

International Actors' Rule of Law Development Approaches in Post-Qaddafi Libya: When Top-down "Best Practices" Meet the Legacies of Protracted Conflict

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THESQUARE

INTERNATIONAL ACTORS' RULE OF LAW DEVELOPMENT APPROACHES IN POST-QADDAFI LIBYA: WHEN TOP-DOWN "BEST PRACTICES" MEET THE LEGACIES OF PROTRACTED CONFLICT

Irene Lizzola

Introduction

Despite the long-lasting efforts made by the international community to re-establish stability, rule of law and a process of political and inter-communal reconciliation in the country, Libya

has been **a theatre of protracted conflict**[1] at least until last October, when the parties finally agreed on a **ceasefire**. However, in spite of the **UN-led mediation process** that ended up in the cessation of hostilities, **mercenaries** and **foreign forces** did not withdraw from the country and there is no sign of adherence to the UN-sponsored arms **embargo**. Therefore, militias supporting the General Khalifa **Haftar** are still operational in Eastern Libya.



OCHA/Giles Clarke - Benghazi Old Town
Source: https://news.un.org/en/story/2020/10/1074672

In March 2021, a peaceful transfer of power led to **the establishment of the interim government of Abdelhamid Dbeibah**. The new executive is in charge of carrying the country to the **upcoming December polls** but, according to the last research report published by the International Crisis Group (ICG), the

[1] In *The War Report* (2018: 71-83), the conflict scenario in Libya has been classified as "a series of overlapping non-international armed conflicts" (op. cit. p. 71). For a more detailed overview on the Libyan conflict and transition process, *see* the **Annex**.

authorities still need to find a consensus over two major issues: the **electoral legal framework** and the **command of the armed forces**[2].

On the issue of the armed forces, Andrea Cellino and Roberta Maggi argue that there is a urgent need to define the "legal foundations for **long-term SSR** [*security sector reform*] processes"[3] in Libya, including the establishment of a **parliamentary oversight mechanism** monitoring the defence and security apparatus (an issue of constitutional interest that needs to be discussed in the framework of the Constitution-drafting process[4]).

Armed groups operating outside the control of the State while being fund by this latter, a prevailing environment of **impunity, insecurity and intimidation and a lack of formal governmental counterparts** have long been among the concerns of international agencies such as the **UN Support Mission in Libya (UNSMIL)** and the **Human Rights, Transitional Justice and Rule of Law Division** representing the UN High Commissioner for Human Rights (UNHCHR) in the country.

In relation to the violence committed by the parties, many provisions enshrined in the human rights conventions to which Libya is part have not been **respected, protected and fulfilled**[5] (e.g.: the right to reparation and effective remedy, the duty to

[2] « Libya's rival factions have agreed to vote on 24 December 2021 but have yet to decide what the objective should be : to approve the draft constitution that an elected committee completed in 2017 but which has yet to be put to a popular vote; to elect a new parliament; or to choose both a parliament and a president" (International Crisis Group (ICG), 'Libya Turns the Page', *Middle East and North Africa Report N°222* (Brussels, 21 May 2021), 1-29, p. i, < https://d2071andvip0wj.cloudfront.net/222-libya-turns-the-page.pdf>).

[3] Andrea Cellino and Roberta Maggi, 'Lessons From Post-2011 Trajectories in Tunisia and Libya', *Italian Institute for International Political Studies - ISPI* (3 June 2021), <https://www.ispionline.it/en/pubblicazione/lessons-post-2011-trajectories-tunisia-and-libya-30641>.

[4] Idem

[5] Despite Libya's signature of the CEDAW, exiled activists women are under threat and migrant women are subject to sexual violence and abuses, including rape, torture, inhuman and degrading treatment.
Moreover, even if Libya is a State signatory of the ICRMW, migrants are exposed to violence and abuse as they are tortured, sexually abused, killed and victims of inhuman and degrading treatment while in detention.

investigate, prosecute and punish as well as guarantees of non-recurrence). Therefore, militias "operating nominally under State institutions"[6] have been responsible of **unlawful killings, enforced disappearances, torture, unlawful detentions and smuggling** (victims of whom have been mainly civilians and migrants).

In 2017, the UN enhanced a bottom-up, participatory and inclusive consultative process of national reconciliation and institution-rebuilding (an international effort that was led by the Geneva-based **Centre for Humanitarian Dialogue**, **HD**). In parallel, throughout the inter-agency cooperation effort embodied by UNSMIL, the UN agencies operating in the country have supported the constitution-making process by endorsing the **UN-backed "integrated approach" to rule of law and development**.

Taking into account these two UN-led interventions, we will attempt to analyse both the extent to which these latter managed to be perceived as **conflict and context-sensitive,** and the **politicisation and depoliticization dynamics** that accompanied their promotion and implementation in the Libyan context.

Thus, we will explore the existing tensions, challenges and paradoxes within international actors' post-conflict peacebuilding and mediation programs.

1. Negotiating peace, settling the rule of law: grassroots consultations *versus* high-level political settlements

In 2016, the UN-led mediation initiative that carried to the establishment of the Government of National Accord (GNA) was not supported by various local armed groups[7]: the Presidential

[6] Armed groups were indiscriminately integrated into State Ministries and militias maintained a *de facto* autonomy in the exercise of their command (*See* the' Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya, including on the effectiveness of technical assistance and capacity-building received by the Government of Libya', 13 January 2017, UN Doc A/HRC/34/42, p. 6).

[7] At that time, clashes between members of the former House of Representatives (HoR) and the ones of the General National Council (GNC) intensified: pro-GNC

Council (PC) was obliged to move to Tripoli and Serraj continued to serve as Prime Minister. One of the tragic consequences of the lack of support to the political transitional process by the militias was **the inability of the newly-established PC to govern and to satisfy the provisions that were stated in the Libyan Political Agreement (LPA) concerning transitional justice, rule of law and human rights**[8].

In the aftermath of the signature of the agreement, ordinary crimes, insecurity, fragmentation of power as well as economic and basic resources' scarcity intensified.



Signature of the Libyan Political Agreement (17 December 2015, Skhirat, Morocco). Source: https://unsmil.unmissions.org/photos-libyan-parties-sign-libyan-political-agreement-skhirat-morocco-17-december-2015

The final draft of the Libyan new Constitution was approved in July 2017 by the Constitution Drafting Assembly (CDA), after a period of protracted conflict and of lack of political cohesion within

groups took control over the High Council of State (HSC) and the pro-GNA ones liberated Sirte from the Islamic State of Iraq and the Levant (ISIL).

[8] 'Report of the United Nations …', at p. 3

the Libyan political scene (as well as within the CDA, "an assembly that lacked both a clear political vision […] and strong constitutional experience"[9] and that ended up in incrementing divisions among drafters "on a regional basis"[10]). However, the draft has not been approved by referendum yet, due to a controversy arisen upon the referendum law[11]. The post-ceasefire phase is now seen as the occasion to approve the draft and to held the elections in December 2021[12].

In a recently-published research paper, Nedra Cherif considers that **the Constitution's final draft represents "the most legitimate constitutional document in Libya at the present time"**[13]. And, in order for it to become more effective, an urgent political consensus is to be found on matters such as "identity, local governance, management of natural resources"[14]. According to the author, the **CDA's "disconnection"[15] from the political debates** and negotiations provoked the inability of the Assembly to deal with these extremely urgent (as well as highly sensitive and contentious) issues.

In addition to this, the Assembly did not manage to keep a solid tie with the Libyan civil society[16]. Thus, paradoxically, despite the relevance of the political negotiations for the Constitution-drafting process, the CDA did not play a role in the framework of the UN-sponsored post-2014 political dialogue (as a result of this, Cherif argues, the LPA that set the terms of the transition in 2015 appeared to be disconnected from the CDA's work)[17].

[9] Nedra Cherif, 'Libya's constitution: between conflict and compromise' (European University Institute, Middle East Directions, Research Project Report, March 2021), 1-25, <https://cadmus.eui.eu/bitstream/handle/1814/70538/QM-09-21-057-EN-N.pdf?sequence=3&isAllowed=y>.
[10] Ibidem, p. 5
[11] Ibidem, p. 1
[12] Idem
[13] Idem
[14] Idem
[15] Ibidem, p. 7
[16] Idem
[17] Idem

The 2017 final draft came up with significant outcomes as far as State governance is concerned: in fact, the drafters managed to propose a context-sensitive hybrid solution **in-between a federal and a unitary State**[18]. Concerning natural resources' management, the draft still lacks clear indications for how to implement the general will of making these resources a "property of the Libyan people" to be managed fairly by the State itself (Art. 169)[19].
In September 2017, the UN structured a National Conference process to reach a "**bottom-up consensus**"[20] to the transition. They did so by organising **consultations** and inclusive dialogues[21]. This process, coordinated by the HD, consisted of a series of local conferences organised all over the accessible parts of Libya.
Each consultation discussed, separately, issues such as: 1. **national and governmental priorities** (e.g. Libya's sovereignty, unity, equitable distribution of resources and access to public services); 2. **security and defence** (e.g. people's right to security and security as a necessary guarantee to rebuild functioning institutions; unified legitimate security and military forces); 3. **resources and power's distribution** (decentralisation of power); 4. **constitutional, electoral and reconciliation processes**[22].

[18] Ibidem, p. 20
[19] Ibidem, p. 22
[20] International Crisis Group, 'Libya's Unhealthy Focus on Personalities', *Crisis Group Middle East and North Africa Briefing N°57* (Tunis/Brussels, 8 May 2018), 1-11, p. 9, <https://www.crisisgroup.org/middle-east-north-africa/north-africa/libya/b57-libyas-unhealthy-focus-personalities>.
[21] The process was part of the UN Action Plan for Libya announced by the UN Special Representative of the Secretary General to Libya, Ghassan Salamé, on 20 September 2017. In this framework, the HD was in charge of organising grassroots preparatory consultations aimed at preparing a National Conference (in the framework of which to discuss the adoption of a National Charter, evaluate the Draft Constitution elaborated by the Constitutional Drafting Assembly and schedule new elections - *see* 'Remarks of SRSG Ghassan Salamé to the United Nations Security Council on the situation in Libya', 20 March 2019). The consultations took place between April and July 2018.
[22] The Centre for Humanitarian Dialogue (HD), 'The Libyan National Conference Process' (Final Report), <https://unsmil.unmissions.org/sites/default/files/ncp_report_jan_2019_en.pdf>.

Among the emerging "areas of consensus", the following points were mentioned: 1) building a **democratic governance** based on "clear and objective criteria of competence rather than tribal, political or regional affiliation"[23]; 2) **freeing the justice sector** from threats, insecurity and political interference; 3) **transparency**; 4) **security** and **rule of law** guarantees; 5) ending the transition and adopting a consensual **constitution**; 6) **national reconciliation** "based on traditional Libyan practices"[24], respectful of justice and "free from foreign interference"[25].

However, several issues were discussed without reaching a consensus, such as for the **disarmament, demobilisation and reintegration process (DDR)** involving armed groups : on the one hand, some people supported strict reintegration criteria excluding "all individuals with a criminal record or who advocate an extremist political or religious ideology"[26] and, on the other hand, others proposed to reintegrate irregular armed groups either into reserve units or into the official security apparatus.

International actors 'involvement in the Libyan national unity dialogue (and, in particularly, the one of the HD), has also been subject to **criticisms of external interference over internal political matters**. In this context, HD's action has been seen as a "calculated attempt to ensure Libya develops according to the policy preferences of non-Libyan actors"[27]. This criticism is grounded in various claims and considerations of the "non-scientific" character of the Libyan National Conference Process's Final Report : this latter is seen as promoting a "false narrative" depicting the Libyan conflict as a matter of controversy over natural resources' management rather than describing it as a political

[23] Ibidem, p. 9
[24] Ibidem, p. 10
[25] Idem
[26] Ibidem, p. 28
[27] Emadeddin Zahri Muntasser, 'How a Swiss NGO is Helping Create a Police State in Libya', *International Policy Digest* (26 February 2020), < https://intpolicydigest.org/how-a-swiss-ngo-is-helping-create-a-police-state-in-libya/>.

battle between pro-democracy partisans of the 17th February Revolution and pro-autocracy followers of Khalifa Haftar[28].
Thus, HD and UN's mediation efforts are criticised for considering Haftar 'military forces as legitimate interlocutors, thus providing them with a recognition that could alter the country's political stability and grant the impunity to those militias accountable for mass human rights violations[29].
In May 2018, the ICG[30] outlined one of the aspects that should be at the core of the Libyan transition to democracy and rule of law: a strengthened **representative character of the institutions and of the overall political system** accompanied by the **abandonment of an elite-based approach to national reconciliation**. In fact, the tendency of satisfying elites' interests has long been a destabilising factor of the peace and reconciliation process in Libya since it challenged the opportunity to rebuild those democratic and representative institutions that are the only and legitimate alternative to "personality-based"[31] governance. In this sense, the ICG has long been suggesting to enhance a bottom-up consultative process of political settlement.
On the one hand, international actors' involvement in peacebuilding, mediation and constitution-making efforts is subject to challenging tensions such as the ones arising from the **criticisms of external influence** and of imposition of foreign models in the Libyan context. On the other hand, these same actors constantly engage in a narrative promoting the idea of a necessarily **"bottom-up"** and **nationally-owned** peace, development and constitution-making process.
When it comes to peacebuilding and mediation, international actors' action is **highly political in nature**: in fact, by choosing and implementing specific methods and formats of intervention, these actors contribute to the shaping of the national dialogue process.

[28] Idem
[29] Idem
[30] International Crisis Group, 'Libya's Unhealthy Focus …'.
[31] Ibidem, p. 7

2. Linking rule of law and development: discussing the UN-backed "integrated" approach

In Libya, the prerogative of searching for a **political consensus** after decades of fragmentation and fragilization of the social fabric - a consensus which is essential in preparation for the elections - seems to be achievable only by **reconstructing a strong and unified country - autonomous** from those external influences destabilising and hampering Libyan State's control over the economy and the natural resources - and by making this renewed central State responsible of introducing **economic policies fostering development, reconstruction** and an effective delivery of **public services**.

In this context, **rule of law and economic development** are seen by international actors as two **interconnected (and "integrated")** domains of intervention.

In the aftermath of the 17th February Revolution, the Transitional National Council (TNC) outlined a number of strategic priorities for the rebuilding of Libya by securing not only the success of the **transitional justice, democracy and rule of law** reform process but also "**social reconciliation, economic recovery, and basic service delivery**"[32].

The transitional momentum was seen by the UN Development Programme (UNDP) and by the UN Population Fund (UNPF) as the possibility to encourage structural changes in Libya, such as: 1) overcoming women' economic and social marginalisation; 2) enhancing gender equality; 3) supporting youth and emerging NGOs; 4) ameliorating security and accessibility; 5) "enhancing public service delivery; 6) strengthening national environment management systems; 7) and supporting […] economic diversification"[33].

[32] Executive Board of the United Nations Development Programme, the United Nations Population Fund and the United Nations Office for Project Services, 'Country programme document for Libya (2012-2014) '(27 June 2012) UN Doc DP/DCP/LBY/2/Rev.1, para 2.

[33] Ibidem, para 7

In the framework of this **integrated approach**, UN development agencies have been working closely with UNSMIL in order to include the rule of law aspect into their broader area of intervention covering social and economic development (for instance, UNDP worked to foster capacity-building both for private companies, individuals and governmental bodies on "public investment, financial management, procurement and contracting"[34] and for courts' officers, in order to increase access to justice through the "automation of national courts"[35]).



UNDP Libya – UNSMIL and UNDP Policing and Security Joint Programme
Source: https://www.ly.undp.org/content/libya/en/home/projects/UNSMIL-UNDP-Policing-and-Security-Joint-Programme.html

In cooperation with the Libyan Ministry of Planning, UNDP Libya promoted a series of "integrated activities" providing technical support for : 1) the organisation of electoral processes and "structured dialogue mechanisms"[36] enhancing democratic

[34] Ibidem, para 9
[35] Ibidem, para 10
[36] Ibidem, para 16

participation; 2) capacity-building on international human rights standards and anti-corruption measures (in collaboration with the World Bank, the UN Office on Drugs and Crime and other organisations from the MENA region); 3) civic education programs; 4) updating the Ministry of Planning and the Office of the Auditor General in the field of management, financial accountability, internal audit, monitoring, reporting, data gathering; 5) sensitising bar associations and the justice sector to address the issue of the "access to justice for the conflict-affected population"[37].

The Final Report of the National Conference elaborated by the HD[38] also showed **the existing interdependence between social and economic development and the reform of the justice sector**.

At the consultation process, citizens pointed at the fact that the climate of corruption, the unequal distribution of resources and the mismanagement of the country's richness have long been challenging people's enjoyment of fundamental rights, access to justice and the transparent, safe and independent development of the justice sector. They also underlined the three national priorities for redistributing power and better managing public resources in the country: **decentralisation of power, transparency and equitable distribution of public goods**.

In order to achieve these goals, a point was made about the importance of guaranteeing **legal clarity** in regulating finance and the **distribution of wealth between groups and regions**[39].

As far as legal certainty is concerned, participants agreed on the need for a reviewed legal framework clarifying the functioning of national institutions and sovereign companies (e.g. the National Oil Corporation, the Central Bank of Libya) and designed by the Ministry of Justice.

In a recent publication, Mehari Taddele Maru addresses the issue of the Libyan economic State model-definition in the aftermath of

[37] Ibidem, para 20

[38] The Centre for Humanitarian Dialogue (HD), 'The Libyan National …', p. 32-44 (Part III).

[39] Ibidem, p. 33

the October 2020 ceasefire and the establishment of the new Libyan Government of National Unity (GNU) in March 2021[40]. Considering that the new Constitution will play a decisive role in defining the profile of the future Libyan economic system, the author shows a series of bridges existing between **rule of law more "legalistic" reforms** and the ones that will handle with those **economic development-related challenges** whom the country is currently facing to.

Among the three possible economic models to be followed by Libya ("the liberal market-led", the "developmental state" and the "welfare state" models[41]), the author suggests to opt for the establishment of a **"developmental state" model**[42]. This is due to the fact that the country lacks those "strong regulatory and enforcement institutions that are essential for an effective liberal state"[43]. In fact, Libya is a post-conflict country that still needs to **address "root causes" of the previous conflict** such as the issue of the "accommodation of diversity based on regional and identity diversity"[44] and of State autonomy and independency from external powers as far as natural resources' management is concerned.

In this perspective, **economic development** is seen as to be **supported by a strong "constitutional democracy"[45] framework** driven by a public sector "dominating the economic space"[46] over

[40] Mehari Taddele Maru, 'The Developmental State Experience in Ethiopia and Rwanda: Lessons for Libya ?' (European University Institute, Middle East Directions, Research Project Report, May 2021), 1-22, <https://cadmus.eui.eu/bitstream/handle/1814/71219/QM-02-21-566-A8-N-EN.pdf?sequence=1&isAllowed=y>.

[41] Ibidem, p. 2

[42] The author explains that the developmental state is one in which the State itself - the executive - engages in the overall "macro and microeconomic planning to grow the economy" (p. 3) through "industrial policies such as export-led growth and labour control" (p. 3) and a particular attention given to "a strong pro-poor policy" including a fair "delivery of public goods" and a strong "post-war reconstruction and development" plan (p. 4).

[43] Idem

[44] Ibidem, p. 3

[45] Ibidem, p. 4

[46] Ibidem, p. 5

the private one. Thus, in Libya, "a developmental state would entail rebuilding the state with enormous capabilities to deliver, to distribute public services and develop goods infrastructure with *inclusivity* in a way that bestows *legitimacy*, that enhances security provision, and more importantly that owns and utilises its *natural and other resources* more effectively"[47].

However, this progress seems to be threatened by both the "absence of monopoly over the use of force and the presence of significant foreign interference"[48] in the country at the present time.

In this sense, what is seen to be needed is **a "national constitutive conference"[49] capable of building-up strong governmental (and confederative) institutions clearly identifying these latter's respective powers**. Thus, autonomy from external forces and consensus over the country's economic development are the two major-factors that could grant the Libyan State with the effective capability of planning the necessary economic reforms fostering development[50].

3. Operating in an area of complexity: facing the legacies of authoritarian rule and protracted conflict

In order for international actors to develop assessments and interventions based on an accurate knowledge of the past and present patterns of the conflict, it appears as fundamental for them to identify those **root causes** that provoked and exacerbated the conflict dynamics.

[47] Ibidem, p. 13
[48] Ibidem, p. 15
[49] Ibidem, p. 17
[50] Ibidem, pp. 17-18



Source: Lawyers for Justice in Libya (https://www.libyanjustice.org)

According to the *World Report*[51], the **tensions among the regions of the country and the ones between the different tribes[52] and**

[51] Sari Arraf, 'Libya: conflict and instability continue', in Annyssa Bellal, *The War Report* (Geneva: The Geneva Academy of International Humanitarian Law and Human Rights, 2018), Chapter 4 (71-83).

[52] Amal Obeidi (2013: 189-194) describes the tribe as a fundamental element of Libya's socio-political configuration, as a "source of personal identification" and "legitimacy" as well as an "agent of political socialisation" (op. cit. p. 189). The relationships among the different tribes and among the members of the tribes are regulated by customary laws and social contracts negotiated between the members of the groups: loyalty, solidarity, hierarchy and men's primacy over women are among the recurrent features of these constituencies.
Under the monarchy (1952-1969), tribes played an important role as legitimate bodies deciding upon the leaders and the members of the elites to be appointed. Then, under Qaddafi (1969-2011), the tribe became "a source of social values, and a tool for education and socialisation" (op. cit. p. 190): from 1969 to 1980, Qaddafi modified the system of loyalties by appointing functionaries following his own ideology as administrators of the municipalities previously governed by tribal leaders; in a second phase, from 1990 onwards, Qaddafi introduced both a system of declared allegiance to his regime and a principle of "communal responsibility and communal punishment" among the tribes (op. cit. p. 191).

ethnic groups (both the regions and the tribes suffered from a series of divisive discriminatory policies under the Qaddafi regime), as well as the continuing hostility between former supporters of the regime and the authors of the 17th February Revolution, were among the factors at the origin of the conflict. In Libya, ideological and political forces have a long history of manipulation of local ethnic identities.

One of the most relevant aspects that should be considered by rule of law reforms in Libya is the role played by **tribes in justice-seeking**[53]: local processes of mediation and arbitration are managed by tribes referring to customary law. Although these procedures are not supposed to substitute State-led ones, they play a crucial role in **stabilisation, "social mediation"**[54] and they are perceived as more reliable, legitimate and less corrupt than the official justice mechanisms, both in rural and urban areas.

The International Legal Assistance Consortium (ILAC) conducted an assessment of rule of law and justice institutions in Libya in 2013 and identified two areas of urgent intervention undermining the functioning of the justice sector and contributing to a widespread "**sense of lawfulness**"[55]: the lack of security, the unresolved unlawful detention condition of about "8.000 conflict-related detainees"[56] and the impunity with regard to the abuses committed by the revolutionary armed forces. Therefore, among the rooted imbalances lies the relatively low number of women exercising the

Therefore, Qaddafi transformed the tribes into political stabilising agents: through the establishment of the "institution of popular social leadership" (op. cit. p. 191), the regime supported inter-tribal strategies of mediation and reconciliation.

[53] Amal Obeidi, 'Additional Report: The Role of the Tribe in Libya: Making the Informal Formal', in Jan Michel Otto, Jessica Carlisle and Suliman Ibrahim (eds.), *Searching for Justice in Post-Gaddafi Libya: A Socio-Legal Exploration of People's Concerns and Institutional Responses at Home and From Abroad* (Leiden: Leiden University, Vollenhoven Institute, 2013), Additional Report, 189-194, p. 193

[54] Idem

[55] International Legal Assistance Consortium (ILAC), 'ILAC Rule of Law Assessment Report: Libya 2013 '(May 9 2013), p. 7

[56] Idem

profession of judges or lawyers compared to the high percentage of women studying law at the university level[57].

According to ILAC, the **isolation of Libyan law practitioners from the international legal networks** during the Qaddafi regime (under the imposition of the *Jamahiriya* ideology[58]) undermined their knowledge of and access to international law standards and practices. In addition to this, **"Green Book ideology"**[59] professed by Qaddafi exacerbated a sense of distrust towards State institutions: in fact, promoting an idea of "statelessness"[60] - despite the fact that the State exercised a monopoly over economic resources -, Qaddafi's ideology altered people's relationship with official institutions, favouring the spread of **unofficial networks of reliance and power**.

The separation between judges and lawyers (the private Bar) under the Qaddafi regime is at the origin of the absence of coordination between law professionals in Libya[61]: under Qaddafi, the private Bar was abolished in 1981, substituted by the "People's Lawyers"[62] and reintroduced in 1990.

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[57] Ibidem, p. 8

[58] The *Jamahiriya* ("state of the masses") ideology was used by Qaddafi to legitimise a wide range of property expropriations. Under the regime, "revolutionary committees" were in charge of silencing the opposition and controlling the neighbourhoods (op. cit. p. 20). Qaddafi made extensive use of military and special courts (the "People's Courts") for trying those responsible of political crimes and he imposed on the judiciary a strict dependence from the executive (the "High Council of Judicial Bodies" controlled the judicial system - the Ministry of Justice was removed from the Council after the Revolution). The People's Courts became famous for their lacking of guarantees of fair trial and were abolished in 2005 under international pressure. Under Qaddafi, from 1981 to 1990, the legal profession was illegal.

[59] Jan Michel Otto, Jessica Carlisle and Suliman Ibrahim (eds.), 'Searching for Justice in Post-Gaddafi Libya: A Socio-Legal Exploration of People's Concerns and Institutional Responses at Home and From Abroad' (Leiden: Leiden University, Vollenhoven Institute, 2013), p. 23

[60] Ibidem, p. 24

[61] International Legal Assistance Consortium (ILAC), 'ILAC Rule of Law …', at p. 44

[62] According to the opinions expressed by those interviewed by ILAC, the People's Lawyers - the lawyers supposed to provide free legal services to the poor - are not seen as independent and they are often described as incompetent. However, the international observers' assumption that People's Lawyers are biased in their work by the fact that they depend on the government, is contested by representatives of the group (Carlisle 2013: 88). A more nuanced recommendation on how to deal

Considering the scarcity of resources in the country, ILAC recommended to focus on **the amelioration of the existing legal institutions** rather than to completely renew them. Moreover, as the Libyan context is delicate in reason of the **highly-fragmented character of the population**, the organisation suggested to avoid "strict political vetting proposals"[63] and encouraged the pursuit of individual accountability while **widening the victim scope** in order to include in the reparation process not only the victims of the Qaddafi regime but also the ones of the revolutionaries.
Globally, the **general perception of the justice system** as assessed by ILAC was characterised by an overall suspicion of **corruption** and by the consideration of **judges' lack of integrity and objectivity** (judges have been seen as to rule differently depending on their political affiliation and on the people before them - either former supporters of the Qaddafi regime or of the 17th February Revolution).
The Libyan case study shows the extent to which international actors operating in a post-conflict transitioning scenario need to take into account **national identity markers**, **rooted characters of the social fabric** as well as all **the relevant existing "political markers"**[64] : this would allow agencies to target interventions considering people's own perceptions of the roles and responsibilities of the different categories of actors (e.g. former supporters or opposers of Qaddafi, members of the revolutionary brigades, victims of the regime, double nationals or exiled).
In this perspective, and with the aim of making the transition a "bottom-up" and "nationally-owned" process, the multiple **civil society organisations** that emerged after the Revolution (e.g. Lawyers for Justice in Libya) need to play an active role in the social and institutional reconstruction, along with the UN-recognised Libyan national human rights institution, namely the **Basic**

with this institution would be to maintain it while subjecting it to a restructuring effort while providing trainings to its members (Carlisle 2013: 90).
[63] International Legal Assistance Consortium (ILAC), 'ILAC Rule of Law …', at p. 33
[64] Jan Michel Otto, Jessica Carlisle and Suliman Ibrahim (eds.), 'Searching for Justice …', at p. 26

Freedoms and Human Rights Council, granted with **investigative powers** and mandated to review the compliance of the national legislation with the international human rights standards.



Source: Lawyers for Justice in Libya (https://www.libyanjustice.org)

Conclusion

Despite these considerable efforts carried out by international actors for strengthening the rule of law in Libya, they focused more on capacity-building for the existing institutions rather than **addressing more structural issues such as the lacking "access to justice and legal empowerment of the poor"**[65] **-** in spite of the fact that dealing with this aspect would have been more in line with the needs of the "demand side" of the rule of law interventions.

[65] Jan Michel Otto, Jessica Carlisle and Suliman Ibrahim (eds.), 'Searching for Justice …', at p. 6

Michael J. Trebilcock and Ronald J. Daniels (2008) propose to reflect upon **a "thinner"[66] conception of the rule of law**, one that considers this latter "as both a set of ideals and an institutional framework"[67].

Aiming at **aligning "rule of law reform" to the "goals of development"**[68], the authors suggest to see the rule of law from a "procedural"[69] point of view: this means to provide a set of "normative benchmarks for key legal institutions […], from the judiciary to the legal education system"[70] that need to be "justified in terms of the contribution they make to human development"[71] (and, in accordance with Amartya Sen's **"capability-building approach to development"**[72], fundamental civil and political rights cannot be excluded from the equation).

The suggestions provided by the public participating in the HD-led consultations are significant as they show the extent to which a "**procedural approach to the rule of law**"[73] allowing the rebuilding of legitimate and renewed institutions may enhance **"broader goals of development**"[74].

The consultations show what is perceived by participants as to be the **procedural minimum requirements** for strengthening fairness, transparency, accountability in the economic, political and justice system. Thus, the proposals appear as to be "justified in terms of the contribution they make to **human development**"[75] and they are the result of a process of discussion and mediation

[66] Michael J. Trebilcock and Ronald J. Daniels, *Rule of Law Reform and Development: Charting the Fragile Path of Progress* (2008), p. 23
[67] Idem
[68] Ibidem, p. 24
[69] Ibidem, p. 25
[70] Idem
[71] Idem
[72] Idem - A. Sen's approach sees freedom "to achieve various lifestyles" (p. 25) as a fundamental guarantee for human development. In this view, freedom means the full enjoyment of fundamental civil and political rights, those rights that allow a society to express and conceptualize its "economic needs" (p. 26).
[73] Michael J. Trebilcock and Ronald J. Daniels, *Rule of Law Reform* …, at p. 25
[74] Idem
[75] Idem

that aimed at identifying the "most widely accepted"[76] elements on the basis of which to reconstruct the overall institutional, economic and political systems.

ANNEX

Overview on the Libyan conflict and the transition process

The 17th February Revolution (2011) that put an end to the Qaddafi era, led to a highly fragmented political situation in which a constellation of local constituencies (i.e. councils and armed militia groups) challenged the establishment of a unified transitional process (in the framework of which a Transitional National Council - TNC - was appointed by elite members of the Qaddafi regime's opposition). Due to the scarce impact of the overall process at the local level, multiple layers of divisions persisted in the country and local militias did not undertake a process of disarmament, demobilisation and reintegration (DDR)[77].

In this fragmented context, the successor of the TNC, the General National Council (GNC), did not succeed in centralising power as militias deeply influenced GNC's political agenda.

In 2014, after a period of renewed violence between Islamist groups based in Misrata and the General Khalifa Haftar and his allies (Haftar launched *Operation Dignity* against Benghazi-based Islamist forces), the GNC was first taken by Islamists and subsequently gained by nationalists, who renamed it the House of Representatives (HoR). Later, the HoR was declared unconstitutional by the Supreme Court (HoR's supporters said it was because of the pressure exercised by Islamist groups on the Court[78]) and, after having benefitted from a strong military support

[76] Idem

[77] Sari Arraf, 'Libya: conflict and instability continue', in Annyssa Bellal, *The War Report* (Geneva: The Geneva Academy of International Humanitarian Law and Human Rights, 2018), Chapter 4 (71-83)

[78] Ibidem, p. 73

from Egypt in the fight against Islamist groups, it was settled in Tobruk. On the opposite side, Islamists and militias from Misrata re-established the GNC in Tripoli.

In 2015, the United Nations started to be involved in negotiations between the parties. The process led to the signature of the Libyan Political Agreement (LPA) on 17 December 2015 and to the creation of the Presidential Council (PC) led by the former HoR member Faiez al-Serraj, appointed as head of the newly established Government of National Accord (GNA)[79]. The PC was recognised both internationally and nationally and by the leading financial institutions of the country as the Libyan legitimate executive authority and it started working in Tripoli in March 2016.

In 2018, the HoR declared that it did not recognise the LPA and it did not accept Article 8 that prevented General Haftar from being appointed as Supreme Commander of the army.

In order to counter the escalation of violence between the pro-GNA Misrata Third Force, the Benghazi Defence Brigades (BDB) and the Libyan National Army (LNA - whose leader is still the General Haftar), after having called for international support, al-Serraj agreed with Haftar and decided to offer him the recognition as chief of the army in exchange of Haftar's acceptance of GNA's authority.

Despite these negotiation attempts, the clashes between pro-GNA and LNA forces continued all along 2017.

During these last years, the tensions spread between the different factions allied with Haftar - who controls at the eastern part of Libya and was supported by Saudi Arabia, Egypt, Russia and the United Arab Emirates - and the ones standing with Faiez al-Serraj who served as Prime Minister of the Tripoli-based GNA supported by the UN until March 2021.

The UN along with the European Union (EU), the African Union (AU), the League of the Arab States, France and the United States were involved in mediation efforts between the conflicting parties.

[79] Under the new political configuration, the HoR functions as a Parliament (it does not support the GNA). On the other side, the former members of the GNC formed the High Council of State.

Despite the negotiations carried out in the framework of the UN-led mediation process that ended up in a cessation of hostilities in October 2020, mercenaries and foreign forces did not withdraw from the country and there is no sign of adherence to the UN arms embargo. Moreover, militias supporting the General Haftar are still present in the Eastern part of the country.
In March 2021, a peaceful transfer of power led to the establishment of the interim government of Abdelhamid Dbeibah. The new executive is in charge of carrying the country to the upcoming December polls.

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