accusations were exchanged over failure to take necessary measures to prepare for the elections planned in 2021, and the HoR eventually withdrew confidence from the GNU and appointed another government based in the East. Ironically, both governments had prime ministers from Misrata, but the political divisions remain for now, although the violence has reduced as a stalemate persists.

TOWARD A FUTURE BASED ON RECONCILIATION?

14 Part of the difficulty in Libya’s reconciliation stems from not only its deep divisions but also from the controversy over the relationship between reconciliation and TJ, posing the question of whether they are different concepts. Some of those associated with the former regime who joined the new government insist on separating the two. In their view, reconciliation should be founded on forgiveness and not on the past, and TJ measures aimed at unveiling human rights violations and holding the perpetrators accountable would be counterproductive. Those parties tried unsuccessfully to convince the PC.

The PC sought to promote its Strategic Vision on National Reconciliation based on TJ. The Vision listed contestation over TJ among the root causes of the conflict in Libya. To end this conflict, the Vision prescribed “implementing transitional justice mechanisms in a way that rises above political, ideological, and regional rivalries.”⁴⁴ It called for:

Issuing a transitional justice law that takes into account the specificities of the Libyan experience; that is based on the fact that revealing the truth is a right for the victims and that amnesty, despite its importance, should not deny this right or immunize the perpetrators of human rights violations; that provides a framework with varied instruments for reparations; in which the public interest is taken into account; and where institutional reform is not reduced to political isolation, which

is to depend on the office holder's conduct and not the office per se.⁴⁵

To translate the Vision into action, the PC also formed a committee to prepare a draft law on national reconciliation. The committee strived to produce a draft that would still be TJ-based while considering the concerns of various parties, such as the supporters of the former regime. It named the proposed law as *Law on Islah That al-Bain*, a Quranic term denoting reconciliation. According to the committee, the intended reconciliation finds its roots in the religious heritage of Libyan society. While this reconciliation entails "all procedures and measures that are likely to consolidate social fabric, reinforce civil peace and national unity, restore public trust in State institutions and among citizens and right holders... [it] shall by no means be construed as an exoneration from accountability or any form of impunity for the alleged perpetrators of violations."⁴⁶

Elsewhere, the draft declared that the law aims to "achieve comprehensive and sustainable national reconciliation... via official and societal Transitional Justice mechanisms that are mindful of the values and traditions of Libyan society and the well-known international standards."⁴⁷ Reconciliation would consist of truth-seeking, criminal accountability, reparation, institutional reform, victim acknowledgement, and pre-eminence of the values of tolerance and rejection of violence. The draft provided for amnesty for human rights violations, yet excluded war crimes and crimes against humanity and required the perpetrator's active contribution to fact-finding and apology to the victim(s).

15

LIBYAN VIEWS ON RECONCILIATION

The draft law was met with mixed reception from experts and activists in various Libyan cities. Those who still hold onto the February Revolution, especially in the west of the country,

appreciated its TJ-based approach, while others, such as the Gaddafi regime's supporters, criticized it.⁴⁸ Detractors

Interestingly, most Libyans do not share this desire to simply dismiss the past and TJ

argued that true national reconciliation should embrace forgetting and forgiving rather than fact-finding and accountability, referring to the Libyan experience manifested in the Harabi Covenant. The Arabic term "transitional justice" is not popular in Libya, as it is understood to be selective or incomplete justice.

Interestingly, most Libyans do not share this desire to simply dismiss the

past and TJ, as shown in a nationwide survey conducted in January–February 2023 at the behest of the Presidential Council.⁴⁹ The survey demonstrates that most Libyans think that to achieve national reconciliation, it is necessary to unveil the truth behind human rights violations (91 percent), hold accountable those who committed them (90.6 percent), repair the harm caused to victims (76.1 percent), and reform the institutions implicated in such violations (82.3 percent). They either strongly disagree (42.9 percent) or disagree (29.4 percent) with granting amnesty to perpetrators. They disagree with not addressing human rights violations until the transitional period (61.1 percent).⁵⁰ This survey assured the PC of its stance on national reconciliation. Victim movements too have remained vocal in Libya for decades, including most notably families of the missing and disappeared, including but not limited to the Families of Abu Selim. As recently as 2022, the ICC worked with the Libyan authorities to help excavate a mass grave site in Tarhuna where hundreds were killed at the hands of a local militia.⁵¹

But, of course, that does not mean the end of challenges to TJ. The PC still must refer the draft law to the HoR, which should enact it as law. As evident in its position on Law 29/2013 on TJ, the HoR lacks the political will to see TJ realized. For almost a decade, it has declined to take steps necessary for the implementation of this law, i.e., issuing executive regulations and forming a Fact-Finding Commission.⁵² Even if the law is adopted, implementation will remain very challenging considering the absence of effective state institutions to implement the law. On the other hand, finding the balance between revisionism, as sometimes advocated by the former regime's supporters, and the revenge that became a hallmark of the February Revolution, may be Libya's best chance at reconciliation.

CAN LIBYA RISE FROM THE ASHES?


In some respects, the initial revolutionary period in Libya most closely resembled that of Iraq after the overthrow of Saddam. In both cases, an international intervention brought down a dictatorial regime, giving way to instability and chaos. As in Iraq, Libya held trials of the former senior regime figures in summary procedures that resembled revenge more than justice. Libya's political isolation law resembled De-Baathification, the controversial and widespread political purge that followed the overthrow of the regime of Saddam Hussein and his Baath Party in Iraq in 2003. What followed was a period of chaos and instability that gave space for extremist groups to function. The polarization

in Libya between East and West, not only along the lines of revolutionaries versus supporters of the former regime but also along the lines of Islamists and nationalists, mirrors the polarization seen in Tunisia and Egypt. The answer does not lie in revisionism and forgetting the crimes of the Gaddafi regime but rather in finding a balanced way to remember and move on to a better future.

Many Libyans would like to chart a more constructive course for their country. Libya contains some of the ingredients that could eventually lead it out of political division and chaos toward a more peaceful and prosperous era. Unlike in Syria or Yemen, the divisions in Libya are not deeply ideological or sectarian. Libya is supported in its reconciliation efforts by civil society and the international community. It has the natural resources to provide for a prosperous future, although this may be a current cause of conflict. Libyans have shown themselves historically able to move forward from their painful history, such as the colonial period.

The key may lie in a process that allows Libyans to focus on the kind of society they want to become rather than on the society they were. Moving forward should not entail forgetting about the past or succumbing to nostalgia or revisionism. In the words of Hisham Matar: “those who would later lament Saif and his father’s (Gaddafi) regime are like a man who looks at the ashes and says, ‘I much prefer the fire.’”⁵³ Reconciliation in Libya will also require stemming revenge, allowing for justice to take its place. In the words of Marcus Aurelius, the Roman Emperor and stoic philosopher who ruled Libya during his reign (161–180 AD) and whose arch still adorns the center of Tripoli, “the best revenge is to be unlike him who performed the injury.” Justice requires condemning violations rather than justifying them on behalf of a revolution. It lies in identifying a form of reconciliation rooted in norms and values that are uniquely Libyan—which seems to be the ambition of the new initiatives of the Presidential Council. At this moment in time, it may be difficult to define exactly what this process will look like. Still, it will require accountability for crimes through compiling a historical record, the release of detainees who have been held for over a decade with insufficient evidence, a search for and identification of the missing, the return of IDPs, redress for victims, truth-telling, and guarantees that certain patterns of violations will not be repeated.

In countries as varied as Syria, Yemen, and Tunisia, demands for justice continue and remain mostly unresolved. Worldwide, polarization and conflict have deepened. Many societies seem to suffer from “the loss of a shared truth or understanding,” as lamented in the Secretary General’s Guidance Note on TJ.⁵⁴ The concept of justice for crimes of the past can still serve to foster belief in a

social contract through measures that “consolidate social fabric, reinforce civil peace and national unity, restore public trust in State institutions and among citizens and right holders,” in the words of the Strategic Vision on National Reconciliation. This is not only true for Libya but also for other Arab Spring countries. Healing the rift in Libya is in the direct interests of citizens, who otherwise will continue to suffer the consequences of division and a lack of effective governance. The numerous flood victims in Derna are a stark reminder of this. Only when it embarks on true reconciliation can Libya rise from the ashes. 

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