

**United Nations Support Mission In Libya**

بعثة الأمم المتحدة للدعم في ليبيا

TRANSITIONAL JUSTICE – FOUNDATION FOR A NEW LIBYA*Background*

The 2011 Libyan Revolution was premised on the struggle for dignity, human rights and freedom from oppression. However, the transition to building a new Libya requires coming to grips with the past and facilitating reconciliation based on principles of transitional justice.

Transitional justice “comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”¹ In the last two decades, transitional justice strategies were developed in dozens of countries, including in the transitions to democracy in Latin America and the end of apartheid in South Africa. Transitional justice measures, including criminal justice, truth seeking mechanisms, reparations, and institutional reforms, are now seen as an essential component of peace-building efforts in post-conflict contexts.

Challenges posed by Libya’s transition

Implementing a transitional justice program in Libya requires an understanding of the vast scope of violations, which include the systematic cruelty of 42 years of dictatorship, the brutal suppression by the regime of the uprising last year, and a conflict that witnessed excesses on both sides. Signature violations of the Qadhafi regime included political repression through criminalizing dissent and opposition; summary executions; forced disappearances and torture; mock trials before political courts and years of imprisonment in “black hole” prisons such as Ain Zara and Abu Salim; and promotion of ethnic and tribal divisions. While the atrocities committed by the Qadhafi regime were often committed publicly and even televised in some cases deliberately to invoke terror, the question of who should be held responsible for sustaining the totalitarian regime, beyond the senior leadership, remains unresolved. Addressing past crimes and crimes committed during the Revolution is complicated by the fact that large numbers of Libyans from different walks of life are potentially implicated.

Crimes committed during the conflict are fresh in memory, generating strong emotions among the communities that suffered the most. In some cases,

¹ Secretary-General’s Report on Transitional Justice and the Rule of Law in Conflict and Post-Conflict Societies, 3 August 2004, S/2004/616.

perpetrators of past crimes became victims, while victims also became perpetrators. While the Libyan society honors those who selflessly fought against the brutality of the former regime, particularly those who lost life or limb, it is also faced with the difficult responsibility of holding accountable members of revolutionary forces for crimes committed during and after the Revolution, including torture of detainees and revenge attacks against communities perceived to be supporters of the former regime. Transitional justice will also have to deal with such violations.

The eruption of local conflicts in many parts of Libya based on historical grievances shows the need for a comprehensive approach to addressing the past. Since October 2011, such conflicts have flared up in various parts of the country, including in Bani Walid; in Kufra, between Tabu and Zwaya; in Sabha; in Zawiya with the Warshafana tribe; in Zintan, with the Mashashiya tribe; in Zuwara, with al-Jumail and Regdalin; and in Ghadames, between Arab and Tuareg. These conflicts have cost many civilian lives. While different delegations were dispatched to try to achieve reconciliation on the local level, these initiatives stopped short of tackling historical root causes and injustices based on recognition of rights. Until now, there is no uniform process of national reconciliation in Libya.

While the National Transitional Council enacted a transitional justice law entitled “Laying a Foundation for National Reconciliation and Transitional Justice”, it is not clear whether the law as currently conceived will allow for a dynamic truth-seeking process. The law was not broadly consulted before it was passed and its goals are unclear. The Fact-Finding and Reconciliation Commission established by the law and composed purely of senior judges, appears to be a quasi-judicial process that may not provide sufficient scope for examining legacies of violations, reflecting on them through public hearings, and creating a space for victims to air their views. Victims are not mentioned in Libya’s law except in relation to compensation. There are other legal challenges to moving forward too. Several amnesties were passed by the NTC and risk promoting impunity. These laws may need to be readdressed with the new General National Congress in place.

Benefits of truth-seeking

It is still an open question whether Libya should institute a comprehensive and dynamic truth-seeking process, of transformational impact, such as the “truth commission” experiences in South Africa or Peru. The complexity of the layers of violations over 42 years of an oppressive regime deserves to be revealed and recognized openly, so that the abuses of the past will not repeat themselves. Truth-seeking can also form the basis for just approaches to reparations and fundamental institutional reforms, including in reforming the justice institutions or the troubled

security sector. It is important that these options are discussed in more detail throughout the Libyan society.

A transitional justice strategy that includes truth-seeking can provide a framework to resolve even the most contentious issues, preventing further conflict and cycles of revenge. An example is the situation regarding Misrata and the Tawergha, which needs reconciliation based on truth and justice. A commission should determine what actually happened, guilty individuals should face trial, and the needs of victims, especially those who suffered sexual violence, should be addressed. But those who suffered reprisal violations deserve reparations and their displacement must end, or else it risks the festering of wounds that will give rise to future conflict.

Need for a victim-oriented approach

The plight of families of missing persons, whether they were for or against Qadhafi, demonstrates the need for a victim-centered approach. The pain of the loss of a father, brother, son or husband is the same, no matter whose side they were on. More concrete measures are needed for victims such as those of the Abu Selim massacre, including giving them the opportunity to tell their stories and to receive full reparations, as well as holding criminal trials of those responsible. Civil society organizations should also play an important role in the transitional justice process, particularly in giving support to victims.

Ending conflict-related detentions and need for a prosecutorial strategy

Libya's legal institutions are still weak and rule of law remains a fundamental challenge. Since the demise of the old regime, Revolutionary forces have continued to substitute for the role of the state and arrested thousands of perceived Qadhafi supporters who remain in detention today without legal process. Some have been subjected to ill-treatment or torture.

Transitional justice experiences can contribute to formulating a prosecutorial strategy that will allow for investigations and trials of those of the highest level of responsibility for the most serious crimes, and for the release of others. The continued detention of some 7000 persons without legal process constitutes arbitrary detention, which must be ended as soon as possible if human rights are to be respected in the new Libya. Regime crimes require particular and complex forms of investigation as those at the top, who are ultimately responsible, typically maintain distance from the crimes, which are carried out by carefully honed systems of subordinates. Libyans would benefit from international experience in devising an approach in this regard.

A coherent overall strategy to prosecutions will require a policy directive and a centralized approach from the General Prosecutor's office. Trials should not simply be conducted in a haphazard way in local courts where high-level detainees are currently being held, but require a deliberate overall strategy. Charges should go beyond the events of 2011 to cover historic crimes even if this requires additional investigation. As it will not be possible to try everyone who is currently suspected or detained, trials should focus on those who organized or masterminded crimes. This strategy will need to be communicated and explained not only to legal professionals, but also to the brigades, victims, and the general public. A strategic approach to prosecutions of the former regime, resulting in fair trials, will contribute to strengthening public confidence in the judiciary and the importance of rule of law in Libya.

Conclusion

Transitional justice processes can enable Libyan society to make a commitment to particular values going forward, which can be reflected in the new Constitution. There are many examples from other countries on which Libya can draw. It would be a pity if Libya missed this critical juncture in its history to take such an opportunity.

In light of the above, UNSMIL puts forward the following recommendations:

- 1.** Libya is at a crucial juncture in terms of its history. In order to move forward, it should carefully consider its past and learn from it. A transitional justice strategy can contribute to defining how Libyan society will go forward, and lay the foundations for a new democratic society. The General National Congress and new government should commit to implementing a comprehensive transitional justice process within the next year.
- 2.** More public dialogue and debate is needed in Libyan society to decide the goals and the scope of transitional justice processes. The General National Congress may want to consider instituting an official public consultation on these matters of national importance, similar to the election law and Constitution.
- 3.** Transitional justice should encompass not just criminal justice but also truth seeking, reparations, and reforms intended to guarantee that such violations do not recur. As a starting point, Libyan authorities should consider instituting a socially dynamic approach to truth-seeking that ensures

participation of wide – section of Libyan society particularly victims of past and present violations of human rights;

4. The legal framework currently in place should be revisited and revised by the National Congress to achieve these goals. This includes not only the Transitional Justice law but also the amnesty laws.
5. The arbitrary detention of those suspected of crimes committed during the conflict must end as soon as possible. All cases should be screened and referred for further investigation or should be released. All torture and ill-treatment of detainees should cease and further cases should be prevented.
6. A prosecutorial strategy should be formulated by the General Prosecutor to ensure that those with a high degree of responsibility should be tried for serious crimes. The Ministry of Justice should seek to explain this to the public.
7. Trials should serve to strengthen the rule of law and judges should comply scrupulously with international standards of fairness. Fair trials would help to reaffirm the place of the judiciary in Libyan society.
8. Post-Revolution conflicts among communities and groups should be addressed through transitional justice, so that reconciliation takes into account historical root causes of conflict, and injustices are remedied through the recognition of rights.
9. The relatives of missing persons should have an active involvement in the search and identification process. The Ministry for the Affairs of Families of Martyrs and Missing Persons should be given sufficient resources for carrying out its tasks which might take several years to accomplish; The General National Congress as a priority should adopt a law for providing legal framework for search and identification of missing persons;
10. Civil society organizations that seek to support victims and human rights deserve to be facilitated and fostered, as they will play an important role in the transitional justice process.