

National Reconciliation in Libya: Challenges and Perspectives

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Introduction

Ten years after the uprising started in February 2011, Libya has been in a state of continuous conflicts on both the local and the national level. During the first phase of the conflict, the division of towns and tribes between “pro-February revolution” and “pro-former regime” created and reinforced a collective mindset which divided between those who won the revolution and the defeated. This has contributed to the outbreak of violence, acts of revenge, displacement of civilians, as well as the stigmatization of certain tribal and social groups. Another dimension of the conflict involves the competition over national resources and positions in state institutions. This has deepened the political division, exacerbated existing tensions, and fueled the dynamics of new conflicts. On the local level, various disputes are strongly rooted in history and go beyond political bounds to reflect the country's urban, rural, ethnic, and other socio-geographical divisions. As a result of this, state institutions have been seriously weakened, and the relationship of trust among Libyans and between them and the state has been severely damaged. The Libyan society has been traumatized and exhausted by the exorbitant social, political and humanitarian costs of violent hostilities and political unrest. This has in turn damaged the national social fabric of the country. These factors have made societal and national reconciliation¹ both more urgent and difficult.

Local initiatives to restore social fabric

Several attempts have been made since 2012 to reconcile the parties to local conflicts and to repair and restore the Libyan social fabric. This has included, among others, the following agreements between cities and tribes: National Transitional Council and Tuwareg (2011), Tebu and Twareg (2014, 2015), Janzour and Wershefenna (2015), Zawiya, Zintan and Rajban (2015), Gdhadhfa and Awled Sliman (2016), Zawiya and Wershefenna (2016), Tebu and Awlad Sliman (2016), Misrata and Tawargha (2018). Most of these initiatives were launched by local councils or committees whose members are elders, tribal leaders or societal figures from different cities, regions or tribes.² These initiatives have been supported by the international community with the consequence of reinforcing the stereotype of Libyan society as being composed mainly of tribes.

While some local agreements succeeded in securing temporary local stabilization and de-escalation of violence, they have largely failed to achieve real and sustainable reconciliation and peace. These attempts mainly consisted of crisis management and de-escalation measures such as establishing a ceasefire, humanitarian truce or exchange of detainees rather than addressing the deep-rooted causes of conflicts, providing guarantees of non-recurrence and achieving genuine reconciliation. This explains to some extent the resumption of violence and the failure of these initiatives in producing sustainable peace and long-lasting stability. On another level, various half-hearted dealing with the past (DwP)³ (also referred to as transitional justice) mechanisms have been implemented and have thus failed to properly initiate and establish reconciliation and DwP. This



is illustrated by the unbalanced dysfunctional mechanisms created through DwP laws, such as the national fact-finding commission, which will be presented and assessed below.

Mimicking international models of reconciliation in Libya

Since 2011, Libyan authorities have engaged in the discourse of reconciliation and DwP. In the absence of a well-defined, context-specific model for Libya based on the grievances of the Libyan society, the authorities fell into the temptation to mimic DwP practices and mechanisms applied in other contexts. This approach reflected a lack of an inclusive process based on consultation and consensus and contradicted the spirit of tolerance and social harmony.

Although reconciliation is defined in academia as a ‘multi-level process’ that operates at ‘political, institutional, civil society and interpersonal levels’,⁴ the Libyan political elite after 2011 understood and dealt with reconciliation as an ‘[...] event that can be legislated or governed by a law’.⁵ This legalistic approach to reconciliation resulted, on the one hand, in the adoption of laws that were not rooted in local realities. On the other hand, this has led to the multiplication of laws and institutions aimed at shedding light on the success of the February revolution and its ‘engagement’ in the struggle for democracy. Furthermore, these laws did not emanate from a broad consultation with the various national and local stakeholders. There was no contribution of local communities in designing the mandates of the adopted reconciliation mechanisms.⁶ The lack of a broad public and inclusive debate on reconciliation and DwP resulted in a ‘isomorphic mimicry’⁷ of DwP approaches and contributed to the failure of these legal mechanisms in effectively addressing the grievances caused by the conflict.

Achieving a reconciled society requires re-building the political community, which was initially governed by corruption and denial, on the basis of mutual consent, respect and justice.⁸ It entails ‘a condition of mutual respect’⁹ and requires

‘the reciprocal recognition of the moral worth and dignity of others.’¹⁰ Society shall be ‘oriented towards the cultivation of democratic reciprocity’¹¹ and should reflect ‘a willingness to seek common ground with fellow citizens’.¹² To illustrate the gaps in these legal instruments, the following paragraph looks at the tinkering of Libyan legislation related to DwP and reconciliation that was adopted between 2012 and 2013.

The tinkering of legislation related to dealing with the past and reconciliation

Laws on reconciliation and DwP in Libya have been adopted in the first years following the revolution (2012-2103) and during the time of political division (from 2014 until 2021). Therefore, this legislation is not comprehensive and inclusive in addressing the various facets of the conflict. It rather reflects the mindset of the victorious (revolutionaries) on how to address the wrongs of the defeated (allies of the

former regime). This is illustrated by its aim to exclude certain actors from the political sphere or shielding some actors from justice. There is also a duplication and lack of harmonization in the institutional infrastructure related to reconciliation and DwP

which was created by these laws. The following are examples of the laws on reconciliation and DwP still in place:

- » **Law No. 17 of 2012** issued by the National Transitional Council: The law lays down the principles for transitional justice in Libya. It also stipulates the creation of the fact-finding and reconciliation commission which shall investigate and address human rights violations, and of the reparations fund for victims. Nevertheless, the law limits the scope for accountability and seeks only to shed light on violations committed by the Gaddafi's regime, despite the fact that serious human rights violations have been committed by both sides during the revolution. The commission was created in 2012 but was unable to effectively work due to legal, political and security challenges.

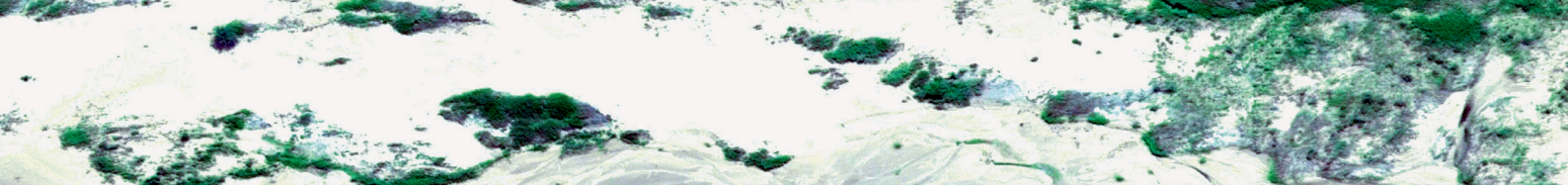


- » **Law No. 26 of 2012** on the High Commission for the Application of Standards of Integrity and Patriotism issued by the National Transitional Council: The law identifies the criteria of integrity and patriotism that shall be fulfilled by those holding public positions. It enumerates the categories of those who shall be excluded from holding public positions governed by the law. Nevertheless, this exclusion does not take into consideration the right to a fair trial. Although this might be considered an important step towards institutional reform and guarantees of non-recurrence of past violations, in a post-conflict society where the victorious-defeated mindset prevails, this law may be used as a political tool to justify the exclusion of some political actors without due diligence. Indeed, a main obstacle that can impede genuine institutional reform and reconciliation is the criminalisation of people on the basis of their political affiliation and without guarantees of fair trial.
- » **Law No. 35 of 2012** on the Amnesty for Particular Crimes issued by the National Transitional Council: The law grants amnesty for persons who participated in the hostilities against the Gaddafi regime including those with previous criminal convictions. Violations committed by members of the Gaddafi family and by those who worked with Gaddafi are excluded from the amnesty.
- » **Law No. 36 of 2012** on property and asset management of certain persons issued by the National Transitional Council: The law stipulates the appointment of a General Receiver and private receivers by decree of the ministerial council to manage the assets and properties of identified persons from the Gaddafi family and those affiliated with the Gaddafi regime.
- » **Law No. 38 of 2012** issued by the National Transitional Council: The law outlines additional measures related to transitional justice. It confirms the content and spirit of Law No. 17. According to the law, violations committed by the revolutionaries are considered as armed or security measures that were necessary to ensure suc-

cess and protection of the revolution. This excludes grave human rights violations committed in the name of the revolution from being brought to justice. This law complements the Law 35 on amnesty.

- » **Law No. 50 of 2012** on compensation of political prisoners issued by the National Transitional Council: The law defines as a political prisoner 'any civilian or military person detained in prison or special detention camps from 01/09/1969 to 15/02/2011 due to opposition to the former regime'. It also provides for financial indemnification for political prisoners.
- » **Law No. 13 of 2013** on administrative and political isolation issued by the General National Congress: The law excludes those who have held certain positions under the Gaddafi era from holding public office.
- » **Law No. 29 of 2013** issued by the General National Congress: The law defines the concept of transitional justice and its pillars and mechanisms. It stipulates the establishment of a fact-finding commission and outlines its mandate, structures and prerogatives. It also outlines the pillars of the transitional justice process and stipulates the creation of the property ombudsman authority. Nevertheless, none of these institutions have been established.

This multiplication of laws has worsened when Libya plunged into further legal inconsistency with the political division in 2014. With two parallel governments and two parallel parliaments in the East and West, contradictory laws and regulations related to reconciliation and DwP have been adopted. As an example, the House of Representatives (HoR) in Tobruk adopted the Law No. 6 of 2015 on General Amnesty which has not been recognized by the Tripoli-based General National Congress. Furthermore, the political division paved the way for the instrumentalization of the legislation on reconciliation and DwP which has deviated from the objective of addressing past human rights violations and grievances and rather contributed to the strong polarization of the country's political arena. As an illustration, the authorities in the East and West have recruited and included within state institutions and mil-



itary bodies individuals who were affiliated to the former regime. Although this can be seen as a significant step towards reconciliation, it was rather a political instrument used by the authorities to reinforce their political position and expand their political bases. The absence of a genuine approach to reconciliation has reinforced the feeling of exclusion and led to the hostile and provocative return of people affiliated to the former regime. This was illustrated by the participation of military personnel affiliated with the former regime in the attack against Tripoli in 2019. Furthermore, the return of Seif Al-Islam Gaddafi to the political landscape through his candidacy for the presidential elections in 2021 was seen as a provocation and as putting at risk the gains of the February revolution. This has triggered fears and frustration and led to the re-emergence of violent speech against those affiliated with the former regime. The latter represents an immense setback to the spirit of national unity. These examples stand as a testament to both the lack of and need for a genuine bottom-up approach towards national reconciliation and DwP.

New roadmap, new hopes and new possibilities

Following the ceasefire agreement announced by the Prime Minister of Tripoli-based Government of National Accord (GNA) and the Speaker of the House of Representatives (HoR) in Tobruk in 21 August 2020, the political and security situation in Libya remains relatively calm though still unpredictable. The agreement on the political roadmap reached during the Libyan Political Dialogue forum in Tunis in November 2020 and the inauguration of the unified executive authorities (Government of National Unity and the Presidency Council) in February 2021 in Geneva constituted the start of a new political arrangement and stimulated the debate on national reconciliation. On the regulatory front, new texts have been adopted through the political track (e.g. the Roadmap for the Preparatory Phase), which insists on the necessity to launch a reconciliation process.¹³ The Roadmap for the Preparatory Phase stipulates in Article 6 that the Executive Authority shall launch a process of national and social reconciliation 'to address the impacts of various conflicts ranging from ending arbitrary arrest, enforced disappearance, release of the prison-

ers of opinion and of those who have been arbitrarily detained; to work for the voluntary and safe return of displaced persons inside and outside the country; and reparations for damages without prejudice to the right to litigation'. The second article of the chapter on the Unified Executive Authority stipulates that the Presidency Council has the prerogative to 'launch the

"the political division paved the way for the instrumentalization of the legislation on reconciliation and DwP which [...] rather contributed to the strong polarization of the country's political arena."

national reconciliation process and form a High National Commission for Reconciliation'.¹⁴ In this context, the Presidency Council issued Resolution No. 5 of 2021 on the establishment of the High National Commission for Reconciliation and the

creation of a preparatory committee to prepare the strategy of national reconciliation.¹⁵ Furthermore, the exchange of prisoners that took place between December 2020 and March 2021 under the supervision of the Joint Military Commission and with the support of elders and social leaders played an important role in de-escalating the situation and reinforcing the reconciliation discourse. The release of key figures affiliated with the former regime such as Saadi Gaddafi and Ahmad Ramadan in September 2021 brought attention to national reconciliation in the lead-up to the elections. Based on these developments, reinforcing the debate about national reconciliation does not only contribute to supporting a participatory and inclusive environment in which the elections can take place, but also to prevent the recurrence of division and violence after the elections. This will also be crucial for the future constitutional process, as it would set the stage for the drafting and adoption of a constitution based on the values of unity, coexistence, national cohesion, and national identity.

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Concluding remarks

Several attempts to reconcile tensions and resolve disputes between members of Libyan society have failed for reasons that range from lack of genuine political willingness to non-inductive political, security and social conditions and the defects and flaws in the reached agreements or the established bodies. This largely contributes to the lack of societal support, readiness and ability to reconcile. Therefore, the success of the reconciliation process relies first and foremost on restoring trust between different constituencies of Libyan society and on repairing the damage that has been caused to the social fabric and ensuring the guarantees of non-recurrence of past grievances. Various reconciliation initiatives were launched, and several ad hoc committees and bodies have been created but they have failed to achieve their desired outcomes for several reasons. In the following, some of these reasons and potential ways to address them, are presented:

- » Lack of strong state institutions and genuine political will to implement a credible and genuine DwP and reconciliation process. This leads to individual or collective acts of revenge¹⁶ and the resumption of violence.
- » Lack of implementation of trust building measures to restore a minimum basis of trust between the conflict parties. Fact-finding bodies and truth-revealing mechanisms to reveal the truth and provide indemnification and reparations can be established to address this. Independent or joint committees that include representatives of the conflict parties can also be created to monitor the implementation of the local reconciliation agreement.
- » Lack of conditions conducive to the safe and voluntary return of displaced persons.¹⁷ The re-building of basic infrastructure, empowerment of local governance structures and providing access to basic services will contribute to create such conditions. In addition, securing the area to allow for the safe return of people and establish joint security forces that reflect the existent societal fabric in the area or neutral security forces, depending on the context of the area would be conducive.
- » Some agreements pointed out the importance of a comprehensive and lasting peace without determining concretely how to ensure the implementation and durability of the agreements.
- » Many agreements referred to reparations as strictly financial compensation without touching upon the immaterial and symbolic dimension of reparations such as providing apology for victims and their families, or the commemoration of suffering of victims and psychosocial support.
- » Some agreements specified that financial compensations would be paid by foreign actors who have intervened in the local reconciliation process.¹⁸ This foreign intervention can jeopardize national sovereignty and the attempt to preserve a nationally led reconciliation process. Financial compensation shall be provided either by official state institutions or by a reparation fund or committee with independent legal personality and financial liability. The resources of the fund of the committee can be obtained through allocations from the state budget or donations.
- » The massive proliferation of bodies and committees such as Crisis Cell Units in war-affected cities, Fact-Finding Committees, Reparation Committees and Reparation Funds without clear mandates and frameworks has further complicated the process, opened the door to misuse of the funds and led to a multiplication of inefficient bodies. This has also damaged the trust in these bodies.

In closing, genuine and effective national reconciliation requires a multi-layered process that captures the complex legacy and dynamics of conflicts, rather than simply mimicking international templates that are prone to political manipulation. This policy brief offers suggestions on what steps should be taken to initiate such a process of reconciliation and DwP; one that shall accompany and reinforce other key tracks including those of political mediation and state-building processes.



Recommendations

In order to prevent similar failures in the future, Libyan stakeholders and decision-makers should make efforts towards changing the prevailing societal and political discourse to become more trustful, reconciliatory and inclusive and to promote values of peace at the community level. This can be contributed to with the following measures:

- » National stakeholders should launch a national dialogue and/ or consultations to develop a new social and economic contract that lays the foundation for social justice.
- » National and local stakeholders should strengthen and support non-polemical societal figures to resolve localized tensions and violent disputes.
- » The competent authorities should create an ad hoc mechanism¹⁹ to deal with priority issues such as:
 - › Draw lessons learned from the implementation of previous DwP mechanisms in Libya.
 - › Work towards re-building trust through looking at the cases of those detained for either military or political reasons and liberate or exchange those prisoners.
 - › Carefully review and propose amendments to DwP-related legislation as well as decisions, decrees and resolutions adopted since 2011 especially those which can be considered as a legal basis to exclude some actors from participating in the electoral process or from working in state institutions.
 - › Address localized violence and work on resolving local conflicts that might lead to the resumption of violence and to further displacement and suffering of local communities.
 - › The competent authorities²⁰ should adopt the internal regulation of the High National Commission for Reconciliation. An inclusive selection process can be put in place to receive and study candidacies for the Commission.
- › Decision and policy makers shall consult local stakeholders on their views and priorities for national reconciliation.
- › The competent authorities should put in place ad hoc grievance redress mechanisms to provide material and immaterial reparations for past atrocities committed in and against some Libyan towns and communities. These mechanisms shall be designed and implemented based on consultations with the affected populations.
- › The legislative authority should revise and harmonise laws on DwP based on an inclusive consultative process to ensure a coherent and authentic Libyan DwP-framework. A parliamentary commission to focus on this area and/or an advisory body composed of legal experts and those who were involved in the adoption of DwP laws can be created to provide advisory opinions and lessons learnt on the adoption and implementation of these laws.
- › Local governance institutions should be provided with the required knowledge and capacity to be able to prevent, mediate and resolve local conflicts, alleviate social tensions, provide the safe return of displaced people, and guarantee their rights and their physical safety.
- › Media and social media actors should de-escalate their language and contribute to a public discourse that encourages reconciliation and unity.

[1] "Reconciliation is the ultimate objective in all post-conflict societies and post-conflict reconstruction processes. (...) National reconciliation is achieved when societal and political processes function and develop without reverting to the framework of the conflict." See Mobekk, E., 2005, 'Transitional Justice in Post-Conflict Societies - Approaches to Reconciliation' (06.01.2022). https://www.bundesheer.at/pdf_pool/publikationen/10_wg12_psm_100.pdf (05.01.2022).

[2] Local Reconciliations in Libya: A Precarious Balance Sheet, Defender Center for Human Rights. <https://www.defendercenter.org/2255> (04.02.2022).

[3] "Dealing with the Past refers to the processes addressing the rights of victims and societies as a whole to truth, justice, reparation and guarantees of non-recurrence in the aftermath of grave human rights violations, breaches of international humanitarian law and related grave forms of corruption that facilitated these crimes." See Guiding Principles on Safe Havens for Archives at Risk, ICA, https://www.ica.org/sites/default/files/guiding_principles_for_safe_havens_for_archives_at_risk_copyright_creative_commons_cc_by_nc_4.0_ica.pdf (05.01.2022).

[4] Ernesto Verdeja, 'Theorizing Reconciliation', in *Unchopping the Tree*, Temple University Press, 2009, p.20. (05.01.2022).

[5] Janis Grobbelaar and Jama M. Ghalib, 'Security and Reconciliation in Post-Conflict Society: The Matter of Closing the Books in South Africa and Somalia', *International Journal of Somali Studies* Vol. 7, 2008 p.4 (07.01.2022).

[6] "The usefulness of national consultation processes as means for the identification of stakeholders that may not appear obvious but that have much to contribute not just to the design but to the implementation, and hence the sustainable impact, of a transitional justice process bears highlighting." Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (25.10.2016) <https://undocs.org/en/A/71/567> (14.01.2022).

[7] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (21.08.2017) <https://undocs.org/A/HRC/36/50> (12.01.2022).

[8] Martha Mamdani, 'The Truth According to the TRC', in I. Amadiume and A. An-Na'im, *The Politics of Memory: Truth, Healing and Social Justice* (Zed Books: 2000), p.176-183. (05.01.2022).

[9] Ibid.

[10] Ibid.

[11] Radzik, Linda and Murphy, Colleen, 'Reconciliation', *The Stanford Encyclopedia of Philosophy* 2015 (05.01.2022).

[12] Ibid.

About the author

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About

This policy brief provides a critical overview of past experiences and the national legislation concerning reconciliation and dealing with the past in Libya. It discusses perspectives for national reconciliation within the current political arena in Libya. Building on lessons learned, it outlines a number of recommendations and possible courses of action to the relevant stakeholders to launch and implement an effective, inclusive and nationally owned reconciliation process in Libya.

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