

Critical Analysis of the Theoretical and Practical Reality of Applying of Libyan Transitional Justice

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Abstract

This paper aims to assess the Libyan Transitional Justice and highlight the reasons behind unsuccessful transitional justice in Libya with focusing on the analysis of the literature view, rules and order issued by the Libyan authority, Libyan Transitional Justice law and draft of the Libyan Constitution. Furthermore, this paper is going to analysis the reasons behind the unsuccessful experience of TJ in Libya. Also, to height light the steps that followed by Libya authority so far.

The questions that arise are: to what extent do Libyan TJ mechanisms find justice for the victims of human rights abuse? Is the current redress sufficient to remedy violent acts committed by criminals? Why has the conflict in Libya not ended to this day despite the adoption of TJ?

These questions are addressed by qualitative methods, namely critical analysis of literature and internal laws of Libya and regulations. This study uses the case study approach for an in-depth analysis and try to find a resolution. This paper finds that the Libya has not successful experience.

Keywords: *Libya Transitional Justice, Constitution, TJ mechanisms.*

1- Introduction

In 2012 Libyans rose up against the tyrannical, dictatorial regime of Gaddafi and succeeded in defeating him. Post conflict, Libya witnessed a period of tension and internal conflict. That is why the urgent requirement appeared of adopting transitional justice (TJ) to reach peace and achieve the democracy. However, there are factors that have led to the failure of TJ or democratization. This study will point out the steps that have been followed by the Libyan authority so far. This study explores the following question: to what extent does Libyan TJ mechanisms find justice for the Victims of Human Rights abuse? Is the current redress sufficient to remedy violent acts committed by criminals? Why has the conflict in Libya not yet ended despite the adoption of TJ? These questions are addressed by qualitative methods, namely critical analysis of literature and the internal laws and regulations of Libya. This studies contribution is to promote and develop Libyan Transitional Justice Law by highlighting the points that will lead to successful Libyan TJ.

It has been established that only those states which recognize and respect human rights and the rule of law can truly be liberal democracies. That one of the reason of the unsuccessful TJ in Libya is because it is selective justice. The Libyan Transitional justice mechanisms is retributive criminal justice, lustration under Libya's Political Isolation Law, and the amnesty granted to revolutionaries under Law 38.

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Libya has been the locus of international and domestic prosecutions for those deemed responsible for human rights abuses and international crimes. That's why it cannot be claimed that Libya has ignored transitional justice. However, almost 6 years since the Libyan uprising, very few of the transitional justice goals have been achieved. In the wake of the civil war in Libya, the new Libyan government was floundering in its application of TJ and in its steps to achieve peace and stability in the region. That transitional authorities passed an amnesty law protecting participants in the revolution from prosecution as well as a lustration law in an effort to cleanse Libya of any and all who opposed the regime. These laws were criticized by the United Nations and Human Rights Watch. It also passed a Transitional Justice Law in 2013 which seeks to establish a fact-finding or truth commission (the Fact-Finding and Reconciliation Commission), a reparations scheme for victims and survivors of violence and rights abuses, and has witnessed some traditional and informal justice and reconciliation processes.

2- Contribution

This research not only assess the Libyan TJ but also looks at the steps adopted by the Libyan authority that has led to their unsuccessful TJ experience and the failure to find peace. This research would help to determine the reasons lead to unsuccessful TJ and suggest some points to strength the TJ of Libya. Furthermore, it is first paper critical analysis the TJ of Libya from legal aspect. This study contributes to promote and develop Libyan Transitional Justice Law by highlighting the points that will lead to successful Libyan TJ.

3- Literature view

Several scholar examined TJ and its forms. Some of them focused on the concept of the TJ itself. For example, Sirleaf examines the concept of the TJ and carries out a critical analysis of the TJ mechanisms applied by Liberia and Sierra Leone. Also, he focused on the challenges faced by the trials and truth seeking in Liberia and Sierra Leone as approaches adopted to deal with the past human rights violations which occurred across Liberia and Sierra Leone. He suggested TJ mechanisms can also encompass regional and transnational efforts to respond to mass human rights violations occurring across societies. Sirleaf also focus on the challenges posed by the failure to take a regional approach.

Serleaf argued that the mechanisms of TJ adopted by the Liberians and Sierra Leoneans did not take into consideration the nature of the human rights abuse and the specific situations of the regions. According to the Serleaf, they ignore such important factor and this leads to a lot of problems during the application of the mechanisms of TJ. The Article proposes that adopting a regional approach when designing transitional justice mechanisms in the aftermath of mass atrocity across societies is the best means for achieving long-term peace, stability, and respect for human rights within the affected region.

Similarly, Gready and Robins examine the concept of the TJ, focusing on peace building and conflict transformation. and proposed a new concept of TJ. They find that the TJ is transformative rather than transitional. Also, this article suggested a new agenda for practice of TJ. Their article also provides practical guidance on how to implement a more transformative transitional justice.

Nagy in his article “Transitional Justice as Global Project: critical reflections” critically reflects on the ways in which the global project of TJ is channelled or streamlined in its scope of application. Using the categories of when, to whom and for what TJ applies, it argues that transitional justice is typically constructed to focus on specific sets of actors for specific sets of crimes. This results in a fairly narrow interpretation of violence within a somewhat artificial time frame and to the exclusion of external actors. The article engages themes of gender, power and structural violence to caution against the narrowing and de-politicisation of TJ.

However, there are few studies on the Libya TJ. For example; both Kersten and Bouhmra examine Al- Gaddafi defeat and the civil war. Mark examines obstacles of the TJ procedure and peace in Libya after the defeat of Gaddafi in 2011. However, he did not explain the entire TJ procedure and how these obstacles are contrary to the TJ law and Libyan constitution. Mark examines TJ mechanisms, focusing only three of them: retributive criminal justice; lustration under Law No. (13) of 2013 on administrative and political isolation, and the Law No 38 which granted amnesty to revolutionaries. The paper finds that these mechanisms, however, have not been implemented within a peace or peacebuilding process. TJ efforts frustrated the construction of a post-war peace. Furthermore, Bouhmra focused on selective justice as the main reasons for the failure of TJ, and ignored the other reasons of failure. However, Lamont focuses on the concept of the TJ and suggests reconsidering the teleological notions of transition and greater engagement with notions and concepts that fall outside dominant practices. This paper has established a linked between the TJ and Peace building. This has been shown through examination of the application of the Libyan TJ in time of post armed conflict in Libya. This paper find that the Libyan TJ led to the division of Libyan society. This is because of several incorrect approaches to TJ. One of such approaches is the adoption of political isolation. This paper highlights the applications of TJ, promoted by outward actors, recommended narrow state-centric justice interferences that were ill-suited for a polity in which the state was highly contested.

Zawati examines the challenges of the Libyan authority to prosecute the Gaddafi’s son Saif Al-Islam, and Abdullah Al-Senussi, Gaddafi’s intelligence chief, after the killing of Muammar Qaddafi on the 20th of October, 2011, and following the capture of Saif Al-Islam and Al-Senussi. The paper explain the conflict of powers between the International Criminal Court and the Libyan internal courts over the trial of the above cases. The scholar believes that the government of Libya does not have the authority to charge those accused of past abuse of human rights. The scholar suggested that to attain stability in Libya, the Libyan authorities need effective judicial mechanisms to be established, as well as and democratic institutions.

Also there are many reports about the Libya TJ. E.g. the report of Human rights watch of 2014. However, they are mostly using descriptive method of the situation in Libya rather than critical analysis for the mechanisms applied by Libya, or the factors lead to the Unsuccessful TJ.

4- What is TJ?

4.1 A Background of TJ

The concept of TJ emerged first in the late 1980s and early 1990s. this emergence was in response to the call for justice during the political transitions which took place in Latin America and Eastern Europe.

The question of how to effectively address the systematic abuses of former regimes, while reinforcing (and not derailing the political transformations which were underway), was the concern of human rights activists and others. Transitional justice has several forms including prosecutions (often of previous regime leaders); truth-telling (for

instance opening up state archives); establishing of truth commissions; adopting of reparations schemes for victims; and the vetting of public employees (such as the members of the security forces).

4.2 The Meaning of TJ

TJ is a 'collection of approaches by states and societies for confronting systematic and large-scale human rights violations and violations of international humanitarian law'. According to this definition TJ is about how to deal with the past with the aim of addressing the past violence caused by the armed conflict and the regime of the state. TJ deals with the legacy of systematic or massive abuse. This could be achieved through two goals- finding justice for victims, and strengthening the potentials of democracy, peace, and reconciliation. The long-term goals of TJ measures could be achieved through TJ combining elements of criminal, restorative, and social justice. TJ however, is not a special kind of justice but is 'justice adapted to the often unique conditions of societies undergoing transformation away from a time when human rights abuse may have been a normal state of affairs'. The Libyan authorities have its own definition of TJ. They define it as a means of addressing the grave and systematic violations of fundamental rights and freedoms to which Libyans were subjected to by the state apparatus under the former regime.

There are several ways to approach TJ and as such states are free to adopt whatever approach they deem fit to their needs and the circumstance of the state after the conflict. According to Art 1 of Libyan Law No. (29) of 2013 on Transitional Justice, the form of Transitional Justice adopted by the Libyan authorities to deal with the grave past abuse of human rights include: Truth commission, Prosecution, Reparation, Reforming institution, and preserve the national memory. These forms of Libyan TJ will be explained in detail later in this paper.

4.3 The aims and the Important of TJ

The main aim of TJ is to facilitate peace processes and promote a durable solution to conflicts. Furthermore, it aims at establishing a basis for addressing the underlying causes of conflict and marginalization, in order to push the issue of reconciliation and respect for the rule of law. TJ is also aims to establish accountable institutions and restore confidence in those institutions. Access to justice is made possible for the most vulnerable groups in society following violations, ensuring that women and marginalized groups play an active role in the pursuit of a just society.

TJ is important to developing and implementing official and unofficial policies, institutions and initiatives that address the legacy of wide scale abuses (by non-state actors) and violations (by the state) that occurred in the past. This includes both the more legally-oriented elements of transitional justice (including court inquiries, inquests, prosecutions, or prison-release programmes) as well as the equally important parallel initiatives such as community reconciliation, victims' services, and institutional reforms. Legally-oriented elements of transitional justice (including court inquiries, inquests, prosecutions, or prison-release programmes) as well as the equally important parallel initiatives such as community reconciliation, victims' services, and institutional reforms.

The process of consultation is very important opportunity that given through TJ. Sometimes, there are advantages in leaving issues to be worked through in a process of consultation, rather than having policies limited by language reached during constrained, and often pressured, political negotiations.

TJ is therefore important in the (re)establishment of the rule of law after periods of conflict or authoritarianism to build sustainable peace and well-functioning states. Truth commissions play an important role establishing the facts about violations of the past. Acknowledging past abuses or a contested or denied history. is important in restoring victims' dignity and responding to some of their concrete needs. Also, it helps prevent

future abuses by recommending reparations or institutional reforms and by reaffirming social norms and promoting accountability and justice. Furthermore, TJ could help to reconcile the society.

5- The Theoretical Theme of Libyan TJ

Libya has had a bad experience with TJ. Since Muammar Gaddafi's removal, successive interim governments have paid little attention in building accountable institutions, while militias with regional, tribal, religious and financial objectives have gained more control and operated with an impunity that defines the new fragmented and volatile country. Libyans can neither reconcile with their past nor with each other while they fear for their lives. Libyan TJ law involves mechanisms that are supposed to address all issues concerning the redress of victims and the establishment of national reconciliation, and that measures have been taken to rehabilitate the judiciary and the security services, which are the most important elements for the application of any law.

Libya needs an inclusive national reconciliation process that helps in securing a successful transition to sustainable peace and stability.

One of the elements leading to the unsuccessful experience of the Libyan TJ is the division of the Libyan society as a result of the revolution by which al Gaddafi was defeated. People were divided into two groups -those who supported the revolution and those who supported the previous regime of Al Gaddafi. This did not help the transference to democracy and led to practices of repression, exclusion and subjugation against those who were merely related to previous government. For example, the Libyan authorities enacted The Political Isolation Law (PIL) (No. 13 / 2013) against those who served in the former regime between September 1, 1969, and October 20, 2011. According to this law, these people will not be able to work in Public Service for ten years. This is unfair law would create further divisions in Libyan society and make it difficult to successfully apply TJ. However, Sharqieh suggested an alternative to this law which might help Libya have a successful TJ. He suggested a comprehensive TJ law and a vetting process should manage the reconstructing of Libya. Also, stability through National Reconciliation by an independent and transparent national integrity committee is required.

The former Libyan justice minister Salah al-Marghani, stated that Libya has had an unsuccessful experience of TJ because the militias, and armed forces are in the hands of political, ideological and regional forces. Other reasons he cited were the break-up of the state and then the coup against it, the destruction of its institutions, assassinations, kidnappings and threats against army officers, police, activists, judges and journalists, and the establishment of different forces, each according to its interest, to bring the national judiciary into their political battles. All of this has cast a shadow over the difficulty of the judicial situation, especially in the light of some examples that have been brought to justice in cases that were supposed to be an important part of justice and the truth. However, the security conditions that accompanied the fighting and the political conflict have lost its validity.

The Libyan government was struggling to apply TJ and the Libyan authority's steps to achieve peace were floundering. This would be explained in this section below.

5.1 Libyan Law No 38 of the Year 2012

Law No 38 of year 2012 on Some Procedures for the Transitional Period, enacted on May 12, 2012 by the National Transitional Council, protects from prosecution the perpetrators of serious crimes if their actions were aimed at "promoting or protecting the [2011] revolution" against Muammar Gaddafi. The law is problematic because it propagates a culture of selective justice and impunity.

Libya has granted amnesty to revolutionaries who committed crimes during the time of revolution against al Gaddafi if their aim is to protect the revolution. Granting amnesty to those responsible persons for serious crimes is the perpetuation of a culture of impunity that encourages further violations. Law No. 38 on "Certain transitional procedures" of 2 May 2012, entered into force on 12 May, stating that there is no punishment "for the acts of military, security or civil action committed by the Revolution of February 17, by revolutionaries in order to make the revolution a success or to protect it "

The law seems to cover only abuses committed under cover of the state, one of its agencies or individuals acting on its behalf. While article 1 of the law states the law "includes some effects of the February 17, it specifies only acts and attitudes that caused a rift in the social fabric, acts that were necessary to protect the Revolution but showed conduct inconsistent with its principles, reconciliation, establishing social peace and laying the foundations for a state of rights and law. This article makes it easier for impunity and the violation of human rights and is a hindrance to achieving peace in Libya and obstructing the peacebuilding and TJ in Libya.

5.2 Libya Transitional Justice No.29 of year 2013

Libyan has issued the transitional justice law No.29 of year 2013. The law replaces NTC law 17/2012 on transitional justice of February 26, 2012. This law cancelled the Law No. 34 of 2012. the Article 1 of this law explain TJ and its aim of dealing with past human rights abuse committed by the previous regime of al-Gadhafi. This could be through legislation, judicial, social, and administrative procedures. This law clearly defines murder, abduction, physical torture, confiscation or damage of funds as serious violations or abuse of human rights. This law sets out that the truth commission should be established. The truth commission accepted cases of violation of human rights abuse that occurred from the 1 of September, 1969 (when Muammar Gaddafi took power) until the end of the transitional period following elections to the legislative council according to the permanent constitution. The truth commission has to provide the government with information about the cases in detail with evidence along with their recommendations. Also, the truth commission should give information about its efforts and attempts at conciliation between the parties. There are many rights for the victims of human rights abuse according to this law, such as the right to know the truth and to document their suffering, reparation treatment, rehabilitation and provision of social services, and others. This law of 2013 dealt with problems that face the application of TJ such as the statute of limitation. This law states that crimes committed before the enforcement of the Law 11 of 1997, and those committed for political, security or military reasons shall not lapse or be halted by the statute of limitation.

The one-sided justice that characterized the Gaddafi regime continued into the Post-Gaddafi or post-civil war period, with the resorting to vengeance against those associated with the former regime in the transitional phase. This is reflected in the selective use of those TJ mechanisms that have been implemented in Libya. The justice was victor's justice. This led to the division of Libya with two governments, one in Tobruk and one in Tripoli, each claiming to be the legitimate authority and each conducting military operations against the other.

6- Law No. 35 on amnesty

The law provided for a conditional amnesty for all Libyans who committed certain crimes during the period from 15 February 2011 until the promulgation of the law, declaring the expiry of criminal proceedings and the voiding of the sentences handed down and the consequences thereof. The most important conditions stipulated by the law to benefit from the amnesty are written pledges of repentance, restitution of money, reconciliation

with the victim, handover of weapons and tools used in the commission of the crime, and the return of the original to crimes of assault on property and movable property.

This law was enacted at a time of political division and military conflict and when it was more appropriate in such a period to seek the reformulation and activation of the TJ project in full, and not to issue an amnesty law, which is subject to considerable debate about the effectiveness and timing of its issuance.

One of the measures TJ took was to charge the son of Gaddafi and the other member of the Gaddafi regime who committed crimes against the Libyan. The Criminal Court of Tripoli sentenced Saif al-Islam al-Gaddafi, Abdullah al-Sanussi and others to death and life imprisonment. Saif al-Islam faces many charges including "inciting civil war, genocide, abuse of power, ordering the killing of demonstrators, wasting public resources and bringing mercenaries to quell protests against his father's regime".

The minister of the justice gave amnesty to Saif al-Islam, Gaddafi son. It is not in his authority to issue the amnesty. Furthermore, amnesty cannot be granted for the crimes which are set out by the Law No. 29 of 2013 on Transitional Justice. According to Article 27 of this law of 2013, there is no Statute of Limitations for political, security, and military motivated crimes. This confusion in this decision is more political than legal. The previous government of Libya looked at Saif al-Islam as criminal, an abuser of human rights, while the new government looked at him as the victim of illegal political and military maltreatment and contrary to human rights.

This is a clear indicator of State fragility, weakness, contradiction and lack of control. It made clear the duplication of political power and the division of legislative power would lead to the collapse and fragmentation of the State.

In the midst of this controversy, the International Criminal Court is still demanding the extradition of Saif al-Islam, whom it accuses of committing war crimes during the events of the overthrow of his father's regime in 2011.

These laws have been deficient on the one hand and on the other have not been activated. It is possible the reason for this is the state of political instability and security experienced by the country. The laws alone cannot lead to the application of TJ, but there must be a genuine political and popular will, strengthening of security and stability and radical reforms of state institutions.

The primary guarantee for avoiding retributive justice is by well-drafted laws co-authored by climate experts. The optimal application of TJ in Libya requires the adoption of a combination of mechanisms of punitive justice and restorative justice in a manner that takes into account the conditions of Libyan society and commensurate with the degree and magnitude of the human rights violations it has suffered. One of the most important considerations to be taken into account when choosing such mechanisms is to achieve the main objectives of TJ, namely, to reduce gross violations of human rights and to prevent their recurrence.

7- The Forms of TJ.

As stated earlier, there are many forms of TJ. States are free to choose the form that fits the circumstances in their country. However, there might be confusion as to how the choice should be made. Therefore, determining which TJ mechanism or combination of mechanisms is appropriate for a given country depends on many factors and the unique circumstances of a period of abuse. Are crimes widespread, or focused on one region or ethnic group? Are many perpetrators responsible, or only a few? Were the crimes acts of the State, or those of insurgents, or both? Are the perpetrators still more or less in power, or has there been a clean transition to a new government? Does the state have sufficient

resources to implement a justice mechanism? Are the courts credible? Can the state afford individual reparations?

Depending on the answers, certain options are more viable than others. The most important point is that a careful assessment must be done about the circumstances of the conflict and the positions and interests of the victims, leaders, and the general public before any transitional justice mechanism is decided. The best way to determine different groups' needs and positions is through thorough consultations and, ideally, public debate about different transitional justice options.

Under TJ approach there are several rights for the victims of the human rights abuse. The core rights which should be available in Libyan TJ are;

7.1. The Right to Truth. The questions of why certain events were allowed to happen can be as important as explaining what happened. The right to truth has been exercised through approaches such as truth or fact-finding commissions, panels of inquiry, recovery of missing and disappeared persons, oral history and memorialization work, the release of government archives, and artistic and public platforms to give voice to suppressed or ignored narratives. However, the question is why do some countries decide not to establish a truth commission? Truth commissions are not appropriate for all situations and there may be sound reasons not to create one, or to delay its establishment.

The Libya established truth commission but the result of the investigation have yet been announced. This is contrary to Article 8(2) of Law No. (29) of 2013 on Transitional Justice which set out that the result should published in the media.

7.2. The Right to Justice: This is understood as guaranteeing equal access to justice, and usually focuses on establishing individual criminal accountability for those most responsible for past human rights violations and crimes. Libya has been the locus of international and domestic prosecutions for those deemed responsible for human rights abuses and international crimes. The Libyan authorities charged the son of Gaddafi, Saif al-Islam Gaddafi and 36 other officials of the al- Gaddafi regime, with war crimes against the Libyan people during the 2011 uprising.

Accountability is one of the most accurate mechanisms of TJ, the most influential of rights and freedoms and therefore, it should not be used for retaliation. Libya held violators of human rights accountable by charging them. However, the Libyan authorities enacted the law of amnesty as explained early. Libya, though, wrongly issued this law by limiting it to the criminals who committed human rights abuse during the revolution against Gaddafi as explained earlier.

Libyan TJ is dedicated to selective justice rather than TJ, which paves the way for deepening social strife. It distinguishes between crimes at the time of their commission and criminals according to their political affiliations. The perpetrators of violations after the collapse of the former regime are different from what was committed under the latter. The victims of the current regime are not victims of the former regime. Thus, this law clearly enshrines double standards and distinguishes between citizens, whether victims or perpetrators of criminal acts, which makes it contrary to international standards and constitutional principles and establishes a State that does not equally respect its citizens. This is the result of the provisions of the law in its first article that transitional justice is to deal with the gross and systematic violations of their fundamental rights and freedoms suffered by Libyans during the previous regime. Any legislator who respects the rights of citizenship, including the right to protection by general and abstract rules of rights and freedoms, should provide for the placement of all violations in one balance, at the time of their commission. That the draft of TJ Law in its preamble referred to the international agreements to which Libya was a party. However, this draft of TJ Law distinguished between the serious crimes that committed in accordance to criminals and the time of the commission. This distinguishes is a breach of international convention regarding the

crimes against humanity, crimes of torture and crimes of war. That there are crimes committed during the uprising and the time of new regime. These crimes were justified by the draft of TJ Law that these are necessary activities to protect the revolution. However, it is not possible to regard such crimes as not being subject to TJ law and regarded as necessary activities. The current Transitional Justice Law emphasized this distinction when it provided for the establishment of the Transitional Justice Prosecution and defined its jurisdiction with the gross and systematic violations committed by the former regime from the date of 1.9.1969 until the declaration of liberation. This means that it has no jurisdiction over the serious violations committed after the defeat of the regime and this clearly violates the Constitutional Declaration and the principles of the International law of Human Rights and the principles of Islamic law. The latter is the resource of TJ as this draft of the TJ Law stated. This distinction was impeded by the reconciliation process among the groups of Libyan society and hindered by the peaceful transition.

Libya resorted to collective punishment instead of personal punishment for the criminal. e.g. The reliance on the collective displacement for all the allies of Qaddafi, even those who did not commit crimes led to an increase in the number of displaced people and refugees. Another collective punishment was the enacting of the Political Isolation Law No. 13 of year 2013. They also embarked on a vendetta against those loyal to the former regime of Al- Qaddafi. The law, which prevents those who served in the former regime between September 1, 1969, and October 20, 2011, from holding public office for ten years, threatens Libya's post-war reconstruction. The law shatters the country's social cohesion, wipes out the state's institutional memory, and increases the odds that domestic instability will spill into to neighbouring countries. PIL must be significantly mitigated, adjusted, or simply cancelled. The Libyan authorities should instead have reformed their local laws in way that conforms to the human rights and guaranties equality for its citizens.

7.3. The Right to Reparation

Reparations programs seek to address the injuries caused to victims and survivors. They can be designed in many ways, and may include (a combination of) restitution; financial compensation; social services such as healthcare, psychosocial care, or education; and symbolic measures such as formal apologies or public commemorations.

According to Libyan Law No. (29) of 2013 on Transitional Justice the reparation could be a material or moral compensation. It shall be in one or more of the following forms; Payment of material compensation, apologies to the victim or acknowledgment of the violations that have been committed against them. It could be also be the commemoration of the anniversary, or the creation of a Victims Compensation Fund.

7.4- Reforming security institutions: is one of the most important benefits of TJ because it involves restructuring institutions associated with the monopoly of the use of force in society, so that they become more fair and transparent, follow the rule of law and the culture of human rights, and held accountable for past violations. The draft constitution contains texts that support this trend, including article 198, which is marked by guarantees of non-repetition, as well as the section of the judiciary and its contents, which entrench the independence of the judiciary, which is considered a major guarantee. , To achieve this, the state would legally acquire the army and police forces, and prohibit any individual, party, or group forming armed or semi-armed groups.

TJ is a hostage to the struggle for power. As a result of the difference in opinions of the political parties in government, no agreement could be reached on anything. However, the Libyan authorities tried to ensure that some of the mechanisms of TJ were adhered to by putting them in a draft of the Libyan Constitution. For example, Article 198 of the Draft Libyan Constitution provides the measures to be taken to guarantees non-repetition. Also, Article 199 of the Libyan constitution states the Libya authorities should

reconstruct the cities and the villages ravaged by military operations during the internal armed conflict. . Additionally, Article 200 obligates the state to recover public funds. However, it is the opinion of this paper that the Libyan authorities are unable to practice these articles as they struggle to reach agreements. It took them five years to approve this Constitution. There are two steps to adopt the constitution. In the first step, the Parliament approves it and in the second, it is approved by the citizens. However, the parliament did not open referendum to this day. This constitution was due for approval since 2012, after the uprising but the politicians are still in conflict even though the draft has been approved since the 30th of July 2017 by parliament. Therefore, this constitution cannot be applied.

reform state institutions, particular attention should be given to the security services, given their responsibility for torture and human rights violations; the administrative apparatus and its bureaucracy, given their endemic corruption; the media, long responsible for the glorification of the dictatorship; and the judiciary, which must be trusted to faithfully and honestly implement TJ. Furthermore, the absence of national dialogue has widened gaps between Libya's different parties, reinforced mistrust, and exacerbated a disastrous security situation.

8- The Main Obstacles to Achieving Peace in Libya

The question arises as to why Libya could not achieve peace from 2012 till 2018? To answer this question, there is a need to understand first why Libya failed to apply successful TJ.

There are several key issues hindering Libya from successfully applying TJ. One of such issues is the absence of political will. There is no sense in talking of achieving TJ in a country without a political will to hold perpetrators accountable. Furthermore, the lack of a clear strategy to chart a clear path for a better country, greatly undermines the opportunity for TJ. A well-formulated strategic plan must be in place, even if there are a large number of perpetrators to be held accountable. The Libyan authorities also faced the problem of not having an appropriate technical approach to understanding the crimes of the regime. Moreover, the armed groups controlled several important institutions such as the courts and prisons. The division of the Libyan society as a result of the revolution also contributed to the unsuccessful TJ experience. The people are divided into those who support the revolution and those who supported the previous regime of Gaddafi. For example, Libya authority enacted The Political Isolation Law No. 13 of year 2013 (PIL) against those who served in the former regime. According to this law these people will not be able to service public office for ten years, as explained earlier in this paper. The Libyan authority did not make any distinction between who committed crimes in times of al Gaddafi and those who merely worked in the Gaddafi regime. This was one of the reason that Libyans did not feel comfortable with the TJ approach and are not comfortable applying it. TJ process has not been entrusted to a neutral party to reassure everyone. TJ is a powerful mediator and advocate for the dignity of the victims and the values of truth, fairness and common humanity.

Furthermore, the results of the investigations were not published despite the formation of this fact-finding commission. On the other hand, the legislative authority removed it from its content through the issuance of parallel legislation supposed to be at the heart of the work of TJ.

Also, the refusal of the revolutionary forces to join the state in spite of the existence of the official government and their denial of the government's legitimacy, generated a culture of division inside the society and government.

The weakness of Libya government and lack of means of implementation required international assistance. Libya requires technical assistance on how best to run a

reconciliation process, investigate past crimes, hold transparent and fair trials of corrupt figures, repair injury done to victims and their families, and engage in deep institutional reform to prevent human rights violations from being repeated. Furthermore, Libya needs international assistance in building a strong police force and army – a necessary step for restoring state authority. Security collaboration with neighbouring countries – particularly Egypt and Tunisia, who can help control their borders with Libya – can move Libya toward a more secure environment for reconstruction and reconciliation.

9- Conclusion

The goal of TJ is to restore the social fabric, to satisfy the sense of justice in a variety of ways, to break with the causes of discord, to uncover the truth, and to identify those responsible for the violations, whether they have been punished or not. The condemnation and the statement of violations are not always linked to the application of the punitive law and do not conform to the traditional rules that have been established for a society in a normal situation that has not experienced civil wars or political unrest in which the circle of gross and systematic violations of human rights has widened. Penal Code. These actions do not merely reveal the truth but act to enforce criminalization and punishment. Transitional justice contains more guarantees than ordinary justice in addition to containing judicial and non-judicial proceedings.

Libyan TJ is selective justice and retributive criminal justice. Almost 6 years since the Libyan uprising, very few of the TJ goals have been achieved. The new Libyan government was floundering in its application of TJ and in its steps to achieve peace and stability in the region.

Achieving stability requires the launch of a process of serious national dialogue and reconciliation and the following of a Systematic approach to any form they wish to adopt with experts consulted

There should be an Arabic version of the minimum law of transitional justice, especially since the Arabs have almost the same political, economic, social and religious conditions with minor differences. The Constitution must be prepared in a very short time, especially since the draft constitution contains some guarantees of the application of the transitional justice law

Libyans in general and victims in particular should be informed of the procedures for achieving transitional justice through the media. Furthermore, victims should be involved in proposals for possible solutions to reach peace. Justice must be restorative and not retaliatory and should not be politicized and should rely on experts in this area. They should not issue laws and decisions that are not deliberate and merely intended for revenge. Furthermore, If the public interest and the peace process in the region require amnesty, the amnesty must be conditional on revealing the truth, apologizing to the victims and compensating them.

The justice of post-civil war was to resort to vengeance against those associated with the regime. This is reflected in the selective use of those TJ mechanisms that have been implemented in Libya. Libya resorted to revenge against all the loyal supporter of the former regime for instance the collective displacement of all the allies of Qaddafi even those who did not commit any crimes.

The general amnesty, which finds its philosophical basis in closing a period of social unrest and opening a new page, leads to the violation of the right of individuals and society to uncover the truth, which is the cornerstone of transitional justice and building a state on a solid basis. While not objecting to the positive outcome of the amnesty and its possible use to bring about social harmony or to go beyond ordinary crimes committed during the turbulence period and to support national reconciliation, this should not be a

way of blurring facts, and impunity for the criminals, and to deny victims the knowledge of those who contributed to the violation of their rights.

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