

Transitional Justice in Libya

Confused Paths

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Editing: Research and Studies Unit at the Defender Center for Human Rights

Follow-up: Media and Communication department

Translated into English : A*chieve for Educational Services and Scientific Translation, Leeds, UK & Salah Abdel Kafi

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September 2022

France: 7, rue des Carmes, 75005, Paris

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Introduction

This article is about transitional justice in Libya. It shows that despite the novelty of this concept in Libya - some authors argued that term is new in Libya, but the concept is not¹ - the country has witnessed great momentum in enacting transitional justice legislation. However, this momentum was not accompanied by a momentum in implementation, in addition to, and perhaps because of, shortcomings associated with this legislation. In later periods, the feasibility and application of transitional justice, in concept and legislation, was questioned, and calls appeared to exclude it, in whole or in part, permanently or temporarily, in order to achieve national reconciliation. The political context since 2011 has had a significant impact on the emergence and development of these calls. It also had an impact on the responses provided.

The article argues that the relationship of transitional justice with national reconciliation is not mutually exclusive, meaning that it is not necessary if one is accepted that the other is denied, but rather the opposite; That is, to achieve sustainable national reconciliation, transitional justice is required. The article also argues that, despite the enormity of the challenges, there are still opportunities to achieve transitional justice.

The article is based on research that the author was involved in as part of a research project on "The Role of Law in National Reconciliation in Libya."² Transitional justice in this project represents one of five main concerns, over which Libyans' disagreements constitute obstacles to national reconciliation. The project focused on examining the role of law in overcoming or exacerbating these disagreements³. The approach of the article, as is the approach of the research project, is socio-legal, which means that the focus is not only on state law, but also on other rules regulating behavior such as religious and customary rules. It also seeks to study the dynamic of rules in the Libyan social and political context. To this end, the research methods used were observation, interviews, and focus group discussions. The article is also based on the experience the author gained from his membership in committees that prepared draft laws and decisions related to transitional justice and national reconciliation. The author also contributed to the drafting and amendment of

¹ Kuni Abouda. 2017. "Real Estate Ownership Disputes and Transitional Justice in the Libyan Approach." In Suleiman Ibrahim and Jean-Michael Otto (ed.) *Resolving real property disputes in post-Gaddafi Libya, in the context of transitional justice*. Benghazi, Leiden: Center for the Study of Law and Society, Van Vollenhoven Foundation.

² This project was implemented by the Center for Law and Society Studies at the University of Benghazi in partnership with the Van Vollenhoven Foundation for Law, Governance and Society at Leiden University during the period from 2018 to 2021. The author is grateful to the team working on this project: Najeeb Al-Hasadi, Zahi Al-Mughairbi, Kuni Abouda, Jean-Michael Otto and Jazia Shaiteer, Hala Al-Atrash, Ali Abu Ras, and Ninka van Hyek.

³ The other four concerns are national identity, national governance, decentralization, and security forces. The research findings, as well as those of transitional justice, were published in detailed reports in both Arabic and English.

Presidential Council Resolution No. 5/2021 establishing the National Reconciliation Commission, and the drafting of the Transitional Justice and National Reconciliation Bill at the request of this Council as well.

The article deals with seven major transitional justice issues, monitors their problems, and evaluates the legislative responses they received. These issues range from questioning the very idea of transitional justice to questioning the applicability of it; from expanding its temporal and substantive scope to narrowing it; from emphasizing the centrality of revealing the truth of its grievances to the call to forget them; and from insisting on holding the perpetrators of these injustices accountable to praising their pardon; from urging the reform of institutions that have been implicated in these grievances, or that have not managed to prevent them from reoccurrence, as they should, to limiting this reform to the targeting of persons who held positions in these institutions, even if their involvement in the grievances that occurred is not proven; from a focus on monetary compensation as the most effective means of reparation for harm, to highlighting the importance of other means and calling for taking into account the limitations of the state's ability to compensate; from limiting transitional justice mechanisms in the national judiciary, to justifying a role for international mechanisms. Given the impact of the political context in post-February 2011 Libya on the emergence of these issues, on the one hand, and the legislative responses given to them, on the other hand, the article starts by presenting an overview of this context.

1. Setting the scene, the political context in post-February 2011 Libya

The political context since the February 2011 revolution plays an important role in explaining the emergence of the aforementioned problems, their development, and the responses they received, or did not receive. What helps to present and understand this context is to evoke a revolutionary fervour, represented in a tendency to exalt the revolution and its people, the revolutionaries, and to condemn the previous regime and its people, who were described for a while as AZLAM which means the previous regime's men but it's a derogatory term. While this fervour prevailed in the first years of the revolution, and legislation aimed at breaking with the previous regime, legislation, institutions, and people was evident, it declined in the subsequent years, and this was manifested in revisions of revolutionary legislation and efforts to replace it with conciliatory ones with the previous regime.

As for the National Transitional Council (2011-2012), the first of the legislative councils, it was increasingly influenced by the revolutionary fervour. In the constitutional declaration it issued in August 2011, the Council did not refer to national reconciliation, perhaps because it did not find a need, and reconciliation at that time mainly related to the previous regime, which was close to collapse⁴.

The impact of the revolutionary spirit is also evident in the law enacted by the Council on Transitional Justice: Law No. 17/2012 regarding establishing the foundations for national reconciliation and transitional justice. While the provisions of the law were conclusive in the inclusion of the grievances of the previous regime, they allow an interpretation that excludes those in which its successors were implicated⁵. It is an interpretation supported by the reading of other legislation enacted by the Council. While some of them declared, excluding the people of the former regime, that they pardoned some crimes⁶, others were conclusive in exempting the revolutionaries from accountability for violations committed to make the revolution a success or protect it. It was not surprising, for this reason, that there were calls to review these discriminatory legislations⁷.

However, due to the growing revolutionary fervour, the revisions of the General National Congress (2012-2014), the successor to the National Transitional Council, led

⁴ Azza al-Maqhour explains this omission by the fact that the authors of the constitutional declaration would not have foreseen the civil wars that the country would witness. Azza Kamel Al-Maqhour (2016). National legislation related to transitional justice and national reconciliation, an analytical study. Without a place of publication, without a publisher. p. 6.

⁵ Azza al-Maqhour. Previous reference. p. 8.

⁶ On May 2, 2012, the Council issued Law No. 35/2012 regarding amnesty for some crimes, with the exception of those "committed by the wife of the so-called Muammar Muhammad Abd al-Salam Abu Minyar al-Qadhafi, his sons and daughters, either biologically or by adoption, and by his in-laws and aides" (Article 1). On the same day, the Council issued Law No. 38/2012 regarding some procedures for the transitional period, deciding not to punish "for the military, security or civil actions of the revolutionaries that were necessitated by the February 17th revolution with the aim of making the revolution a success or protecting it" (Article 4).

⁷ United Nations Support Mission in Libya, "Transitional Justice: Foundation for a New Libya" (September 17, 2012). Available at:

https://unsmil.unmissions.org/sites/default/files/old_dnn/Transitional%20Justice-Foundation%20for%20a%20new%20Libya%20%28English%29.pdf (access date 13/7/ 2022)

to more discriminatory legislation. The new transitional justice law, No. 29/2013, was filled with texts denouncing the previous regime and holding it accountable for all the grievances it had committed, and others that exalted the February Revolution and limited accountability for the grievances committed in its name⁸. In this, the law has clearly deviated from its draft, as prepared by the Ministry of Justice with the advice of the International Center for Transitional Justice⁹. The GNC also dropped, in clear defiance from the draft, an entire chapter on institutional reform, apparently content with Law No. 13/2013 regarding political and administrative isolation, which reduces this reform to purging institutions from the people associated with the former regime¹⁰.

While the Political Isolation Law (PIL) represented the revolutionary fervour at the height of its power, its enactment heralded its demise. On the one hand, in enacting the law, the National Congress was subject to the pressures of revolutionary forces, and on the other hand, forces within the Congress used the law to exclude their opponents, although some of them were among the pioneers in opposing the previous regime and joining the February Revolution, such as Muhammad al-Maqrif¹¹. Many saw in the law a clear example of the poor performance of the General National Congress, its lack of vision, and its failure to achieve the stability and prosperity promised by the revolution. For this reason, calls for Congress dissolution were raised, which eventually prompted the Congress to enact a law to elect a successor: the House of Representatives.

However, when the House of Representatives was elected in July 2014, it was evident that it lacked a significant representation of the powerful revolutionary forces who dominated the General National Congress. These led the Congress to refuse to hand over its tasks to the newly elected body, which resulted in a duality: a general national congress in Tripoli, in the west of the country, and a parliament in Tobruk, in the east, and each has its own government, army, central bank, ... etc.

⁸ The law, for example, makes one of the goals of transitional justice "the legal recognition of the justice of the February 17 revolution and its being the right of the Libyan people and the recognition of the corruption, tyranny, and criminalization of the previous era" (Article 4). While it stipulates that it includes systematic and gross violations of human rights since September 1, 1969 (the date of Gaddafi's coming to power) until the end of the transitional period, which can be understood as the law's inclusion of violations after February 2011, other provisions of the law question the extent of the seriousness of this inclusion. On the one hand, the law described these violations in a way that limits their subordination to its provisions. They are "some of the effects of the February 17 revolution," namely: 1- Attitudes and actions that led to a rupture in the social fabric. committed to its principles. On the other hand, it is expected that the law restricting the violations subject to its provisions to be systematic including a large number of such violations.

⁹ The text of the project can be found on the ICTJ website (archived): <https://web.archive.org/web/20130309032927/http://ictj.org/sites/default/files/Libya-TJ%20law%20Arabic-Jan%202013-AR.pdf>

And on the comments made by the center about the project:

<https://web.archive.org/web/20130309032917/http://ictj.org/sites/default/files/ICTJ%20comments%20on%20Libya%20TJ%20law-AR.pdf>

¹⁰ Issam Al-Mawy, Lawyer and former President of the Council for Rights and Freedoms, in-depth interview, Al-Bayda, 21/1/ 2020. Cited in Suleiman Ibrahim et al. (2020) "Transitional Justice in Libya, Research Project Report. Benghazi: Center for Law and Society Studies; Leiden: Foundation Van Vollenhoven for Law, Governance and Society.

¹¹ Muhammad al-Maqrif was the head of the General National Congress, and was disqualified because he held the position of ambassador to New Delhi in 1981.

The aforementioned revolutionary fervour provides an indication for distinguishing between the General National Congress after its revival and the House of Representatives. As for the former, it continued, and the control of the revolutionary forces over it was strengthened, in its approach of breaking with the previous regime and favoring its opponents¹². As for the HoR, whose arena was emptied of these forces in favor of its opponents, it took a course that indicated a tendency to conciliate with the previous regime, on the one hand, and questionable revolutionary forces that supported the National Congress, on the other hand¹³.

Despite UN-sponsored efforts to end the political divide, it continued in various parts of the country. Initially, the political agreement concluded in Skhirat in December 2015 established the House of Representatives as a single legislative authority and replaced the General National Congress with a High Council of State with advisory powers. But while the former has always neglected to consult with the latter, if necessary, the latter has insisted on acting like a second legislative chamber¹⁴. Although the agreement created a government of national accord headed by a presidential council that took into account the representation of the parties to the conflict, the parliament rejected this government and kept its interim government in the east of the country. Accordingly, the duality continued: the House of Representatives with its interim government in the east of the country, and the High Council of State with the Government of National Accord in the west.

The failure of the political agreement at that time was explained by reasons including the absence of effective forces from the dialogue that established it. Among these, as stated by the head of the United Nations Mission in Libya, are the supporters of the former regime¹⁵, and this is what some of these supporters referred to the political agreement as an agreement between the supporters of the February Revolution¹⁶. This recognition finds credibility in the texts of the political agreement that

¹² For example, on 08/19/2015, the conference enacted a law adding financial and in-kind benefits to the victims of the Abu Salim massacre perpetrated by the previous regime (Law No. 11 of 2015 issued on 08/19/2015 amending an article in Law No. 31 of 2015). 2013 on deciding some provisions of the Abu Salim prison massacre. Official Gazette. 4. Fourth year.) and enacted a law on 10/14/2015 that abolished a large number of the previous regime's restrictive legislation on real estate ownership, such as Law No. 4/1978 (Law No. 16 of 2015 issued on 10/14/2015 regarding the repeal of some laws (Official Gazette 5. Fourth year).

¹³ The House of Representatives enacted legislation characterized as reviewing legislation targeting those who were classified as supporters of the previous regime, and questioning forces affiliated with the February Revolution and loyal to the General National Congress. For example, the parliament enacted Law No. 2/2015 that repealed Law No. 13/ 2013 regarding political and administrative isolation (Law No. 2 of 2015 issued on 6/8/2015 regarding the abolition of Law No. 13 of 2013 regarding political and administrative isolation. Official Gazette. 6. Fourth year), and Law No. 6/2015 regarding amnesty that included violations many have been attributed to supporters of the former regime (Law No. 6 of 2015 regarding general amnesty. Available on the Parliament website:

<https://www.parliament.ly/>

¹⁴ Al Jazeera.net (2016). "The Libyan Salvation Government stops its work and the "conference" resorts to the judiciary," 4/6/2016.

¹⁵ Ewan Libya (2015). "Libyan expert: Tripoli is following in Baghdad's footsteps after signing the Skhirat Agreement," December 20, 2015. Available online:

<https://www.albawabnews.com/1671452> (last accessed: 7/13/2022).

¹⁶ Muhammad Jibril Al-Urfi. In-depth interview. Al-Marj 9/8/ 2018. Referred to in Suleiman Ibrahim et al. Transitional Justice in Libya, Research Project Report.

exalt the February Revolution and the revolutionaries and condemn the era of the previous regime¹⁷.

Recognizing the impact of excluding the supporters of the former regime in the failure of the political agreement reveals the growing role of these supporters. This is due to reasons, some of which are related to the failure to provide a better alternative to the regime with which they were associated, and the requirements of alliances that accompanied the conflict in Libya. When the United Nations sponsored a dialogue to end the political crisis, supporters of the former regime participated in it, and although the demands attributed to them: ending the constitutional declaration and the political agreement, did not receive a response, the outcomes of the dialogue from a road map and a unified executive authority showed a greater understanding of their concerns. While the road map stipulated that its implementation is governed by the governing principles as determined by the political agreement (Article II/1), including the commitment to the principles of the February Revolution¹⁸, it made among the goals of the map the launch of a comprehensive national reconciliation based on the principles of transitional justice and the dissemination of a culture of amnesty and tolerance in parallel with the investigation Facts and reparation (Article 1/2.9). It stated, in contrast to the 2015 political agreement, that equitable representation of political diversity as one of the criteria for forming the Government of National Unity (Article V/6). It made national and social reconciliation, among its requirements, enabling the displaced inside and outside the country to return, a priority for the executive authority (Article VI/2), this included the loyalists of the former regime who left their homeland after the February Revolution. Indeed, among the members of the National Unity Government are supporters of the former regime¹⁹. It was significant that Saif al-Islam al-Gaddafi was among the candidates for the presidential elections for which this map was established.

The impact of the political context is also evident in the work of the Constituent Assembly to Draft the Constitution (2014-). This assembly worked in a time and place that increasingly saw calls for reconciliation with the former regime and a review of the February Revolution. This had its impact on the Assembly's outputs, as the

¹⁷ The agreement takes the February Revolution as its reference, although at the same time it acknowledges the violations that occurred after it, including those attributed to revolutionary forces. For example, the agreement asserts in its preamble that the Libyan people will remain "indebted to their revolutionaries for the role they played in liberating the country from decades of individual rule," and condemns in its preamble "all forms of tyranny that characterized the previous regime, which was an unjust, tyrannical era that represented a black era in the the history of Libya and perched on the country from 9/1/1969 until the victory of the blessed February Revolution," and its ruling principles include "the principles of the February Revolution" (Principle No. 6). While the agreement makes the activation of transitional justice and national reconciliation mechanisms a principle of its principles (No. 26), it links these mechanisms to what is stipulated in Law No. 29/2013 (Article 26/5 that requires the application of this law, including the appointment of the Board of Directors of the Fact Finding Authority).). But the agreement also includes provisions related to violations subsequent to February 2011, such as those related to addressing the situation of missing, detained, missing and displaced persons (Principles No. 24 and 27 and provisions of Articles 27, 26).

¹⁸ Among these are "6. Commitment to the principles of the February 17 Revolution included in the preamble of the Constitutional Declaration, and based on justice equality, respect for human rights, and building a state of law and institutions.

¹⁹ Zayed Hadiya (2021) "Gaddafi supporters return to Libyan politics through the new government's gate", The Independent Arabia. 3/13/2021.

preamble explains. When some members of the Assembly demanded a preamble glorifying the February Revolution and denouncing the previous regime, this was opposed by other members who called for a preamble for a constitution that accommodates “supporters of the February Revolution, its consequences, and opponents to it²⁰.” When the preamble to the draft constitution announced in April 2016 withheld the reference to the February revolution and the condemnation of the previous regime, and only referred to the Libyans’ struggle against dictatorship and the need to break with the rule of the individual, supporters of the former regime criticized it, as they saw in it a reference to the previous regime, even if it was a hint²¹. In conclusion, the Assembly, in order to get out of this dispute, opted to drop the preamble from its 2017 draft.

From the above, the successive changes witnessed by the political scene in Libya after February 2011 become clear and recalling these is a key to understanding the emergence of the main transitional justice issues, the responses they received, and their outcomes.

²⁰ Hadi Bouhamra (2019) *The Libyan Constitutional Path*. Tripoli: Dar Al-Rwaad. pp. 140, 141.

²¹ *Ibid.* p.144.

2. The necessity of transitional justice

This issue relates to the question of the necessity of transitional justice. Some question its necessity in the first place, while others question its necessity now, and each of the two views has its opponents. While the transitional justice legislation enacted by the transitional authorities can be interpreted as siding with the view that transitional justice is necessary, these authorities' reluctance, or inability to enforce this legislation, may be interpreted in favor of the opinion advocating that it is not necessary now.

There are many arguments for opponents of transitional justice. Including: the inappropriateness of dividing justice into ordinary and transitional; the sufficiency of the first; the effect that transitional justice has on well-established legal principles such as the authority of judicial rulings, by justifying retrials, prohibiting the retroactivity of punitive laws against the accused, by permitting persons to be held accountable for acts that the existing law at the time of their commission permitted, or might oblige, to commit; the statute of limitations, considering cases while the maximum time set for initiating legal proceedings has passed; the high costs involved; And threatening societal peace by opening long-standing files²².

There is another argument that does not deny the necessity of transitional justice but questions its necessity now. This argument argues that this justice depends on the existence of state institutions that can enforce it, and this is missing in Libya today, which is marked by political division and insecurity. The credibility of this, some argue, is that many transitional justice laws have not yet found a way to be implemented. The absence of application in some cases, as is the case of the most important law in this field, i.e. Law No. 29/2013, is due to the Legislative Council (the General National Congress and then the House of Representatives) refraining from issuing the executive regulations of the law and from restructuring the fact-finding body, which may indicate the absence of political will to activate the transitional justice process, perhaps because some of those in charge of this council are targeted by this process!

In fact, the reluctance to activate the transitional justice process due to the involvement of some officials in violations covered by this process constitutes another challenge that must be addressed without delay. The interpretation of this is that this path aims to reform the institutions that were implicated in violations, and this includes their employees, in a way that prevents the recurrence of such violations, and this is not obviously limited to institutions inherited from the previous regime but can extend to the institutions that were created after its demise as well if these institutions, and/or some of those responsible for them, are involved in violations.

²² Suleiman Ibrahim and others. Transitional Justice in Libya, Research Project Report.

The need for transitional justice is currently reinforced by the inability of its alternative, regular justice, to address grave human rights violations. Such was the prominent inability of the regular judiciary, represented by the Ninth Criminal Circuit of the Tripoli Appeals Court, to reveal the truth of the Abu Salim prison massacre and hold its perpetrators accountable because of its reliance on the rules of ordinary law that stipulate a statute of limitations. Such an approach not only withholds justice from the victims of this violation, who are here the families of the victims, but also opens the way for them to seek redress for themselves outside the framework of the law, with its negative effects on the social fabric.

The one who looks at the legislation movement after February 2011 realizes that the transitional authorities opt for the view seeing transitional justice as necessary, but they also realize that the transitional justice legislation has both substantive and procedural flaws, some of which are the product of the aforementioned revolutionary tendency, and that the momentum of the legislation was not accompanied by momentum in implementation. But the weakness of implementation, as has been said, is not an excuse to delay the implementation of the transitional justice process, even though it highlights the magnitude of the challenges it faces.

3. Which grievances to redress?

This issue relates to defining the scope of human rights violations that should be covered by transitional justice measures. There are various opinions in this regard. For example, a group extends the date range to the period of the monarchy, arguing that it witnessed violations such as banning political parties and preventing the claim of rights under the slogans of state building. Another group restricts it to the period of Gaddafi's rule, as it witnessed massive violations of human rights. A third group believes that the post-February 2011 period has also witnessed grave violations that are no less than, and may even exceed, what occurred before, and that, therefore, it should also be covered by transitional justice. A fourth group holds that the post-February violations alone should be addressed, due to their gravity compared to their predecessors, and because their predecessors were dealt with by measures taken by the previous regime, such as compensation paid to those whose properties were expropriated under socialist laws.

Monitoring transitional justice legislation shows the impact of the aforementioned revolutionary trend in identifying the grievances being addressed. On the one hand, it is conclusive in its coverage of human rights violations during the period of Gaddafi's rule²³, and while it extends its temporal scope to include the transitional period, and consequently what the revolutionaries may have committed in violations, it, on the other hand, limits the scope of the latter to a great extent²⁴, especially if the law's description of the violations subject to its ruling is interpreted as being systematic, as referring to what happened to the revolutionaries as well²⁵.

²³ Law No. 29/2013 defines transitional justice as "addressing what Libyans were subjected to during the previous regime of gross and systematic violations of their fundamental rights and freedoms by state agencies" (Article 1), and states that it applies to "the facts that occurred as of September 1, 1969." (Article 3), and makes its first goals "legal recognition of the justice of the February 17 revolution and that it is a right of the Libyan people and recognition of the corruption, tyranny and criminalization of the previous era" (Article 4/1), and adds to it the goal of "exposing and documenting the pain and suffering of the Libyan citizen in the previous regime." (Article 4/10), and establishes transitional justice on the foundations of the first of which is "the issuance of laws and constitutional texts that reveal the justice of the February 17 revolution, the unjustness of the previous regime, and the lack of legality of unjust laws" (Article 5/1).

²⁴ Law No. 29/2013 stipulates that it includes the facts that occurred since September 1, 1969, "until the transitional period ends with the election of the Legislative Council based on the permanent constitution" (Article 3), but when it defined transitional justice, it stated that it was limited to "some" of the violations committed by the revolutionaries. According to its first article, "The concept of transitional justice in this law includes some of the effects of the February 17 revolution, namely: (1) attitudes and actions that led to a rupture in the social fabric (2) actions that were necessary to fortify the revolution marred by some behaviors that were not committed to its principles. (Article 1).

²⁵ According to Abd al-Rahman al-Swehli, a member of the former National Congress, the former head of the Supreme Council of State, and its current member, a distinction should be made between the violations that occurred under the previous regime and those that occurred after February 2011. The former is systematic and the latter is not. And if he ends up saying that justice should extend to both, because justice is indivisible. (In-depth interview. Tripoli, December 30, 2019. Referred to in Suleiman Ibrahim et al., previous reference).

4. The centrality of revealing the truth

The question here relates to revealing the truth of the violations, is it a duty in all cases, or is it a matter of not redressing the wounds of the past, leading to the perpetuation of conflicts? While some actually promote the virtue of refraining from revealing the truth about past violations, claiming that the focus should be on the future, and that this disclosure would undo wounds and perpetuate conflicts, others believe, rightly, that revealing the truth is necessary in all cases. The reason for the necessity is that revealing the truth is a necessary prelude to all axes of transitional justice. Without revealing the truth of the violations, the perpetrators will not be known, and it will therefore be impossible to hold them accountable, and the institutions that were implicated in their occurrence will not be revealed. If what happened from the damage cannot be revealed, the damage cannot be remedied.

Moreover, knowing the truth is the right of the victims. This was the conclusion of a study included in a report by the Office of the High Commissioner for Human Rights, which stated that “the right to the truth about gross human rights violations and serious violations of humanitarian law is an inalienable and autonomous right ... [it] is closely linked to the State’s duty to protect and guarantee human rights and to the State’s obligation to conduct effective investigations into gross human rights violations and serious violations of humanitarian law and to guarantee effective remedies and reparation²⁶.” The study listed the legal bases for considering knowing the truth as a right, as revealed by a resolution of the United Nations Human Rights Council on 10/10/2012²⁷.

By monitoring transitional justice legislation, it becomes clear that it is devoted to revealing the truth as a basis for the rest of the axes of transitional justice. Law No. 17/2012 establishing the rules for national reconciliation and transitional justice established a truth-finding and reconciliation commission, which was reconstituted in the subsequent law: Law No. 29/2013 on transitional justice. The first law was criticized for establishing a body that was dominated by a purely legal character²⁸, which some sought, without success, to address in the second law by stipulating the

²⁶ UN Commission on Human Rights, Study on the Right to the Truth, Report of the Office of the United Nations High Commissioner for Human Rights, 8 February 2006, E/CN.4/2006/91, available at:

<https://www.refworld.org/docid/46822b6c2.html> (accessed 13/7/2022).

²⁷ UN Human Rights Council, Right to the truth: resolution / adopted by the Human Rights Council, 10 /10/ 2012, A/HRC/RES/21/7, available at:

<https://www.refworld.org/docid/50ae27412.html> (accessed 13/7/2022).

²⁸ Law No. 17/2012 did not provide for the formation of the commission of judges, but it was composed entirely of judges, males, elderly, and there was no representative of civil society or experts in psychology, sociology, politics, or archiving. Look: Trial by Error: Justice in Post-Qadhafi Libya. Crisis Group Middle East/North Africa Report N°140, 4/17/2013. P. 17.

It is worth noting that the commission had written to the President of the Transitional National Council on May 1, 2012 to inform him of receiving questions about its not including representatives of the different groups of society, its neglect of the role of women, and its formation only by jurists, and ended by asking him to amend Law No. 17/2012 in a way that can From restructuring the board of directors. Othman al-Kaf, a judge who previously worked with the commission. Personal communication, 9/5/2020.

membership of specialists in other disciplines, in addition to the law²⁹. The renewed body did not see the light due to the legislative authority's reluctance to issue a decision to reconstitute it. The legislature was not satisfied, as it should, with a fact-finding body, so it established others that investigate facts in specific violations³⁰. However, the main problem with the legislature's behavior regarding revealing the truth is that it issued a general amnesty in a way that violates the victims' right to know the truth about the violations, as will be shown immediately.

²⁹ Draft Law No. 29/2013 stipulates that among the members of the authority's board of directors, specialists in sociology, psychology, law, media and archives (Article 5). However, this proposal was omitted from the text of Law No. 29.

³⁰ For example, the General National Congress, under Law No. 31/2013, formed a fact-finding committee on the Abu Salim massacre (Law No. 31 of 2013 deciding some provisions of the Abu Salim prison massacre. Official Gazette, 4. Third year). It formed another committee for the same purpose by virtue of its Resolution No. 33/2015 (General National Congress Resolution No. 33 of 2015 issued on 3/25/2015 regarding the formation of a fact-finding committee on the Abu Salim prison massacre. Official Gazette. 4.).

5. Appropriateness of pardon

The question of the relationship between transitional justice and national reconciliation is clearly evident in the issue of amnesty. Some see amnesty for the perpetrators of violations as a condition for reconciliation, while others see it as a waste of transitional justice.

In Libya, there have been several amnesty laws in harmony with the political context. Initially, the NTC enacted amnesty legislation that included the revolutionaries and excluded their opponents. Such as Law No. 35/2012 and Law No. 38/2012, where the first excluded from the scope of the amnesty the crimes committed by Gaddafi's wife, his children, in-laws and aides, and the second stated that there would be no punishment "for the military or security actions of the February 17 revolution." or civil actions carried out by the revolutionaries with the aim of making the revolution a success or protecting it" (Article 4).

Subsequently, the House of Representatives enacted the General Amnesty Law No. 6/2015, which, according to the interpretation of many, pardoned supporters of the former regime. This interpretation was supported by the statement in its first article that his pardon includes "all Libyans" for crimes committed "during the period from February 15, 2011", the date of the start of the February Revolution, and the actions that the previous regime may have committed to quell it. However, according to some, it is not necessary from this interpretation to immunize the perpetrators of serious crimes from criminal accountability, nor to neglect the rights of the victims. The law excludes such crimes from amnesty and makes it conditional on the repentance of the violators.

These laws have been rightly criticized. On the one hand, they exclude categories that the amnesty is supposed to target in order to achieve reconciliation: the Gaddafi family and his associates according to the legislation of the Transitional Council, and the perpetrators of terrorism crimes, whose interpretation was expanded to include political opponents, according to the law of the House of Representatives. On the other hand, they threaten to waste the requirements of transitional justice. Law No. 35/2012 suffices in the amnesty to reconcile "with the victim or his guardian, or to pardon the blood guardian, as the case may be" and to announce repentance before the competent criminal court" (Article 2), and neither procedure guarantees revealing the truth of the violation. The matter is worst in Law 6/2015 which states, after echoing the conciliation clause, that it is satisfying that the offender makes a written pledge of repentance (Article 2).

In addition to its modest restrictions, Law No. 6/2015 has been subject to extensive interpretation. The Minister of Justice of the Interim Government saw its inclusion of Saif al-Islam, who is accused of serious crimes, and demanded his

release³¹. Saif al-Islam's lawyer argued for this amnesty before the International Criminal Court, while the delegation of the Government of National Accord, who was considered by the Court as a representative of Libya, opposed it, on the grounds that the law does not apply because Saif is accused of crimes such as identity killing, which excludes it from its scope, and because this law the pardon is attached to conditions that have not been proven to be met: a declaration of repentance and the issuance of a reasoned decision by the competent judicial authority.

The court of first instance's decision ended up refusing to invoke the amnesty law because it considered it inconsistent with public international law. This was upheld in the appeal. According to the court, "granting amnesties and pardons for serious acts such as murder constituting crimes against humanity is incompatible with internationally recognized human rights. Amnesties and pardons intervene with States' positive obligations to investigate, prosecute and punish perpetrators of core crimes. In addition, they deny victims the right to truth, access to justice, and to request reparations where appropriate."³²

In evaluating the appropriateness of amnesty, it is necessary to start from its impact on transitional justice. It is rejected if, as is the case with the enacted legislation, it would waste the disclosure of the truth, which, as previously stated, is a necessary prelude to measures of accountability, reparation and institutional reform. It may be desirable to achieve national reconciliation if it does not prevent this disclosure, and its consequences of reparation and reform of institutions, and does not include grave crimes such as those directed against humanity.

³¹ Marwan Tashani (2016) "The Chaos of Transitional Justice in Post-Revolution Libya: Saif Al-Islam Gaddafi as a Model", Legal Agenda. November 24, 2016. Available online:

<https://www.legal-agenda.com/article.php?id=3256> (last accessed 7/13/2022).

³² International Criminal Court. press release. Saif al-Islam Gaddafi Case: Pre-Trial Chamber I confirms the admissibility of the case before the International Criminal Court. 4/5/ 2019. Available online: (last accessed 7/13/2022). <https://www.icc-cpi.int/Pages/item.aspx?name=PR1446&ln=Arabic>

6. The nature of reparations

Should reparation for violations take the form of payment of monetary compensation? And if necessary, what is the scope of these compensations? These are important questions in the context of transitional justice in Libya, as there are many victims who see comprehensive monetary compensation for their losses and missed gains as a means of optimum reparation. However, others, most of whom are not victims and some of them are policy and law makers, question the appropriateness and realism of this option, and call for reparations that are not limited to monetary compensation, and limit the extent of these when necessary. As the transitional justice legislation related to real estate shows, both views have found legislative resonance.

In the framework of its socialist policies, the previous regime enacted legislation that greatly limited real estate ownership, most notably Law No. 4/1978. According to this law, a person has the right to own one dwelling or one piece of land to build a dwelling or a place to practice his craft, which is sacred property, as described by the law. Anything in excess of this amount shall be transferred to the state, which places it as it deems appropriate, in return for compensation. Tens of thousands of real estate have been transferred to the state in implementation of this law, and in many cases this was not accompanied by compensation, or full compensation, which falls within the framework of practices that the regime later called deviations in the application of the law, and tried to remedy them by forming committees to complete compensation in 2006. And because many owners were not satisfied with the committees due to their limited mandate, as they do not have the right to return real estate except in exceptional cases, and their compensation is meagre, their calls were raised after the February Revolution to abolish Law No. 4, recover their real estate, compensate for years losses, and even repair the damage they sustained.

Despite the numerous attempts to enact a special law that repeals Law No. 4 and addresses its effects, the first legislative response was general in the form of Transitional Justice Laws No. 17/2012 and then No. 29/2013. Reparation for the latter goes beyond monetary compensation, although it attaches great importance to it, to other forms such as compensation in kind, memorial measures, treatment, rehabilitation and the provision of social services. It also limits monetary compensation, when awarded, to the subsequent loss without the loss of profit.

However, Law No. 29/2013 was not implemented. The legislature did not issue its executive regulations³³, nor did it form a fact-finding body, which reinforced the owners' demands to put in place a special law that was more equitable from their point of

³³ The executive regulations meant to be issued by the executive authority, but the General National Congress included in Law No. 29/2013 a text authorizing itself with this competence, which had the effect of obstructing the application of this law.

view. After reviving these demands, the National Congress responded by enacting Law No. 16/2015, which repealed Law No. 4/1978, and Law No. 20/2015, which dealt with the effects of the repealed law differently from Law No. 29/2013. For example, Law No. 20/2015 established the return of the property to its former owner in the first place in dealing with the grievance, and required, when the response was not possible, to compensate the owner in a way that takes into account the market value of the property at the time of the enforcement of Law No. 20/2015, and an estimate of what was lost to the original owner due to being deprived of it. And because Law No. 20/2015 was not implemented, perhaps due to the questioning of the legitimacy of the General National Congress when it was issued, and under pressure from the former owners, the Presidential Council of the Government of National Accord issued decisions that revived the compensation committees and authorized them to compensate owners for their previous properties at an equivalent to their current market value³⁴.

Despite the fairness of the issue of the former owners, the treatment enshrined in the decisions of the Presidential Council raises many problems. It distinguishes between these owners and other victims, by providing the owner with monetary compensation equivalent to the current market value of real estate. If we noticed that city centers such as Tripoli's or Benghazi's were a fertile field for the application of Law No. 4, we would have realized the enormity of this value, and we would understand the dilemma that Salah Al-Marghani talked about, during his tenure at the Ministry of Justice, that the justice of the demands of the former owners contradicts the limited resources of the state³⁵, especially since violations of Law No. 4 are not the only ones, nor the first to redress.

In an attempt to relieve the state from these obligations, the Supreme Court denies the state's responsibility for compensating any damages arising from events such as the February Revolution. The court justified this result on the ground that that responsibility is not assumed, and that it must be based on the sources of obligation established by law, and this requires, in the case of the state, as in the case of any other legal person, that its fault be the cause of the damage incurred by the plaintiff. And there is no evidence in the present case, as the court said, that the state committed a mistake. It is not acceptable, the court reasoned, to hold the state responsible based on its obligation to provide security and protection for every person in Libya, "because of the danger that falls on the state treasury with financial burdens that lead it to ruin."

Jurists have criticized this ruling rightly. Kuni Abouda clarified that the state's responsibility for reparation in the case in which the judgment was issued exists, as

³⁴ Decision of the Presidential Council of the Government of National Accord No. 684/2018 with a judgment report regarding General People's Committee Decision No. 108/2008 and its Resolution No. 1599/2018 dated December 3, 2018.

³⁵ Salah Al-Marghani. In-depth meeting. Tripoli, 12/1/2012. Referred to by Suleiman Ibrahim et al. Transitional Justice in Libya, Research Project Report.

the damage has affected the right to property, which is a fundamental right whose violations are addressed by Law No. 29/2013, which establishes the state's responsibility for reparation. Even assuming that this right is outside the scope of transitional justice, it is permissible to measure the other rights covered by this justice. Likewise, the responsibility of the state may implement the rules of traditional responsibility when it is proven that the damages that occurred were due to the actions of the state's followers, in fact or by judgment, such as rebel groups or support groups. Fortunately, Kuni concluded his comment: the Supreme Court ruling is not a ruling that lays down principles that bind all courts and authorities, and its effect is limited to the case in which it was issued.

Fortunately, the Supreme Court subsequently issued a ruling that appears to have reversed its earlier ruling. In November 2020, the court established the state's responsibility for repairing damage arising from military operations carried out in implementation of decisions by the authority. According to Kuni Abbouda, this ruling has taken an important step in the path of achieving justice for the victims of the war. But the court, according to Kuni, would not have found a need for this intervention had the transitional justice institutions been activated, as these are more capable of reparation in a way that eases the burden on the judiciary and ensures that the foundations and principles of justice are followed.

Kuni is correct in this criticism. As the mechanisms of reparation, as defined by transitional justice, guarantee a balance between treating the harm done to the victims, on the one hand, and taking into account the limited resources of the state, on the other hand. These mechanisms are not limited to monetary compensation but extend to other forms such as restitution or rehabilitation, satisfaction and guarantees of non-repetition³⁶. With regard to monetary compensation, when it is decided, it does not require it to be in full, that is, inclusive of the loss suffered by the victim and the loss of gain, as it can be limited to the first aspect only.

³⁶ The General Assembly of the United Nations, in its Resolution No. 60/147 of March 21, 2006, laid down the basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law. Regardless of the extent to which the two laws apply to the violations that occurred and occur in Libya, and there is no doubt that they apply to most of them, and that the General Assembly's resolution is indicative and does not have an obligatory character, there is benefit in using it in determining the means of reparation.

7. The meaning of institutional reform

Is institutional reform, as one of the axes of transitional justice, limited to purging the employees of the targeted institutions? How are these determined? Is it sufficient for them to occupy certain positions in those institutions, or does it also require their actual involvement in the violations in which these institutions were involved? While no one explicitly disagreed, according to the available information, that institutional reform is more comprehensive than political isolation, practice reveals institutional reform is reduced to be part of the political isolation.

The first transitional justice law, Law No. 17/2012, did not address institutional reform, nor did it mention it among its objectives. The reason for that is in the fact that the draft law, as revealed by Hadi Bouhamra, one of its drafters, focused on three pillars, among which this reform is not: truth-seeking and reconciliation, reparations, and criminal trials. However, the writers of the draft, Hadi stressed, did not neglect the issue of institutional reform, and prepared a draft law on transparency and anti-corruption, which necessitated a re-examination of public institutions, especially security and judicial institutions, "to purify them of corrupt people according to objective criteria away from political considerations and by an independent body that has broad powers and specializes in preventing corruption in the transitional period and by taking the necessary measures to recover the embezzled public money". It appears from this description that the institutional reform that this draft aims at were limited, but the NTC, in any case, ignored it and established a public body to implement standards of integrity and patriotism³⁷.

A look at Law No. 26/2012 that established this body reveals that a number of its criteria in determining national integrity, and thus eligibility to occupy or continue to occupy a wide range of public posts, are based on assuming certain positions during the era of the previous regime without regard to the behavior of the incumbent. Examples of these are the positions of ministers, ambassadors, leaders of the security and military agencies, and the secretariat and membership of the secretariats of the popular committees of the Shaabiyat (the equivalent of municipal councils). The law made an exception for those who joined the February revolution before March 20, 2011³⁸. When the aforementioned revolutionary fervour rose, this exception was dropped. The Political Isolation Law No. 13/2013 stipulated that it should be applied to anyone who held a position or a position within a wide range of public positions and positions since September 1, 1969.

³⁷ Hadi Bouhamra (2012), "Some Draft Laws Presented to the National Transitional Council, Origin and Fate. Libya the Future. 9/7/2012. Available online:

<https://archive2.libya-al-mostakbal.org/news/clicked/24496> (last accessed 13/7/2022).

³⁸ Law No. 26 of 2012 regarding the Supreme Authority for the Implementation of Integrity and National Standards. Official Gazette. Issue 13. First year. May 7, 2012. The chosen date (March 20) refers to the day when the fall of the regime was achieved, as the day before it witnessed the first NATO air strikes that halted the advance of the regime forces towards Benghazi, the stronghold of the revolution.

The Political Isolation Law represented the treatment of the General National Congress for institutional reform. While the draft of transitional justice law included an entire chapter on “institutional inspection,” including dismissal, but not limited to it, the contracts concluded by the targeted institutions, and the legislation and regulations governing them, the General National Congress dropped it when the law was enacted under the name of Transitional Justice Law No. 29/2013. Apparently, satisfied with the political isolation law which was enacted in the same year³⁹.

Like Law No. 26/2012, Law No. 13/2013 excluded certain job occupants during Gaddafi’s rule regardless of their behavior, and did not exclude, like Law No. 26/2012, those who defected from the regime. Therefore, the dismissal included people such as Muhammad al-Maqrif, the head of the General National Congress, who served in the early eighties as Libya’s ambassador to India, and decades of opposition to the regime did not guarantee his exception. Although the law was challenged as unconstitutional, due to its distinction between citizens according to their political affiliation, which is prohibited by the constitutional declaration, the Supreme Court preferred to remain silent on this challenge, which prompted the House of Representatives to enact a law that abolished it⁴⁰.

While political isolation is a tool of institutional reform, it is not right to base it on the person in question occupying a specific post without looking at his or her behavior when they were occupying that post. As stated by the International Center for Transitional Justice, institutional reform can include measures such as examining employee records with the aim of removing and punishing abusive and corrupt employees, creating or transforming legal frameworks such as drafting a new constitution or other existing amendment or ratifying an international human rights convention, structural reform of institutions, and subjecting Officials and public servants for training programs on human rights standards and international humanitarian law⁴¹.

³⁹ Issam Al-Mawy, lawyer and former president of the Council for Rights and Freedoms, in-depth meeting, Al-Bayda, January 21, 2020. Referred to by Suleiman Ibrahim and others. Previous reference.

⁴⁰ The House of Representatives abolished the Political Isolation Law by virtue of Law No. 2 of 2015 issued on 6/8/2015 (Official Gazette, 6. Fourth year). Although the legitimacy of the Council when this law was enacted was questioned, at least in the west of the country, the Government of National Accord has bypassed the Political Isolation Law by including people to whom its provisions apply, such as Taher Al-Juhaimi, Minister of Planning in this government, who held positions during the Gaddafi era Ministerial and diplomatic.

⁴¹ International Center for Transitional Justice. Institution reform. Available online: <https://www.ictj.org/ar/institutional-reform> (last accessed 7/13/2022).

8. The exclusive jurisdiction of the national judiciary

The question here relates to the extent of the exclusive jurisdiction of the national judiciary to consider transitional justice grievances. Part of this question relates to the jurisdiction of the national judiciary as opposed to national non-judicial mechanisms such as the fact-finding commission. This is a controversial matter that has not been resolved by the provisions of Law No. 29/2013⁴², the second part of which relates to the jurisdiction of this judiciary in exchange for international mechanisms, whether exclusive or mixed, and the other is a controversial matter. In what follows, we will focus on this last point.

Although the recognition of jurisdiction by the national judiciary seems self-evident, based on considerations, the most important of which is national sovereignty, the transitional situation, with its accompanying security and institutional weakness, has led many to question the ability of this judiciary to exercise this jurisdiction adequately. Early after the February revolution, Hadi Bouhamra called for the assistance of an international court, either by expanding the jurisdiction of the International Criminal Court or establishing a special court, regarding the investigation and trial of the grave crimes that Libya witnessed. This was justified by the state's impotence and the spread of different armed groups regionally and politically, as this affected the independence of the judiciary in dealing with these crimes. In response to his suspicion of violating national sovereignty, Hadi called for regulating the use of the international court by an agreement between Libya and the United Nations that defines its jurisdiction, its composition, and the law applicable before it. While justifying its mixed composition of Libyan and foreign judges, Hadi called for the court's prosecutor to be appointed by a decision of the Secretary-General of the United Nations⁴³. It seems that this proposal received support that brought it to the General National Congress, but it was aborted, as Hadi mentioned, by influential people who thought that the proposal intended them⁴⁴.

However, subsequent developments soon revived the case for the use of an international judiciary, whether pure or mixed. Such developments were the ruling of the Tripoli Court of Appeal, which imposed the death penalty in absentia on defendants, including Saif al-Islam Gaddafi, without regard to fair trial standards, and the ruling of the same court in the Abu Salim case, which decided the statute of limitations for the crime. In both cases, the court was affected by the pressures of active forces. This prompted people such as Salah al-Marghani, a human rights defender and former Minister of Justice, to state that "it is time to think about establishing a special court along the lines of the Rwandan courts to investigate and

⁴² See Suleiman Ibrahim et al. Transitional Justice in Libya, Research Project Report.

⁴³ Hedi Bouhamra. (2012) "International Judiciary as Part of the Solution in Libya." Legal Notebook. 3/9/2012. Available online: <https://www.legal-agenda.com/article.php?id=166> (last accessed 7/13/2022).

⁴⁴ Editor (2017) "Views on the call for the formation of an international tribunal for Libya." 10/11/2017 Available online: <http://alwasat.ly/news/libya/149053>. (last accessed 07/13/2022)

try crimes against humanity and war crimes in Libya 2011-2017⁴⁵.” This view was shared by many, some of whom called for organizing a campaign to collect signatures of supporters of the initiative to establish an international court for Libya and submit it to the relevant international bodies⁴⁶.

On the other hand, there are still opinions that reject internationalization, and emphasize the capacity of the national judiciary to adjudicate violations of human rights independently. For example, Saad Aqila, the former Supreme Court judge, refused to internationalize the judiciary in a country already suffering from political internationalization. Hussein Al-Bouishi, the former head of this court, declared that he is against the International Criminal Court and any mixed court, because these courts do not know the nature of Libya and its people⁴⁷.

While one understands the motives of the opinions against resorting to a purely or mixed international judiciary, it is difficult for one to ignore real questions about the ability of the national judiciary to address grave human rights violations, especially those that have a political nature. The previous evidence from the rulings of the Tripoli Court of Appeal, was reinforced by others, such as the recent ruling of the same court that it did not have jurisdiction to hear the Abu Salim massacre case, and that jurisdiction falls to the military judiciary⁴⁸, and for nearly a decade the Supreme Court suspended its oversight on the constitutionality of legislation to evade a ruling on sensitive issues such as determining the legitimacy of existing political bodies. This suspension is a behavior that may represent a denial of justice⁴⁹. While these problems reinforce the claims of reforming the institution of the judiciary, as a long-term solution, they may serve, in the short term, as a justification for assigning consideration of grave human rights violations to an international judiciary in order to stave off impunity for perpetrators.

⁴⁵ . @SalahMtlc (2017, October 30). It is time to consider creating a special court similar to the Rwandan courts to investigate and try crimes against humanity and war crimes in Libya 2011-2017. Twitter. Available via: <https://twitter.com/SalahMtlc/status/925123408026681345> (last entry date 7/13/2022).

⁴⁶ Bashir Zoabi (2017, November 4). "Idea for more enrichment" [via Facebook]. Available online: <https://www.facebook.com/bzabiya/posts/10155243065964576>

⁴⁷ See Suleiman Ibrahim et al. Transitional Justice in Libya, Research Project Report.

⁴⁸ [Osama Ali \(2022\) Libya: Tripoli Court of Appeal decides that it does not have jurisdiction in the Abu Salim prison massacre case. The New Arab. 15/6/2022.](#)

⁴⁹ Majdi Al Shabani. 2017. Is the Supreme Court's suspension of the constitutional circuit a "denial of justice"? Ain Libya. November 18, 2017. Available at: <https://is.gd/pr8aMw>. Last accessed: 13/7/2022.

Conclusion

As the previous presentation indicated, transitional justice in Libya faces enormous challenges. The most dangerous of these challenges is the presentation of transitional justice as being incompatible with national reconciliation, that is, declaring that adopting one of them negates the other. And what is dangerous is that it may lead to disregarding all or part of transitional justice, in order to achieve national reconciliation. For example, one may argue that revealing the truth of the violations: what exactly happened, who committed them, and what their effects are, is contrary to reconciliation for it requires digging up the wounds of the past. It is thus justifiable to overlook it. And if holding the perpetrators of violations accountable hinders reconciliation efforts, why should not they be pardoned? In both cases, it is sufficient to compensate the victims, if known. These scenarios are not hypothetical, as, as the previous presentation indicated, legislation has been enacted that enshrined them.

The efforts of the Presidential Council of the Government of National Unity over the past two years provide a clear example of the challenge of matching transitional justice with national reconciliation. According to the roadmap that was established to end the division by forming unified institutions, including this council, the council will carry out a major task of launching a comprehensive national reconciliation based on the principles of transitional justice and spreading a culture of amnesty and tolerance in parallel with fact-finding and reparation (Article 1/2.9). Despite this emphasis on establishing principles of transitional justice, the council has been subjected to pressure aimed at interpreting the desired reconciliation as requiring disregard for transitional justice, and even replacing its law, Law No. 29/2013, with one related to national reconciliation.

However, the Council also received advice that contrasting transitional justice with national reconciliation is a fallacy, and that achieving the latter in a comprehensive and sustainable manner depends on achieving the former. There is no guarantee to the prevention of reoccurrence of human rights violations except by revealing their truth, holding the perpetrators accountable, making reparations for their victims, and reforming the institutions that were implicated in them. If the amnesty does not conflict with transitional justice, and may even be considered one of its tools, then it must be controlled in a way that prevents granting it to the perpetrators of serious human rights violations and prevents it from being used as a basis to obscure the truth. Fortunately, the Council has adopted this advice and announced a strategic vision for national reconciliation based on the principles of transitional justice⁵⁰. Also, the committee that it formed to draft the national reconciliation bill has drafted it in a manner that bases it on these principles.

⁵⁰ Al-Wasat Gate (2022), the axes of the strategic vision of the National Reconciliation Project. 23/6/2022. Available online: <http://alwasat.ly/news/libya/363084>

But some have reservations about the role of the council. In their view, it is a major party to the conflict, and that any vision of reconciliation should be the product of a dialogue between all political and societal parties, supervised by an elected political authority, and with participation and monitoring by human rights organizations, and they warn against taking the "specificities of the Libyan experience" referred to in the vision as an excuse to issue a transitional justice law devoid of guarantees of accountability for perpetrators of grave human rights violations⁵¹. It may be responded to this reservation that the vision adopted by the Council is to a large extent the product of research that included surveys, in-depth interviews with chairs and prominent members of the legislative, executive and judicial institutions, and with other key political and social actors, and focus group discussions involving representatives of different shades of the Libyan spectrum⁵². Although this does not make the vision the product of the dialogue that the critics have pointed out, it denies the council singlehandedly put it. This council is aware of the need to subject the vision to societal consultations. Therefore, the action plan attached to the vision, includes measures that aim to achieve these consultations, even if only to an extent. The warning against adopting a draft law that would immunize perpetrators of grave human rights violations remains based on justified fears, although some may see the vision as adopted by the Council and the draft law as prepared by the committee that formed it as indications of its awareness of these fears and its quest to dispel them.

But, of course, the Presidential Council adoption of this approach does not mean the end of transitional justice challenges. It still must refer the draft law to the House of Representatives, and this, as its practices have shown, lacks a real political will to activate the transitional justice process. This is attested by the fact that, and before it the General National Congress, it has failed to take the necessary measures to activate Law No. 29/2013: restructuring the fact-finding body and issuing the executive regulations, and there are no indications that any alternative law will have better luck.

Even assuming the parliament adopts a new transitional justice and national reconciliation law, the law alone is not sufficient. It is true that its adoption will constitute a step in the right direction, but this adoption must be accompanied by implementation. But this implementation, it must be acknowledged, will not be easy in light of the weakness, or perhaps the absence, of effective state institutions, especially those concerned with implementation. While the presence of capable and empowered institutions is, of course, a guarantee for activating the transitional justice process, its absence should not be used as an excuse to postpone this activation. This indicates

⁵¹ Defender Center for Human Rights (2022), Brief Report on the Situation of Human Rights in Libya. January-July 2022. Available online:

https://defendercenter.org/wp-content/uploads/2022/07/Reportfinal-AR_merged.pdf

⁵² Al-Wasat Gate (2022), the axes of the strategic vision of the National Reconciliation Project. 23/6/2022. Available online: <http://alwasat.ly/news/libya/363084>

that activating the transitional justice process, including institutional reform, would contribute to the process of (rebuilding) state institutions, which in turn would be reflected as a contribution to achieving justice, both normal and transitional. This, then, is a call to activate the transitional justice process, as it is also a process of building state institutions.