مركز مدافع لحقوق الإنسان
DEFENDER CENTER FOR HUMAN RIGHTS

Human Rights and Justice Challenges in Libya 10 Years after The Revolution

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An introduction

The first quarter of this year marked 10 years since the outbreak of the February 17 revolution in Libya. On that day, Libyans took to the streets to demand the end of the political system that dictator Muammar Gaddafi had imposed for nearly forty-two years. During this period Libyans were deprived of their basic rights and freedoms. Freedom of expression, civil society groups' rights to assembly and peaceful protests were all restricted. Various minorities, political opponents, peaceful government critics and human rights defenders were subjected to repression and intimidation, as well as the regime's perpetration of massive and widespread human rights violations, including arbitrary arrest and detention; enforced disappearance; extrajudicial killing; and torture and other ill-treatment.

Ten years after its revolution, the Libyan people were supposed to celebrate its success in achieving its goals of realising a democratic transition, writing a constitution that works to strengthen human rights, protect fundamental rights and freedoms, eliminate corruption, and build justice and law enforcement institutions based on new rules that do not allow for the violation of human rights once again, and a decent life for all. However, this was not the case after those years had passed. Contrary to the hopes and expectations that occupied the imagination of Libyans in 2011, Libyans have been unable to address the legacy of tyranny, state institutions have collapsed, especially justice and law enforcement institutions, and armed groups that abuse their powers have proliferated, while perpetrators enjoy impunity in the absence of accountability for committing human rights violations. While the international community has failed to achieve peace in Libya, the country has suffered for years from the scourge of a bloody civil war, at the same time as the country becoming a contested theatre for various regional and international powers that have split into blocs whilst supporting local political groups. These political groups hardly agree to address their differences. When they do, their fragile agreements collapse quickly, and a new phase of the conflict begins, for which the Libyan people always pay the price. Despite all of the above, there is no room to give in to despair and stop working hard for peace, democracy, justice and freedom in Libya.

In the context of the interest of the Defender Center for Human Rights in studying the challenges facing the promotion of human rights and justice in Libya after the first decade of the outbreak of the revolution, the centre prepared this book in cooperation with a group of distinguished researchers to focus on four main topics: Legislative policy in Libya after February 2011; challenges to the right to access justice; anti-corruption; and the economic agenda of violence and its role in the continuation of conflicts and civil war in the Libyan case.

The Center believes that it is necessary to shed light on the legislative policy that Libya witnessed during the various transitional stages in the wake of the revolution, not only to record it in the books of history, but also to reflect on how the dynamics of politics affect the formulation of legislation, and then explore the extent of its impact on how these legislations respect human rights, as well as the consolidation of justice in society, through laws regulating litigation mechanisms and guarantees of the right to a fair trial. This makes the study of the obstacles that prevent access to justice in Libya and an analysis of the structure of the justice system an issue worthy of legal examination, particularly after a decade that followed a popular revolution which demanded a just society in which everyone enjoys human rights and equality before the law.

The issue of combating corruption in Libya also needs to be highlighted further, especially in light of its spread in the country to the extent that it prompted thousands of citizens to defy the repression of the authorities in both the east and west, and take to the streets in massive demonstrations during the summer of 2020 to protest against corruption. The issue of anti-corruption is closely related to the legislative process and the justice system, and there is an urgent need to review anti-corruption mechanisms in Libya and the reasons for their failure, and to develop a legislative and procedural roadmap that would effectively contribute to eliminating corruption.

The Center believes that there is an urgent need to discuss the economic dimension of the Libyan conflict, and its impact on the economic situation and society in Libya, and on wasting the country's resources. In addition to providing an in-depth analysis of the conflict that has been going on in Libya for years, and explaining how the adoption of an economic agenda for

violence in Libya by armed formations and parties involved in the conflict led to the emergence of dynamics that contributed to the prolongation and sustainability of the conflict in the country.

Finally, the Center hopes that the book will be a serious contribution from which all parties concerned with human rights and justice in Libya can benefit. The Center also hopes that the book will be a useful reference, not only for researchers and human rights defenders, but also for the authorities that are expected to be elected and formed by the end of this year (December 2021), if everyone adheres to their political pledges for a better future for Libya.

Legislative Process in Post-February 2011 Libya

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A summary

This paper seeks to assess the law-making process in post-February 2011 Libya. This assessment is quite bleak, it reveals that the description of the crisis that accompanied this process during the era of the Gaddafi regime is still a true description of it more than ten years after the fall of this regime. A large part of the challenges that faces the legislative process is because of the lack of oversight in the past and present. The paper stresses that the political environment plays a major role in creating these challenges and multiplying their impact. However, the paper concludes, after monitoring indicators of improving this environment, that there are opportunities to address and overcome these challenges.

Foreword

Since the February 2011 revolution, Libya has been going through a transitional phase, from a totalitarian regime in which human rights violations prevailed, to a democratic one, where rights are respected and preserved. Legislation was entrusted with a pivotal role in achieving this transition, but the desired transition faltered, as the transitional period was prolonged, and was interspersed with political division, sometimes accompanied by armed conflict. This was reflected in the legislation and its application. Positive signals sent by early legislation that reinforced the rule of law and human rights have disappeared, to be replaced by other laws that revealed the adaptation of legislation, especially since the political division in the second half of 2014, for the purposes of political warfare. Hence, there was a deviation from the intended goals of the transition. But the opportunity has not passed yet. After a political dialogue sponsored by the United Nations that drew a road map for a stage that paves the way for a comprehensive solution, based on which a unified executive authority was formed, and it is hoped that presidential and legislative elections will be organized in accordance with it in December of 2021. It is assumed that legislation will have a major role in addressing the effects of the previous division and paving the way for a comprehensive solution and establishing it, but a legitimate question is raised about the opportunities for legislation

to play this role. To answer this question, this research paper presents the features of the legislative process before February 2011 (first), followed by monitoring the legislative policy directions after this date (second), and determining the impact of these directives on the legislation that was developed (third), before the paper ends with a conclusion that draws where the prospects of the legislative process. This paper is based on research work, both desk and field, carried out in the framework of a project on the role of law in national reconciliation[1].

Firstly: Features of the legislation-making process before February 2011

It is not possible to study the legislation-making process after February 2011 without investigating it before that landmark date. It was evident that this process was already in a crisis before 2011. This description, "crisis," was a proposal for the title of a conference organized in 2008 on theoretical and practical problems in the legislation-making process over a period of thirty years[2], but the proposal was not accepted by all organizers, perhaps due to its sensitivity under a system that claims the uniqueness and distinctiveness of legislation in Libya. In conclusion, the opinion settled on a different title: Towards the Development of Legislation in Libya[3]. The conference

1 This project was implemented by the Center for Law and Society Studies at the University of Benghazi in cooperation with the Van Volenhoven Foundation at Leiden University, during the years 2018-2020, and the researcher owes his thanks to the project's experts and main researchers, namely: Dr. Najeeb Al-Hasadi, Dr. Zahi Al-Mughrabi, d. Al-Koni Abouda, d. Jazia Shiitir, d. Hala Al-Atrash, a. Loujain Al-Awjaly and A. Fathi Moussa.

2 Global Center for Green Book Studies and Research. 2008. Recommendations of the Scientific Conference Towards Developing Legislation in Libya. Freedom newspaper. Available at: https://is.gd/b6SXFr . Entry date: June 13, 2021.

3 According to Muhammad Salem Drah, "The conferees in the Preparatory Committee put forward a title for the conference, "The Crisis of Legislation in Libya," and some objected to this description (by mitigating it) and suggested "towards the development of legislation in Libya." And its problems in Libya, and the attempt to find mechanisms and proposals for development, given that the description, whether (crisis) or (towards development) is not without the effects of a sense of the problem. Darah, Muhammad Salem. (2007) Judicial oversight of the constitutionality of laws in Libya in accordance with Law No. 17/1423 on jurisprudence and the judiciary. Lawyer. Issue 69-70. pp. 9-22.

was actually organized under this title, but a review of its conclusions and recommendations reveals that the description of the crisis was more appropriate and truer in expression.

The conferees concluded that the legislative process in Libya suffers from several problems: (1) the absence of supreme rules governing the process; (2) confusing the formulation of public policies with the making of legislation, for the latter, as an expertise, should be entrusted to specialists; (3) The ambiguity of decision-making mechanisms, which makes it difficult to monitor and review the development of legislation; (4) the absence of a national body for legislative drafting; (5) overburdening the Supreme Court with the tasks of checking the validity of legislation; (6) the heterogeneity of legislation; (7) lack of explanatory notes; (8) Weak community participation in making legislation.

This was a bold diagnosis. Its audacity lies in the fact that it carries a critique of the theoretical foundations of the existing political system. Legislation, according to the third universal theory advocated by Gaddafi in his Green Book, is an authority exercised by the people directly, without representation, through basic popular conferences, and their power is not limited by supreme bases in the form of a constitution. But experience has revealed the difficulty of translating this theoretical authority into practice. Legislation requires knowledge of the law, and this cannot be assumed in the general public, and the task of these people, as understood from the diagnosis, should have been limited to setting public policies and not making legislation. The mechanisms of decision-making are ambiguous, and they are supposed to be clarified by theory. The conclusion related to the weakness of community participation has a special significance, as it was assumed that the legislative process under the system of masses would represent the widest form of this participation.

In light of this diagnosis, the conference concluded with a number of recommendations: (1) Establishing a code of legislative controls that will serve as a reference for state authorities; (ii) distinguish in form, purpose and competence between public policy making and the technical aspect of legislation; (3) creating a clear and decisive decision-making mechanism that enables oversight and review; (4) The creation of a court to monitor

the legality of legislation, and assigning the Supreme Court, therefore, the functions of cassation; (5) reviewing legislation to ensure its consistency, and its fulfillment of the requirements of justice, legal security and social progress, and keeping pace with development; (6) enclose the legislation with explanatory notes to assist in its interpretation; (7) establishing a national center for drafting laws; (8) Enhancing community participation in drafting laws.

The audacity revealed by the organization of the conference, whose summary contained this diagnosis and these recommendations, would not have been possible without the reform efforts led by Saif al-Islam Gaddafi. This was evidenced by the fact that the organizing body was a center for Green Book studies, which was led at the time by Abdullah Othman, a close associate of Saif al-Islam, but the organization of the conference and the announcement of the diagnosis and recommendations were, perhaps, the most that could be achieved. These efforts, assuming their seriousness, faced a counteroffensive from those who saw them as undermining the foundations of the political system. The draft constitution called for by Saif al-Islam, as will be shown later, provides a clear example of this.

The recommendations of the conference did not refer to the constitution and constitutional oversight, but it focused on the necessity of having supreme rules governing the manufacture of legislation and an independent court to monitor the legality of legislation. The reason for this lies in the widespread belief that the idea of the constitution contradicts what the political system calls for. Constitutions, according to the Green Book, express and perpetuate the convictions of the ruling elites, and should, therefore, be accepted only if their source is divine or societal, i.e., religion or custom. Likewise, recognizing a constitution means recognizing a legislation that is superior to and restricts the rest of the legislation, and this would limit the authority of community members in legislation, and the assumption that prevailed was that this authority does not accept restrictions. Some legal scholars have tried to deny this contradiction by saying that Islamic Sharia, due to its divine source, may be a constitution, and that there are indeed documents and laws of a constitutional nature, such as the Declaration of

the Establishment of the Authority of the People issued in 1977. This dealt with topics that constitutions are specialized in such as the form of the state, its name, and the law of its society is The Holy Qur'an[4].

This controversy was not purely theoretical, as it was reflected in legislation that at times stripped, and at other times granted, the Supreme Court oversight on the constitutionality of laws. Reflecting the denial of the existence of legislation of a constitutional nature, Law No. 6/1982 on the reorganization of the Supreme Court deprived this court of this oversight. In a manner that reflects the recognition of the existence of such legislation, the legislator returned this oversight to the court in 1994, however, the court stopped its practice for a period of ten years, on the grounds that it first needed to establish the regulation regulating this practice[5]. It seems that the court's fear of what this practice may bring upon it from a confrontation with the political system, as its legislation contains a violation of basic rules, was the reason for this reluctance to exercise control over legislation, and even after the court reluctantly put the internal regulations, it narrowed the scope of constitutional appeals[6]. As we will explain later, these court practices were not limited to the era of the previous regime, as the later period witnessed them as well.

It seemed that the controversy was resolved with the political regime's announcement of its intention to draft a constitution. Indeed, within the framework of Saif al-Islam's reform project, a draft constitution was drawn up that included the establishment of a constitutional court and the abolition of exceptional courts. However, the project did not survive, despite it being subjected to several amendments, which reduced its reform measures, and ended with it being largely in line with the visions of the political system[7].

4 Algheitta, N. F. 2011. Protecting human rights of the accused in the Libyan criminal justice system. University of Aberdeen: doctoral dissertation. Pp 61-66.

5 Ibrahim, S. 2013. "Libya's Supreme Court and the Position of Sharia, in the Perspective of Constitutional and Legal History." In Searching for Justice in Post-Gaddafi Libya - A Socio-Legal Exploration of People's Concerns and Institutional Responses at Home and from Abroad, ed. J.M. Otto, J. Carlisle and S. Ibrahim. Leiden University: Van Vollenhoven Institute, 54-76.

6 Ibid.

7 Al-Huni, Muhammad Abdul Muttalib. 2015. Saif Gaddafi, the cunning of politics and the irony of fate. pp. 133-136. Mohammed Khalid. Libya is considering a new draft constitution. 2008. The

Despite this there were frequent reports of Gaddafi's rejection of this project. Saif al-Islam renewed his pledge to draft a constitution during the February Revolution, but it was too late for his initiative[8].

The Gaddafi regime, then, was not prepared to address the crisis of law-making process, which was in fact a symptom of a larger crisis that it was experiencing. The regime ended up with the February 2011 revolution, and it seemed at that time that a real opportunity for a radical treatment of the crisis had arisen.

Secondly: Legislative Policy Guidelines After February 2011

If the Gaddafi regime was largely responsible for the crisis in the legislative process under it, its influence did not seem to end with the end of his rule. The desire to break with this regime, at first, and to review the position on it and find excuses for it, at the end, represented important directions for making legislation after February 2011. The break with the legacy of the previous regime was a goal of the transitional authorities, and an explanation for many of their legislation. This is expected from authorities that were built on the ruins of this regime, and derived their legitimacy from the revolution that overthrew its rule, but when these authorities failed to achieve the goals of the revolution, rather to preserve the achievements made during the era of the previous regime (the unity of institutions and security), this failure was reflected in a decline in direction towards a rupture with this system, on the one hand, and to take exclusionary positions towards revolutionary forces, due to the contribution attributed to them in this failure, on the other

Middle East (No. 10973. December 13, 2008). Available at: http://archive.aawsat.com/details.asp?section=4&issueno=10973&article=498705#.VxvO-9qN95-W Date of access: June 13, 2021.

Ibrahim S.M.K. (2020), Citizenship and political participation in post-Qaddafi Libya: The long and winding road to a new social contract. In: Meijer, R.; Sater, J.N.; Babar, Z.R. (Eds.) Routledge Handbook of Citizenship in the Middle East and North Africa. London: Routledge. 378-392.

8 Saif al-Islam says that Libya «is not Egypt and Tunisia» and announces that a draft of a new constitution is ready. 2011. France 24. (April 20, 2011). Available via: https://is.gd/pInedb . Last entry date: June 13, 2021.

hand. This cutting, and its retreat, was not uniform during the transitional period, although it is possible to distinguish, in general, between the period preceding the political division, which manifested itself since about July 2014, and the period that followed it.

During the first period, February 2011-June 2014, calls for a break with the former regime rose, and the transitional authorities identified with it. These calls drew their momentum from religious revolutionary forces that contributed to the revolution and took upon themselves the realization of what they saw as the goals of the revolution. These calls revolved around breaking with the legislation, institutions, and people that were associated with the system, or were portrayed as linked to it. The claim that this regime deviated from true Islam, which was used to justify the revolution against it, had the effect of urging the transitional authorities to review its legislation, including those that the regime, falsely claiming, was based on Islamic law.

The National Transitional Council (2011-2012) was affected by these claims. On the one hand, the council was the body that led the revolution against the Gaddafi regime, so it is not surprising that it adopted a revolutionary discourse condemning this regime and exalting the revolution against it. The council included representatives of religious forces, which had an impact on its adoption of a discourse calling for a review of the legal system Inherited in the light of the provisions of Sharia[9], but the Council, on the other hand, included representatives of civil currents, and jurists, many of whom had assumed prominent positions during the era of the previous regime[10]. This had the effect of "softening" the religious revolutionary discourse, especially during the period preceding the council's move from Benghazi to Tripoli (October 2011), as this move made it more vulnerable to the influence of religious revolutionary forces[11]. While the constitutional declaration

9 Sawani, Y., & Pack, J. (2013). Libyan constitutionality and sovereignty post-Qadhafi: the Islamist, regionalist, and Amazigh challenges. The Journal of North African Studies, 18(4), 523-543. 527

10 For example, the head of the council, Mustafa Abdel-Jalil, was the last Minister of Justice before the February Revolution.

11 Al-Baja, Fathi, member of the National Transitional Council. An interview with Lujain Al-Awjaly. Benghazi. July 22, 2018.

issued in August 2011 in Benghazi represented a model for the transitional council's moderate rhetoric in the face of revolutionary religious demands, the law establishing Dar al-Ifta, and the law criminalizing glorification of the tyrant, which were issued in 2012 in Tripoli, constituted a model for the discourse in which the religious revolutionary tone escalated. .

As for the General National Congress (2012-2014, 2014-2016), which was elected to succeed the Transitional Council, it was more influenced by religious revolutionary calls, especially in its second term. This was the result of pressure exerted by revolutionary forces, most of which have religious orientations, on the National Congress due to the success of its representatives from among the Congress members in controlling it to a large extent, and being able to direct its members and supporters to pressure it through means that included demonstrations and sit-ins, and in some cases went beyond that to Siege of the headquarters of the National Congress and the detention of its members[12]. The Transitional Justice Law No. 29/2013, the Political Isolation Law No. 13/2013, and Law No. 1/2013 regarding the prohibition of benefits are examples of legislative responses that embodied this revolutionary religious discourse.

But it is noticeable that the responses of the General National Congress to the demands of the religious revolutionary forces were not complete, and the reason is that it was not entirely subordinate to these forces, as civil currents were also represented in it, and the confrontation between the two occupied a large part of the time that the conference allocates for its sessions[13]. One of the effects of this clash was also the failure of the performance of the conference, and the escalation of calls for it to step down as a result[14].

12 For a detailed explanation of how the Political Isolation Law was issued, and the role played by the Political Isolation Coordination, see Al-Shalawi, Abdel Fattah Burwaq (2015). Secrets under the dome of Parliament, 700 days of the General National Congress. Misurata: House and Library of the People. pp. 216–256.

13 The Mufti expressed his frustration with the conference taking up his time on: "organizational and legal issues, intellectual debates, verbal arguments, partisan portfolios, job quotas, and regional biases." Al-Ghariani, Al-Sadiq Abdul-Rahman (2012) Building the State 1. Available from the Dar Al-Ifta website:

https://ifta.ly/%d8%a8%d instagram%d8%a7%d8%a1- 1/282/, accessed: June 13, 2021.

14 See, for example, Al-Muhair, Khaled (2014) "No to Extension" in Libya… The Controversy of

In response to these calls, it was forced to accept recommendations to amend the Constitutional Declaration for the seventh time, to establish the election of a House of Representatives to replace it in the leadership of the transitional period[15].

But the National Congress did not, as it was supposed, hand over power to the elected House of Representatives. And if the conference justified its position on the fact that the surrender should be in Tripoli, not in Tobruk, which is located in the far east of the country and which the House of Representatives has taken as its headquarters, the real arguments are related to the composition and orientation of this Council. The failure of the National Congress to perform its duties was the reason for electing its replacement, the House of Representatives, and a great deal of blame for this failure was directed to the congress' submission to the religious revolutionary forces[16]. Therefore, it was not surprising that representatives of these forces failed in the elections to the House of Representatives[17], on the one hand, and the parliament decided that Tobruk, which is far from the influence of these forces, should be a temporary headquarters, on the other hand. In this way, it was also not surprising that these forces portrayed the House of Representatives as a representative of a counter-revolution aimed at its exclusion, especially after the changes that occurred in neighbouring Egypt, and that the National Congress, under the influence of these forces, refused to hand over its duties to this House, appealing to it with the support of the Those same forces after they took control of the capital in what was known as Operation Dawn of Libya. Since then, the conference has completely identified with the demands of these forces, as evidenced by the amendment of the ninth constitutional declaration and the legislation enacted by the conference during 2015 and 2016.

Transitional Phases and the Presidency.

15 General National Congress. Official Gazette Issue 4, Third Year, July 5, 2014.

16 See, for example, Engel, Andrew (2014). Libya and the growing threat of civil war. Available via: https://www.afrigatenews.net/a/13919 . Accessed: June 13, 2021.

17 See (2014). Libya: The «civilian» movement is ahead of the Islamists in the parliamentary elections. Available via: https://www.france24.com Last accessed date: June 13, 2021.

As for the House of Representatives (2014-), it was not only immune to the influence of the revolutionary religious forces but was moreover affected by a speech blaming these forces for the state of the country during the period of the General National Congress, especially with regard to the Political Isolation Law. This discourse was also the discourse of the military "Operation Dignity" launched against Islamist groups in Benghazi, which ended with the defeat of these groups, and the control of the Dignity Forces over the east of the country. In fact, the areas of control of these forces have become the areas in which the legislative authority of the House of Representatives is recognized. This explains the relevant legislation of the House of Representatives. Some of them aimed to review National Congress legislation that was considered exclusionary, such as Law No. 2/2015 regarding the abolition of the Political Isolation Law, or which led to the strengthening of the influence of religious forces, and such Law No. 8/2014 regarding the dissolution of Dar al-Ifta, or which was the result of the effect of this Powers, such as Law No. 7/2015 regarding the postponement of the ban on interest in transactions to January 2020[18]. Other legislations reverse the conciliatory approach of the House of Representatives with supporters of the previous regime such as Amnesty Law No. 6/2015.

As for the Constituent Assembly for the Drafting of the Constitution (2014-), it was also affected by the political context in which it was formed and carried out its work. The birth of the body was difficult. In the beginning, it was to be a technical body appointed by the General National Congress to formulate a draft constitution that it, the Congress, would review, approve, submit to a public referendum, and issue it upon acceptance of a general constitution for the country. Later, it became a body consisting of sixty members, divided equally between the three historical regions of Libya: Cyrenaica, Tripoli and Fezzan. accepted in the public referendum. The amendments also included finding appropriate representation for the three

18 In an interview with Abu Bakr Baira, a member of the House of Representatives, he mentioned another reason for the parliament's enactment of Law No. 7 to postpone the ban on interest until January 2020, which is the need for the interim government, in the east of the country, to borrow, and the requirement for banks to obtain a return from the lending process. The council, according to him, is also less religiously fanatic than the General National Congress. Baira, Abu Bakr. Interview with Shiitir, Jazia. Benghazi. 25 July 2018.

minorities: the Berbers, the Tebu, and the Tuareg, which translated into the allocation of six seats, two for each of them, and the obligation to agree with the representatives of these minorities in the provisions relating to them. These amendments entailed an amendment in the period of the Authority's completion of its project[19].

When the elections for the commission were held in February 2014, they were not at the level of the success of the General National Congress elections. The disappointment of those who elected the house prompted them, it seems, to boycott the commission's elections[20]. Since the weak performance of the conference was attributed to its submission to revolutionary religious currents, the seats in the commission were largely empty of their representatives. On the other hand, the authority took the city of Al-Bayda, located in the east of the country, as its headquarters. This choice ensured that it is far from the influence of the religious revolutionary forces, which are concentrated in the west of the country on the one hand, and on the other hand, exposed the commission to working in an environment that gradually became more tolerant of supporters of the former regime. Also, the amendments made about minorities were not sufficient to meet the demands of some of them. The Berbers rejected them, and accordingly boycotted the elections of the Commission. As for the Tebu and the Tuareg, they did not boycott the elections of the commission, and they had representatives in it, but they used to boycott its work, under the pretext of excluding them, and adopting the approach of majority, not consensus, in

19 See Ibrahim, Suliman (2017) Constitution-making in post-Qaddafi Libya. In Shaiter, Jazia et al (ed.). Calibration of the draft Libyan constitution. Benghazi: Center for Law and Society Studies. 187–210. pp. 191.

20 Only 45% of the registered voters participated in the elections, which means that the actual voting was limited to less than 14% of those entitled to vote, and it also means that less than 10% of the people participated in the election of the commission. Look:
Eljarh, Mohamed. 28 April 2014. "Libya›s assembly faces major challenges." Middle East Eye. http://www.middleeasteye.net/columns/libyas-assembly-faces-major-challenges-1273681924. Last accessed 26 November 2018.

deciding issues related to them[21]. This formation and performance had an impact on the disparity in the outputs of the constituent body, the latest of which was the project announced in July 2017[22].

To end the political division, the United Nations Support Mission in Libya (ANSMIL) sponsored a dialogue between different Libyan parties, which culminated in the signing of an agreement on December 15, 2015. The agreement aims to end the political division through power-sharing in which the House of Representatives has the sole legislative authority, and in which it transforms The National Conference is transformed into an advisory body, and the implementation authority is assumed by a Presidential Council and a Government of National Accord in which the various parties are represented, in which the draft constitution-drafting body completes its work. While representatives of the House of Representatives and the General National Congress signed the agreement, the first has not yet ratified it, and the constitutional declaration has not been amended to include it, with several arguments including its disagreement with some provisions of the agreement, such as those related to the subordination of the army to civilian authority and the power-sharing mechanism[23].

As a result, the agreement did not achieve its main goal, which is to end the political division. The agreement led, on the one hand, to the replacement of the General National Congress by the State Council, and the formation of a government of national accord with a Presidential Council, which, in the eyes of the international community, became the only legitimate executive authority. However, on the other hand, the Government of National Accord formed by the Presidential Council has never received the approval of the House of Representatives, and this remains attached to the interim government in the east of the country.

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21 See, for example: "Statement of the Tebu and Tuareg regarding suspension of their membership in the Constituent Assembly for the Drafting of the Constitution." August 23, 2015. Broadcast via YouTube: https://www.youtube.com/watch?v=sUVQ80qaY14 . Accessed: November 26, 2018.

22 Ibrahim. The previous source.

23 Al-Arabi, Muhammad. The Libyan Political Agreement ... its path and questions about its fate. (2017) Arabic. December 14, 2017. Available at: https://is.gd/VIYOfY. Accessed: June 13, 2021.

The House of Representatives was not the only objector to the political agreement. Important religious forces, such as those expressed by Dar al-Ifta, rejected the agreement for reasons including the lack of the text relating to Islamic law and the failure to immunize the legislation enacted by the National Conference in 2015-2016[24]. Moreover, revolutionary forces were not represented in the dialogue that led to the agreement, nor were they observe when dividing power[25]. This same claim was raised by the supporters of the previous regime, as the dialogue and the agreement that resulted in it was confined to the supporters of February, according to their opinion[26]. The claim of exclusion was also claimed by ethnic forces, as the Amazigh Supreme Council was excluded from the dialogue after it had initially participated in it[27]. Perhaps awareness of the absence of actors from the dialogue and its outcomes is what led Ghassan Salameh, the Special Representative of the Secretary-General of the United Nations in Libya and head of its mission there, to present a new road map in which the political agreement will be reviewed, and an inclusive conference will be organized in which the parties that took place previously marginalize it[28].

After efforts to resume political dialogue faltered for a period, interspersed with a military conflict over Tripoli (2019-2020), these efforts finally succeeded, and resulted in a modified agreement on the political agreement. The amendment represented drawing a road map that includes the formation of a national unity government and a presidential council, and the organization of presidential and legislative elections on December 24, 2021, based on a constitutional rule. The government and the parliament have already been formed, many state institutions have been unified, and

24 https://is.gd/BtiiiV

25 https://www.crisisgroup.org/middle-east-north-africa/north-africa/libya/libyan-political-agreement-time-reset

26 Jibril, Muhammad, Secretary of Trade Union Affairs at the General People›s Congress (the equivalent of parliament during the Gaddafi era) Interview with Moussa, Fathi. Prairie August 9, 2018. Muhammad Jibril.

27 Asmaa Khalifa, an Amazigh activist. Skype interview with Ibrahim, Suliman. October 1, 2018.

28 Salameh messages to the participants in the dialogue committee meeting in Tunis. the middle. September 26, 2017. Available at:
http://alwasat.ly/news/libya/144626 Last accessed date: June 13, 2021.

efforts are underway to prepare for the year-end elections that will replace the House of Representatives and the Supreme Council of State, as well as the government. The new authorities will have to address a confused legislative reality, not only because of the legacy of the previous regime, but also because of the practices of its successors.

Thirdly: Features of the legislative process after February 2011

A study of the legislative process after February 2011 reveals that the description of the crisis is still attached to it, although there are elements of success that can be built upon. The following is a presentation of the aspects dealt with in the study, which is the vision that the legislation should be based on, the legitimacy that is supposed to be achieved in the author of the legislation and the way it is established for it, the legitimacy on which the legislation relies and ensures its societal acceptance, the application that is supposed to be its end, and the control that is achieved by its fulfilment of previous standards.

1. Vision

Legislation in a transitional phase is supposed to be based on a clear vision of the requirements of transition, which is translated into a legislative policy. However, it is noticeable that the legislation issued after February 2011 reveals a significant absence of this vision and that policy. The constitution-making provides a clear example of this.

Drafting a constitution is a transitional entitlement par excellence, and the National Transitional Council was aware of this, but its vision for making this constitution was confused, and it was not appropriate to the requirements of the transition. The imposition of making a constitution in a transitional phase is to address, and establish, to address critical issues, even if most of them are controversial, and to seek to build a societal consensus on these issues before drafting texts that address them. Such issues are those related to the fair distribution of wealth between the regions, those related to addressing the legacy of human rights violations, including

violations against minorities, and those relating to the status of Islamic Sharia in legislation. Of course, building such a consensus takes time, and this is supposed to be reflected in the formation of the body charged with drafting the constitution, but the texts of the constitutional declaration, which have been repeatedly amended, reveal the absence of such a vision for constitution-making.

The first indication of the absence of the desired vision lies in the name given by the constitutional declaration to the body charged with writing the constitution. It was described as a constituent body and at the same time tasked with drafting the constitution, and it is clear that there is a great difference between drafting, as a task undertaken by a technical committee, and the establishment, which requires a more important body.

The second reference relates to the nature of the commission between appointment and election, and its relationship to Parliament. In the beginning, the Constitutional Declaration stated that the Constituent Assembly would be appointed and subject to the General National Congress, and this Congress was to choose its members from among its members. But later, the declaration was amended to make the body composed of sixty members chosen by the conference from among its non-members. Then it was amended again, making the body an elected body of the people, largely independent of the Congress. The hesitation between appointing the commission and electing it was not based on a better vision of constitution-making as much as it was a response to the pressures of regional forces. It should also be noted that reversing the appointment of the commission by Parliament to directly elect it, was not accompanied by cancelling the subjecting of its project to a popular referendum, which is one of the remnants of the appointment option, which led to making the birth of the constitution a very difficult task.

These changes had an impact on the period specified for making the constitution, and this is a third sign. The timetable included in the declaration was overly ambitious, apparently motivated by the desire to end the transitional phase quickly, as this ends with the drafting of the constitution and the election of a legislative assembly in accordance with its provisions. In the beginning, the period set for implementing this

constitution was only sixty days, but it soon became clear that achieving this was practically impossible, so the period was repeatedly extended until it exceeded five times the original period. This is an indication that what is meant by making the constitution, and what it requires, was not entirely clear to the transitional authorities.

Among the effects of the delay in drafting the constitution, the repetition of extending the transitional period, and the failure of the constitutional declaration, legislation was issued without a constitutional basis if necessary. For example, transitional justice includes a departure from well-established legal rules, such as the non-retroactivity of criminal laws to the detriment of the accused, the expiry of cases by the lapse of time, and the validity of judicial rulings, and this departure is not justified except with a constitutional authorization. However, despite the constitutional declaration's absence of the term transitional justice, let alone its establishment, transitional justice legislation, most notably Law No. 29/2013, was ignored by the judiciary in giving precedence, it seems, to the rules of traditional justice. Abu Salim prison has a statute of limitations, a violation of transitional justice par excellence[29].

Legislation related to transitional justice also provides another example of the absence of a directed vision. In the absence of the constitutional foundation of these legislations, and the transitional authorities affected by the revolutionary and counter-revolutionary tendencies that were previously explained, these legislations were characterized by fragmentation and the personalization of addressing grievances. When revolutionary tendencies escalated during the era of the General National Congress, this law enacted a transitional justice law (Law No. 29/2013) that established the distinction between the violations of the previous regime and the violations of the revolutionaries, and stated the condemnation of the former and the prosecution of those attributed to them, limiting accountability for the latter and seeking excuses for those to whom it was attributed. Likewise, transitional justice legislation has been numerous, and some of them have

29 Tripoli drops a charge against the former head of the Military Intelligence in the «Abu Salim case». 2019. RT. December 15, 2019. Available at: https://is.gd/ZjbI0j. Last entry date June 13, 2021.

singled out a group of victims with discriminatory treatment, not only in the type and extent of compensation they receive, but also in the mechanism of their determination, such as Law No. 50/2012 regarding compensation for political prisoners. In addition, these legislations reduced institutional reform to political isolation. The National Congress was satisfied, as Law No. 29/2013 indicates, in the latter, for its shortcomings, and dropped an entire chapter on examining institutions that the draft law had included[30], was sufficiently replace, apparently, by the political isolation law[31].

2. Legitimacy

The legislative process after February 2011 suffers from a problem of legitimacy, whether in terms of scepticism about its author, or in terms of scepticism about the mechanism of its formulation. The absence of clear rules governing this process, on the one hand, and the political division, on the other, have had an impact on creating and exacerbating this problem.

Regarding questioning the legitimacy of the legislators, the transitional period is replete with many examples. For example, the legislation of the House of Representatives has been questioned because the basis for his election was the Seventh Amendment to the Constitutional Declaration, which the Supreme Court ruled unconstitutional[32]. On the other hand, the legislation of the General National Congress was questioned after its refusal to hand over power to the elected House of Representatives. This scepticism was reflected in the legislation enacted by both houses, such as the Amnesty Law No. 6/2015 and Law No. 2/2015 regarding the abolition

30 The draft law contained a chapter on "institutions examination" (Chapter Three), but it was dropped from the draft without correcting the order of the chapters after its deletion, so Chapter Four was followed by Chapter Two! The text of the project, and the comments made by the International Center for Transitional Justice on it, can be found on the center's website: https://www.ictj.org/ar/news/ictj-comments-on-libya-draft-law-on-transitional- justice (accessed June 26, 2020), the text of the law can also be found on the Ministry of Justice website: https://aladel.gov.ly/home/uploads/sections/458_Transitional_Justice_Law.pdf, last accessed June 26, 2021.

31 Issam Al-Mawy, lawyer and former president of the Council for Rights and Freedoms, in-depth meeting, Al-Bayda, January 21, 2020.

32 Constitutional Appeal No. 17 of 61 BC. November 6, 2014. Available via the following link: https://www.alyassir.com/index.php?pid=5&i=1&f=38 . Last accessed: June 13, 2021.

of the Political Isolation Law, including, for the General National Congress, the Ninth Amendment to the Constitutional Declaration that made Islamic law the only source of legislation, Law No. 16/2015 regarding the abolition of socialist laws restricting real estate ownership, and Law No. 14/2015 that amended Law No. 10/1984 on marriage and divorce in a way that reduced the rights granted by the latter to women. The Constituent Assembly for the drafting of the constitution did not escape suspicion. Some based their criticism of the draft constitution drafted by the body in 2017 on exceeding the period set by the constitutional declaration[33]. When the political agreement was signed in December 2015, it was hoped that it would secure the legitimacy of the bodies it established, but because the House of Representatives was not guaranteed by the constitutional declaration, the Government of National Accord and its legislation, including those related to dealing with real estate property violations committed by the former regime, were questioned[34].

Doubting the legitimacy of legislation goes beyond its author to the process of creating it, that is, questioning the commitment to the established legal context. The assumption here, of course, is that there is a prescribed context, and the study shows that this assumption was not true in many cases. For example, Article 30 of the Constitutional Declaration, which includes what is known as the roadmap for the transitional period, was secretly formulated, and it was not known, even to the committee that drafted the declaration, how and who included this article[35]. Of course, the party that issued the declaration, i.e. the Transitional Council, has the authority to introduce such a change, but it should have demonstrated the wisdom calling for it, and be more transparent about how it did so.

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33 See, for example, Saad Al-Aker (2018). About the Constitution Drafting Assembly, according to the law! observatory. August 4, 2018.

34 Zayed Hadia. 2019. Libyan Parliament Speaker Aguila Saleh: The Government of National Accord is not legitimate. May 31, 2019. The Independent Arabia. Available via: https://is.gd/S5gznQ. Last accessed: June 13, 2021.

35 See Khaled Zio. 2015. On the General National Congress Elections Law No. 4 of 2012 and its impact on political life in Libya. In Suliman Ibrahim and Jean-Michael Otto (ed.). Evaluation of Libya›s legislation for reconstruction. Benghazi: Center for Law and Society Studies; Leiden: Van Vollenhoven Foundation for Law and Governance.

Legislative process in the era of the General National Congress was not significantly different, and Law No. 13/2012 regarding political and administrative isolation is a clear example of this. Based on vague and far-reaching criteria, this law excluded many people from holding public office for ten years because of the assumption of their relationship to the previous regime. Since there is a high probability that the law would violate fundamental rights affirmed by the Constitutional Declaration, and thus be liable to be overturned by the Supreme Court in pursuance of its constitutional oversight, the latter, the Constitutional Declaration, was subject to an amendment that included a provision that stated that the creation of a law on political isolation does not constitute a violation of its provisions, i.e. the provisions of the Declaration. No wonder, then, that some saw this law as a political weapon in the hands of the majority that controlled the National Congress to get rid of their political opponents[36]. The law was not accompanied by an explanatory memorandum, and the minutes of the sessions in which its articles were discussed were not made available to the public. This opened the door to the exchange of accusations between political opponents about the way the law was drafted and enacted[37].

The approach taken by the House of Representatives in dealing with the Political Isolation Law is another evidence of the absence of clear rules governing the making of legislation, and how this hindered any oversight or review. On February 2, 2015, the House of Representatives debated the law, but it was not clear at the time what it had decided on it. On the one hand, some reported that the council had decided to suspend the law, but some of its members stated that the decision was to cancel the law entirely[38].

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36 See, for example, what Mustafa Abdel Jalil, the head of the National Transitional Council, said in an interview with Asharq Al-Awsat. October 23, 2013. Available at: http://aawsat.com/home/article/6912 Date of access: June 13, 2021.

37 See the interview given by Mahmoud Jibril, head of the National Forces Alliance, and head of the Executive Office of the National Transitional Council. Middle east. 05 June 2013.

38 See: «Al-Abani confirms the abolition of the Political Isolation Law, not its freezing.» middle gate. February 3, 2015. Available at: http://www.alwasat.ly/ar/news/libya/59531/ . Access date: June 13, 2021.

In cases where there was a specific procedural context, its compliance was not always a course of action for the legislators. For example, the General National Congress did not observe the quorum when it amended the constitutional declaration for the seventh time in preparation for the election of the House of Representatives, and this was the support of the Supreme Court in ruling that this amendment was unconstitutional. Also, the Constituent Assembly for the drafting of the constitution made an amendment to its bylaws related to the voting quorum. In its procedures, it did not adhere to the established context, and relied on the amended quorum in adopting the draft constitution for 2016. This procedural violation supported the Jabal Al-Akhdar Court of Appeal in cancelling the commission's decision by referring Her draft to the House of Representatives in preparation for the enactment of the referendum on it[39].

And if these were legislations/drafts of legislation that the judiciary was asked about its legality, then there were legislations that were also questioned about their legality, although the judiciary has not yet been asked about their legality. Among these are many legislations of the House of Representatives, in which it was claimed that the quorum of decision-making was not achieved, and legislation that argued that it violated what was approved in its enactment sessions, such as what happened in the matter of the Political Isolation Law, as stated above. Other examples include the decisions of the Presidential Council of the Government of National Accord whose president alone, or with some of his deputies, issued them alone in cases where the political agreement founding this council required the unanimity of the president and all his deputies. This is what led some of them to protest its legitimacy[40]. Some of the decisions of this council combine exceeding the established quorum and violating the applicable legislation of a higher status, which made its legitimacy more suspicious, and such decisions to revive compensation committees for Law No. 4/1978 previously repealed by Transitional Justice Law No. 29/2013[41].

39 Al-Bayda Appeal cancels the decision of the "Constituent Assembly" by amendment of the internal regulations (2016). TV 218. December 7, 2016.

40 Escalation of differences within the Government of National Accord (2020). Africa portal. July 29, 2020.

41 Ibrahim S.M.K. (2019), Seeking Justice for Property Grievances in Post-2011 Libya. In: Bau-

3. Legality

For legislation to achieve its goals, it must gain societal acceptance. This entails being guided by the society's orientation, its general members and the experienced ones, regarding the need for legislation and its content, and keenness to expand the circle of participation in the making of legislation. The study reveals the poor luck of post-February 2011 legislation from this acceptance.

In order to verify the social acceptability of a piece of legislation, the legislature should look at the opinions of members of the community as revealed by reliable opinion polls and surveys. As for the opinions of the experienced among them, their knowledge is available through various media such as conference work, scientific meetings, newspapers and media communication. In order to enable community members to participate in the making of legislation, draft legislation can and should be made available through the various media and official websites affiliated with the legislation authority, and citizens are invited to comment on them and make suggestions on them. Regarding experts, committees can be formed that include them to study the problems that legislation is intended to address, determine what this treatment should be, and review the prepared draft legislation.

Based on the foregoing; The post-February 2011 legislation's modest share of societal acceptance is evident. Legislative bodies did not seek, as they should, to identify the opinions of members of society, and did not, accordingly, take some of the aforementioned methods. It is worth noting here a path that seems like an exception in this midst, which is the keenness of the Ministry of Justice, especially during the era of Salah Al-Marghani, the former Minister of Justice, to regularly publish draft laws that the Ministry participated in preparing, and in some cases, its explanatory memoranda. While publishing does not guarantee the contribution of members of society to the making of legislation, it is a necessary introduction to it.

mann, H. (Ed.) Reclaiming Home: The struggle for socially just housing, land and property rights in Syria, Iraq and Libya.: Friedrich-Ebert-Stiftung. 49-60.

The issue of the source of Islamic Sharia, for example, provides for cases in which the legislator identifies with the trends of society and others in which it departs from them. Opinion polls revealed the tendency of many society members to assign an important role to Islamic law as the main source, or chief, of legislation, but without neglecting other sources of inspiration[42]. The Transitional Council responded to this trend by stating in the Constitutional Declaration that Sharia is the main source of legislation, unlike the General National Congress, which amended the Declaration to make it the only source, and the same in this Constituent Assembly, which included its draft of 2017 a text that can be understood with merit as limiting the source to Islamic Sharia .

Transitional justice provides another example of cases in which the legislator identifies with the orientations of society, and others in which I reject these orientations. The research reveals the tendency of the majority of society to prefer the implementation of transitional justice, without delay, including revealing the truth of violations, holding those responsible for it accountable, reparation for its victims and reforming the institutions involved in it in a way that prevents its recurrence[43]. In this context, the 2017 draft constitution is credited with dedicating the foundations of transitional justice, as it obliges the state to put in place a law regulating truth disclosure, reparation for harm, accountability of perpetrators, and reform of institutions, and it bypasses legal obstacles such as adherence to the non-retroactivity of legislation, especially criminal ones, statute of limitations, and adherence to the gains of legislation Transitional justice flawed as amnesty legislation. However, it may be accused of dropping an important text included in the 2016 draft that obliged the state to examine some public institutions for structural reform and exclusion of the involvement of their affiliates in human rights violations, the dismantling of all armed organizations, their disarmament, and the psychological and professional rehabilitation of their members. Although some of these provisions can be

42 Results of the comprehensive national survey on the constitution, University of Benghazi. 2013.

43 Suliman Ibrahim and Najib Al-Hasadi (2020). Report on the fourth research phase on transitional justice (October 2019 - April 2020) of the Project on the Role of Law in National Reconciliation in Libya. Benghazi: Center for Law and Society Studies; Leiden: Van Volenhoven Foundation for Law, Governance and Society, Leiden.

extracted through texts devoted to institutional reform, as a cornerstone of transitional justice, it would have been better to include them explicitly in the constitution to ensure response to broad societal views calling for the civil state, and to establish its monopoly on the army and police institutions, and reform them.

As for the Transitional Justice Law No. 29/2013, it was a short response to a societal desire to achieve transitional justice. Because of a revolutionary tendency that characterized the work of the legislator at the time, the General National Congress, a discriminatory law was incomplete and difficult to implement. First, it distinguishes between human rights violations according to the perpetrators, condemns them and prosecutes those who have been attributed to him among the supporters of the former regime, and almost overlooks the violations of the revolutionary forces that revolted against this regime. And he, secondly, drops an entire chapter on examining institutions, claiming that the PIL is closing in. Thirdly, the law restricts its application to an executive regulation which, unlike the norm, is referred to the Legislative Council for its issuance.

In enacting the confused transitional justice law, the GNC ignored the opinions of national and foreign experts. The draft law was prepared by national experts and the International Center for Transitional Justice contributed to its improvement[44], but the National Congress made amendments to it that ended in it, as previously said, a discriminatory law that is incomplete and difficult to implement. It is noteworthy that the Human Rights Committee of the conference, in a session discussing the draft law (September 23, 2013), objected to preparing the law "in a superficial manner by the conference or a group of jurists," and presented a proposal to ensure the participation of all sectors of society in drafting the law as a societal document. But the response of the head of the Legislative

44 The text of the project, and the observations made by the International Center for Transitional Justice on it, can be found on the center's website:

https://www.ictj.org/ar/news/ictj-comments-on-libya-draft-law-on-transitional-justice (accessed June 26, 2020), the text of the law can also be found on the Ministry of Justice website :

https://aladel.gov.ly/home/uploads/sections/458_Transitional_Justice_Law.pdf, last accessed June 26, 2021.

Committee, a lawyer, confirmed that the committee had collected a myriad of observations and proposals, from members of the conference and local, regional and international organizations, and prepared the draft law in the light of them. While the wide sharp criticism of the Transitional Justice Law casts doubt on the accuracy of the claim that its project is based on these observations and proposals, the response reveals a misunderstanding of community participation, as it limits it to the collection of observations and proposals prepared by conference members and organizations, and does not require direct communication with individuals society through, for example, hearings for citizens of different groups or backgrounds, especially victims of violations and human rights defenders.

While there have been many cases of having experts used to prepare drafts for different legislations[45], the cases of ignoring the opinions of these experts without declaring specific reasons are also numerous. Here, too, transitional justice provides an apt example. A committee formed by the Minister of Justice and a group of Libyan experts comprising a civil society organization prepared a preliminary draft of Law No. 17/2012 on National Reconciliation and Transitional Justice, which was presented to the International Center for Transitional Justice, and after discussing it in a scientific session at the Faculty of Law at the University of Tripoli, the draft was amended and discussed. With members of the National Transitional Council. But the latter, "The law was issued after amendments were made to it that radically changed its philosophy and content without discussing it with the committee. Perhaps the most important of these amendments is

45 For example, the Transitional Council formed a committee headed by Faraj al-Sallabi, an advisor to the Supreme Court, to draft the constitutional declaration, and the National Conference succeeded it in the form of a committee known as the February Committee to submit proposals to amend this declaration, mainly related to a new body to succeed the National Congress and a law regulating the election of this body. The committee included fifteen members, including academics, lawyers, civil society activists, and members of the National Congress, and was chaired by Al-Koni Abbouda, a law professor at the University of Tripoli. The proposals of this committee formed the content of the Seventh Amendment to the Constitutional Declaration. Other examples of these committees can be found in a committee formed by the Ministry of Higher Education of university professors to draft a law for universities, and another formed by the Libya Trade Network to formulate a draft law regulating electronic commerce.

the deletion of the entire chapter on criminal trials, which is the solid core of the project….[46]" What helped the Transitional Council not to disclose the justifications for its actions was the absence of any obligation to make the minutes of its sessions publicly available, or to publish explanatory notes accompanying its legislation.

Despite its apparent advantages, drafting legislation, as was done in the case of the aforementioned draft Law No. 17/2012, may raise some problems. As previously stated, a committee formed by the Minister of Justice of experts (ad hoc committees formed as needed), a civil society organization and an international organization participated in the drafting process, and this has undisputed advantages. Committees formed as needed usually include experts in the field to which the legislation relates. The presence of civil society organizations would increase the level of participation in law-making. But there are risks associated with the involvement of these bodies in the legislative process. The expertise provided by international community organizations may not be appropriate to Libya's needs and special circumstances, and resorting to committees formed as needed in legislation increases the marginalization of state institutions entrusted with playing a major role in the manufacture of legislation, such as the administration of law. In addition, the reliance on such bodies makes it difficult to control the process of making legislation.

4. Implementation

Implementation failure is a dominant feature of many post-February 2011 legislation. The reasons for this are many, including the political division, and its attendant confinement of recognition of legislation to the area under the influence of its author, and the failure to take necessary measures for implementation such as issuing an executive regulation, forming a committee, or monitoring a budget, which is what It may be inferred from the absence of political will.

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46 Hadi Abu Hamra. Some draft laws submitted to the National Transitional Council, origin and fate. July 09, 2012. Available at:
http://archive2.libya-al-mostakbal.org/news/clicked/24496, last accessed date June 26, 2021.

As for the impact of the political division on implementation, one party's denial of the legitimacy of the other led to the non-recognition of its legislation, and thus its non-implementation. During the split between the House of Representatives and the General National Congress, the application of the first legislation was limited to the east of the country and those that the second set to the west. Accordingly, and by way of representation, Islamic Sharia in the east of the country, contrary to what was stipulated by the legislation of the General National Congress, remained the main source of legislation, and not the only one, and the age of eligibility for marriage was 20 Gregorian years, instead of 18, and the obligatory will is permissible. In the same way, the parliament's legislation was not implemented in the west of the country, including, for example, the Amnesty Law No. 6/2015.

While it was hoped that the 2015 political agreement would end the division, and thus remove one of the implementation pitfalls, this did not materialize, as the Government of National Accord did not implement the text of Article (62) to form a committee of specialists to look into the laws and decisions that were drawn up during the period from August 4, 2014. to December 17, 2015; with a view to finding appropriate solutions. The formation of the committee could have provided an opportunity to review all or part of the non-implemented legislation. Accordingly, the problem of restricting the implementation of the parliament's legislation to the east of the country and not the west continued, although it was noted that some courts in the west have started to apply the amnesty law that the parliament put in place "shyly." On the other hand, none of the GNC legislation issued after the split was implemented in the east of the country.

The political agreement had created a new body, a government of national accord headed by a presidential council, which did not receive the recognition of the House of Representatives, the only legislative authority according to the political agreement. This has led to a duality similar, to some extent, to that of the House of Representatives and the General National Congress. Although the Presidential Council is not a legislative council, it has consistently issued decisions that address issues that are supposed to be addressed by laws established by the House of Representatives. Likewise, the decisions to re-form the compensation committees under

Law No. 4/1978, which was canceled by Law No. 29/2013 on transitional justice, and the decision to establish an executive regulation for the last law despite its stipulation that the House of Representatives has the authority to issue it. What reinforced this duality, and the accompanying failure of full implementation, is the presence of two official newspapers, one in the east of the country, issued by the Ministry of Justice of the Interim Government and publishing laws and decisions made by the House of Representatives and this government, and another in the west of the country, which publishes the decisions issued by the Government of National Accord. . The distribution of each newspaper is limited to the area of influence of its source.

However, the political division is not the only reason for obstructing the implementation, as it is a feature that accompanied several legislations issued before this division. One of its reasons is the application's dependence on actions not taken. This is the example of Transitional Justice Law No. 29/2013, which has not yet been implemented because it was referred to an executive regulation drawn up, contrary to the custom, by the Legislative Council, not the government, and stipulated the re-formation of the fact-finding committee. Neither the General National Congress at the time nor the House of Representatives subsequently issued the regulation or formed the committee, despite the latter receiving several proposals in this regard.

The reluctance to take these measures may indicate a lack of political will to implement transitional justice. There are people who, according to this interpretation, will reach the hand of transitional justice who constitute a significant part of the legislative, executive and effective powers of the country, and such people are not expected to be enthusiastic about the course of its fate that will remove them from their positions and deprive them of their influence.

Law No. 18/2013 regarding the rights of cultural and linguistic components also did not find its way to implementation, as the Ministry of Education did not print the books necessary to teach the languages of these components[47], and the Audit Bureau refused to grant permission to

47 An interview with Issam Al-Mawy, (former) president of the National Council for Public Liber-

contract with teachers to teach Tamazight[48], and with the exception of a single festival in Nalut, it did not The Ministry of Culture sponsored the cultural heritage of these groups as provided by law[49].

5. Censorship

To address the problems, a body that controls the quality of legislation, exercising previous oversight, and an effective judiciary, which exercises subsequent others, should be used. While in the Libyan legal system there is already a law department that is supposed to carry out the previous control tasks, this department faces obstacles that prevent it from addressing these tasks as desired. The judiciary, too, has varied in its performance, success and failure, in establishing appropriate subsequent oversight, although failure is more common.

The Law Department, according to its establishment law No. 6/1992, represents a body that exercises prior control over the quality of legislation. This law assigns it, among other tasks, the tasks of drafting legislation and reviewing projects prepared by other parties. And the context, according to some members of the administration, as attributed to them by a report of an international organization following their interview:

Any Libyan ministry, institution, or civil society organization can propose new laws through discussion with the Law Department. During this process, task forces form within the administration to discuss initial ideas about the new bill, review the existing legal framework, and, if the idea is accepted, draft the bill. The project is then referred to the National Conference for Initial Reading. The draft, along with the conference notes, is returned to the Ministry of Justice and, when necessary, a new draft is prepared and submitted to the Prime Minister's Office, which can in turn submit new proposals. The amended draft is submitted to the Legislative Committee of the National Conference, and if it approves it, it is presented to the National

ties and Human Rights. Al-Bayda. 29 July 2018.

48 «The Supreme Council for the Amazighs of Libya» denounces the book of the Audit Bureau regarding the teaching of the Amazigh language. Alwasat. April 21, 2016. Available at: http://alwasat.ly/news/libya/96731, last accessed: June 13, 2021.

49 An interview with Jazia Shiitir. Albayda. 29 July 2018.

Conference for discussion. If the National Conference approves the project, and then enacts it, it will then be published in the Official Gazette of Libya. During this process, according to the Department of Law, all community institutions can submit their comments and suggestions as part of the consultation process on the new project[50].

But this somewhat idealistic picture does not find credibility. The administration, as it is now, seems unable to perform this task as intended. It suffered from long-term marginalization during the period of the previous regime, and now it suffers from a lack of qualified workers and a lack of necessary capabilities. In addition to this, it is possible, without obligating, for other state institutions to use their services, and it is a tool rarely used by these institutions, as previous studies have shown[51]. There was a tendency, as indicated by previous outputs of the Constitution Drafting Assembly, to completely abolish the administration of law without creating an alternative to it. This trend lacks relevance; As there is a need not only to maintain the administration of law, and to provide it with the human and material resources necessary for its success, but to establish a new supervisory body over the legislative process, this time not affiliated with the government and similar to a state council. Fortunately, the Constituent Assembly of the Constitution, in its latest drafts, amended this approach, dedicating the existence of the administration of law, but, on the other hand, it did not take the idea of establishing a state council despite its earlier orientation to adopt it[52]. And if this is the case of the previous control over the manufacture of legislation, is it different from the matter of the subsequent one, that is, judicial oversight?

50 International Legal Assistance Consortium (ILAC). 2013. Rule of Law Assessment Report: Libya 2013, 58,59. Available at: https://www.tawergha.org/docs/libya-ilac-rule-of-law-assessment-report-2013.pdf. Last accessed 13 June 2021.

51 Suliman Ibrahim and Jean-Michael Otto (2015). Evaluation of the legislation of Libya.

52 The proposal for a chapter on the judiciary prepared by one of the specific committees formed by the constituent body included a proposal to establish a state council, whose tasks would be to formulate draft laws. But this proposal was dropped from subsequent drafts.

The judiciary can play an important role in oversight of the legislative process to improve its outputs, but this theoretical capacity has not been embodied in reality in many cases, and it has contributed to this confused political context in which the judiciary worked.

In a country like Libya, the role of the judiciary is limited to implementing the law without creating it. Some may see that the role of the judiciary is limited in the matter of oversight of the legislative process. But this saying ignores that the judiciary has to interpret the texts in the event of their lack of clarity, and that its authority expands at that time to exceed the apparent meaning, and that the judiciary, and indeed it has to, take into account the changes that occurred after the development of the legislation. More than this, the principles of the Supreme Court contained in its rulings are binding on all courts and executive authorities and are not bound by the limits of the cases in which these rulings were issued. They also have the control it exercises over the constitutionality of legislation that may end in cancelling what it finds of these legislations in violation of constitutional rules. While lower courts do not have this oversight of repeal, they may decline to apply any legislation they deem to be inconsistent with these rules.

But the judiciary's exercise of its functions in this way is subject to its independence. The research shows that, in principle, the transitional authorities were keen to consolidate this independence, so they reconstituted the council based on its affairs, excluding representatives of the executive authority, the Minister of Justice and his deputy (the public clerk), limiting his membership to members of judicial bodies, and making election a way to select those. But later, after the political division, attempts were made to undo these gains. The Minister of Justice in the interim government - formed by the House of Representatives - attempted to amend the Judicial System Law so that the Minister of Justice would be returned to the presidency of the Supreme Judicial Council, and subsidiary councils would be established at the level of the courts of appeal. However, the House of Representatives, on the recommendation of its legislative committee, did not adopt the project presented by the minister for fear of causing the creation of two councils for the judiciary, and because returning the Minister of Justice to the presidency

of the Council would reduce the independence of the judiciary[53]. On the other hand, the General National Congress enacted Law No. 6/2015, which required that the President of the Supreme Court be the head of the Supreme Judicial Council, which means that the legislative authority, represented by the General National Congress, will determine the identity of the President of the Council as the authority entrusted with appointing the President of the Supreme Court in accordance with the law No. 6/1982 regarding the reorganization of this court. Some observers found in this an expression of the desire of the General National Congress to control the Supreme Judicial Council[54]. Indeed, by its Resolution No. 50/2015, the General National Congress appointed Muhammad al-Qamudi al-Hafi as the head of the Supreme Court, and thus head of the Supreme Judicial Council.

Although the attempt to establish a parallel council of the judiciary and preserve the unity of this supervisory body failed, the political division cast a shadow over the courts. Its performance was confused regarding the application of the legislation of multiple legislative bodies, even within the same geographical region. Some of them used the legislation of the Presidential Council of the Government of National Accord and others denied them. The judicial inspection faced the problem of dealing with rulings issued in accordance with different, and sometimes conflicting, legislations by courts in the east and west of the country, and it favoured the adoption of all of them[55]. This course of action, although it is appropriate in the matter of evaluating the performance of the judges concerned, cannot be followed by the Supreme Court when it is presented with an order to decide the extent to which a decision or regulation violates the law, or its misapplication or interpretation. In this case, the court has nothing but to decide the extent of the legality of the legislation allegedly violating it, which puts it at the center of the conflict over the legality of the various political bodies.

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53 Moftah Koider, «Creating an alternative body to the Supreme Judicial Council may lead to partition.» March 29, 2015. Libya News.

54 Marwan Tashani, 2015. Legislation related to the judiciary after the revolution. In Suliman Ibrahim and Jean Michael Otto. Previous reference.

55 An interview with Muhammad Al-Hafi Al-Qamudi, President of the Supreme Judicial Council. August 2, 2018. Tripoli.

Experience has shown that if this situation does not fuel conflict, it does not contribute to reducing it. When the court examined the constitutionality of the Seventh Amendment to the Constitutional Declaration, which established the election of the House of Representatives, it was keen to verify the commitment of the General National Congress to the regulations of legislation, but it was not keen, on the other hand, to ensure the compatibility of its ruling with the interest of society and the stability of its systems. Accordingly, the court ruled that the amendment was unconstitutional, so it rewarded the perpetrator of the violation by giving legitimacy to its revival, squandering the legitimacy of the elected House of Representatives, and consequently strengthening the realistic division that existed at the time. The Council justified this ruling by submitting the Supreme Court to pressure from forces supporting the General National Congress in the west of the country, where it is based. In what can be seen as a response to strong pressure in the east of the country, where the House of Representatives is based, the Al-Bayda Court of First Instance issued a ruling that the aforementioned Supreme Court ruling was absent(56).

Perhaps the fear of repeating the experience of the ruling on the constitutionality of the Seventh Amendment is what prompted the Supreme Court, by a decision of its General Assembly, to freeze the work of the Constitutional Chamber. This has led to the suspension of consideration of important cases, some of which relate to the legitimacy of bodies such as the draft constitution-drafting body and the House of Representatives, and legislation such as the Political Isolation Law and the Political Agreement. Some saw this as a denial of justice, and a backsliding from the court in performing its role(57). While it is understandable that it is difficult to address such cases, this puts the court at the center of the political conflict, and may jeopardize the safety of its judges, but this difficulty does not allow the court to freeze its constitutional oversight, especially since there are precedents for the court to address politically sensitive issues in a way that enhances the

56 Al-Bayda Court of First Instance: The constitutional ruling to dissolve Parliament is «non-existent». 2015. Libya News 24. February 5, 2015.

57 Majdi Al Shabani. 2017. Is the Supreme Court's suspension of the constitutional circuit a "denial of justice"? Ain Libya. November 18, 2017.

rule of law, such as Its ruling of the unconstitutionality of Law No. 37/2012 regarding the [criminalization of] glorification of the tyrant[58], and its adoption of an interpretation of Amnesty Law No. 35/2012 broadens its scope[59].

It is clear from the foregoing that, although the judiciary can exercise an effective role in oversight of legislation, the actual exercise of this role is still below expectations.

Conclusion

The study reveals the crisis of the legislative process in Libya. This was an honest diagnosis of it during the Qaddafi era, and it is still valid for describing it in the period following the end of that era. If the Qadhafi regime's political doctrine and practices played a major role in creating and perpetuating this crisis, the political doctrine of the authorities that succeeded him, despite their differences in time and place, also had a negative impact on the legislative process. Despite its scarcity, there are reasons to be optimistic about the future of this process.

By reviewing the features of the legislative process after February 2011, it becomes clear that the environment plays a major role in multiplying the impact of the challenges facing this process, or creating them in the first place. These challenges are either due to structural causes, which exacerbated the surrounding environment from their impact, or they are the result of this environment. The first examples are the absence of a clear vision of what the transitional period requires, the weakness of legitimacy in terms of non-compliance with the established legal contexts, the lack of legitimacy, or its total absence, and the limited application and oversight. Like the second questioning the legitimacy of the author of the legislation. Accordingly, the role of the environment in both cases is important, and its reform (or reform) would contribute to improving the chances of addressing these challenges.

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58 Judgment of the Supreme Court in the constitutional appeal 5/59 BC c 14/6/2012 AD unpublished.

59 The Supreme Court - Criminal Cassation - Appeal No. 48 of Judicial Year 60, dated 2/5/2018.

Fortunately, there are signs of optimism in this goodness. On the one hand, the dialogue efforts led by the United Nations succeeded in reaching a political agreement that unified most of the state institutions, excluding the military ones, and established presidential and parliamentary elections at the end of this year (December 24, 2021). And if these elections are successful, there will be, for the first time in a long time, authorities whose legitimacy is not under question. On the other hand, the dialogue efforts reveal the growing conviction, at least declared, that the solution to the country's crisis can only be peaceful, and that the whole should be a part of it. This is not evidenced by the fact that the dialogue included representatives of the political spectrum, especially the supporters and opponents of the former regime, and that the unified executive authority that resulted from it included representatives of these colours of the spectrum. In such an environment, one hopes to use legislation to achieve transition without excluding, or intending to, anyone based on their political orientation.

But the good of the environment, though necessary for the good of the legislative process, is not enough. It is necessary because it creates the conditions for reforming the legislative process, and prevents, for example, the use of legislation as a tool for warfare, but it does not replace the structural challenges. To address this, a package of measures is required to suit each challenge. The challenge related to the absence of an appropriate vision for the transitional period, and the appropriate legislative policy it requires, requires measures, some of which are related to Parliament and others to the government. Annual legislative and medium-term legislative policy (4) that arranges, in order of priority, the necessary legislation for the transitional period and what responds to the immediate and vital needs of society.

As for the challenge of legality, the election of legislative and executive bodies, as it is hoped, is enough to remove doubts about the legitimacy of the legislator, but it is not sufficient to remove those related to the legality of drafting the legislation. To remedy this, measures are required to regulate the making of legislation. Parliament must put in place a law or at least an internal system that addresses at least the following aspects of legislation making: standards of quality of legislation, stages of the legislative process,

participation, duty to prepare explanatory notes for legislation, duty to keep records of meetings of organs Legislation, the duty to publish the minutes of Parliament sessions, publication, and the duty to evaluate laws. The government should ensure that the Official Gazette is published on a regular basis, both in paper and electronically, so that one can know what legislation is being issued.

As for the challenge of legitimacy, overcoming it requires taking measures that enhance participation, inclusiveness and transparency. Parliament needs to be more open to participation, more inclusive, and more representative in the process of making legislation. This may require Parliament to include in the law or bylaws related to the legislative process a text regulating the participation of civil society institutions in it, and to establish a support office composed of legislative experts (who are not members of Parliament) to provide advice on draft legislation in particular, and the legislative process in general. While international technical assistance may be justified, or even favoured, it should be based on an awareness of local needs and national knowledge that already exists.

But the use of national or foreign expertise should not be at the expense of the role that the specialized national bodies should play. Accordingly, a task such as drafting legislation, or reviewing what was drafted of it, should be entrusted to the administration of law, which is supposed to be formed by professional drafters of legislation. Yes, it may be said that this administration suffers from real problems that prevent it from performing its tasks as desired, but this objection, despite its merit, should not lead to addressing those problems rather than ignoring the administration. The lack of efficiency is treated by raising them by, for example, organizing on-the-job training courses. on legislative drafting. It is worth noting in this regard the experience of Rwanda in organizing intensive training on the legislative process, to which those involved in this process were assigned to the various state agencies[60]. In the future, it may be desirable to creat

60 Times Reporter. 2012. Law institute introduces course in legislative drafting. 4 September 2012. Available at: https://www.newtimes.co.rw/section/read/56977 . Last accessed: 13 June 2021.

an independent constitutional body that specializes in drafting legislation, obligating state institutions to request their advisory opinion on draft legislation, and justifying not adopting this opinion.

If these measures are to address the challenge of prior oversight of the legislative process, they should be combined with others that provide ex post oversight. Oversight of the constitutionality of legislation comes at the forefront of this. While the law actually entrusts this task to the Supreme Court, this court has refrained from its exercise due to considerations arising from the surrounding environment, as previously stated. And if the hoped-for environment will contribute to urging the court to exercise its oversight mission, there is a need to review the restrictions that have diminished the independence of the judiciary, such as those related to the decision of the Chief Justice of the Supreme Court to preside over the Supreme Judicial Council, who is appointed by the Legislative Council[61]. In this regard, it seems desirable for the Constituent Assembly to include in the Constitution a Constitutional Court with jurisdiction, not only for judicial oversight on the constitutionality of laws, regulations of the House of Representatives and the Senate, and constitutional amendments, but also for reviewing laws deemed unconstitutional before reissuing them. It is also worth noting that the Constitutional Court will be competent to hear cases related to the legislative authority's failure to fulfill its constitutional obligations. Thus, it is possible, for example, to sue the legislature for failing to enact legislation necessary to put a constitutional provision into practice. This is a text that will reduce cases of non-application. As previously stated, one of the most important reasons for the failure of implementation is the failure to take necessary measures such as issuing an executive regulation, forming a committee, or monitoring a budget, and this may reveal the absence of political will. There is no doubt that the ability to sue the legislature if it fails to activate constitutional texts such as those related to the promotion and protection of human rights will contribute to strengthening the implementation of the constitution. If this is coupled with a sustainable end to the political divide with the election of new legislative and executive

61 Marwan Tashani. The previous source.

bodies, the chances of implementing the legislation in general will be enhanced. This gives rise to optimism that the future of the legislative process in Libya may be better than its present.

Challenges to the Right to a Fair Trial in Libya

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Abstract

This paper examines the challenges facing the right to a fair trial in Libya. By reviewing the constitutional guarantees of citizens' right to resort to their natural judge and equality before the law. The paper also sheds light on the obstacles facing the independence of the judiciary in the absence of security and the exposure of judges and courts to frequent attacks, in addition to the unsafe working environment for lawyers. These violations ultimately lead to obstruction of citizens' ability to access justice, victims' mistrust in the judicial system and fear of persecution by armed groups. Most important, the collapse of confidence in the effectiveness of the judicial system in a lawless state as a result of persistent conflicts, rampant impunity and the use of torture and cruel treatment. The paper provides a quick review of the conditions of pretrial detention, the Code of Criminal Procedure, and developments in the military judiciary in recent years, including the possibility of trying civilians before military courts, and the absence of legal protection for victims and witnesses. Moreover, the paper reveals the deplorable conditions of places of detention in the absence of judicial oversight and their de facto control by armed groups. Hence, the paper concludes with a list of practical and legislative recommendations addressed to the Libyan authorities with the aim of protecting the right to a fair trial in Libya.

Constitutional regulation of the right to a fair trial

The Constitutional Declaration of 2011 devoted the chapter on judicial guarantees to establish the right to a fair trial through a set of principles, when it affirmed the presumption of innocence and the pledge of defense guarantees. It was also concerned with stipulating the independence of the judiciary as a primary premise for the protection of rights and freedoms, including a fair trial. This is in addition to prohibiting the establishment of exceptional courts, establishing the right of citizens to resort to their

natural judge, in addition to equality before the law[1] and the protection of human rights and fundamental freedoms[2], including the sanctity of private life[3]. However, it neglected some other necessary guarantees, which will be addressed when dealing with the draft constitution. This is due to the fact that the constitutional declaration is of a temporary nature to meet emergency circumstances, and therefore includes the issues necessary to manage the country's affairs until a constitution is drawn up that regulates the state's powers, rights, and freedoms. In this context, it is worth noting Libya's ratification of the International Covenant on Civil and Political Rights[4], the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[5], the Convention on the Rights of the Child[6], the Convention on the Elimination of All Forms of Discrimination against Women[7], and the International Convention on the Elimination of All Forms of Racial Discrimination[8], the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[9], and the Convention on the Rights of Persons with Disabilities[10], which, in theory, would complement the shortcomings overlooked by the Constitutional Declaration.

As for the right to a fair trial in the draft constitution[11], the draft devotes nearly twenty articles to establish its principles. In addition to what was decided by the Constitutional Declaration, in order to avoid repetition unless necessary, the draft put in place many important guarantees, foremost among which comes the report on the transcendence of international

1 Article (6) of the Constitutional Declaration.

2 Article (7) of the Constitutional Declaration.

3 Article (12, 13) of the Constitutional Declaration.

4 Ratified on May 15, 1970.

5 Ratified on May 16, 1989.

6 Ratified on April 15, 1993.

7 Ratified on May 16, 1989.

8 Ratified on July 3, 1968.

9 Ratified on June 18, 2004.

10 Ratified on February 13, 2018.

11 Adopted by the General Meeting of the Constituent Assembly No. (74) held in Al-Bayda, on July 29, 2017, which was not put for voting because it is a matter of dispute.

treaties and agreements over national law, ruling out their precedence over the Constitution[12]. However, this guarantee is fraught with risks considering Article (6) of the Constitution draft, which is immune from amendment according to the draft[13], which considered Islamic Sharia the source of legislation. This could lead to the possibility of disrupting human rights agreements if they clash with the provisions of Islamic Sharia, which is inconsistent with the goal of joining these treaties[14].

As for the other problem, it is that the article's inability is coupled with a condition that emptied the principle of transcendence of international agreements of its content. The article stipulates that international treaties must be respected except in what "contradicts the provisions of the constitution". This is a vague provision that would open the way for reversing the application of international treaties previously ratified by Libya. Despite the conditions that states must abide by under the general rules contained in the 1969 Vienna Convention on the Law of Treaties in Article 46, which stipulates that a state may not invoke its national law in order to evade its obligations arising under an international treaty[15].

In addition, the draft puts an obligation on the state to protect human dignity, prevent forms of violence, and combat torture and cruel and inhuman treatment, and considers them crimes with no statute of limitations[16]. In addition to ensuring freedom of movement and preventing a ban on travel except by a reasoned judicial order and for a specified period[17]. The draft

12 Article (13) of the Constitutional Declaration.

13 Article (195) of the draft constitution.

14 Article 27 of the Vienna Convention on the Law of Treaties (1969) states that "a party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform the treaty." In this context, the Human Rights Committee notes that the State party should fully respect all its obligations under the Covenant and not invoke the provisions of its domestic rules as justification for its breach of its obligations under the Covenant. (CCPR/C/IRN/CO/3), para. 5.

15 Review: Hala al-Atrash, Rights and Freedoms in the Constitution, p. 182, published in: A Calibration of the Libyan Constitution Project, Center for Law and Society Studies, University of Benghazi.

16 Article (34) of the draft constitution.

17 Article (44) of the draft constitution.

also prohibits immunizing legislation or administrative decisions from judicial oversight and not excluding any behavior harmful to rights and freedoms from the jurisdiction of the judiciary[18].

Article (63) of the draft also established some procedural guarantees in criminal articles that are summarized in respect of human dignity, obligating the competent authorities to reason their orders that violate rights and freedoms, in addition to prohibiting detention in places other than those designated for this and for a legally specified period, while giving the detainees sufficient time and facilities to prepare their defense, informing them of the reason for their arrest and of their right not to be compelled to present a defense against themselves, and to seek the assistance of an interpreter and lawyer of their choice. It also placed an obligation on the state to guarantee legal aid.

In addition, the draft forbade resorting to deprivation of liberty except in the case of insufficient measures and procedures or alternative penalties, with the legislative authority's obligation to regulate cases of compensation for deprivation of liberty in the event of failure of the case or a judgment of acquittal[19]. The importance of this guarantee appears in light of the problems contained in the texts regulating pretrial detention, as will be mentioned later.

The draft also included many texts that guarantee the independence of the judiciary and judges, although there are some drawbacks. Article (118) stipulates that "the judiciary is independent, and its function is to administer justice, ensure the rule of law, and protect rights and freedoms. Judges are independent in the performance of their functions, and are not subject to anything but the law, and are bound by the principles of integrity and impartiality. Interfering in the work of the judiciary is a crime without statute of limitations". In this context, we fear the expansion of the criminalization of interference in the work of the judiciary to include criticism directed at it by citizens, which constitutes infringements on freedom of opinion and expression.

18 Article (64) of the draft constitution.

19 Article (64) of the draft constitution.

To ensure financial and administrative independence, Article (124) stipulates that "the judiciary shall have a council called the Supreme Judicial Council, which guarantees its good conduct, independence, integrity, effectiveness, and development, and enjoys legal personality, administrative and financial independence, and prepares its draft budget, for discussion before the legislative authority". The draft also made the Supreme Judicial Council important in all matters of the judiciary, as it is competent to appoint and promote members of the judiciary, transferring them, disciplining them, and regulating their functional affairs. It is also concerned with establishing courts and prosecution offices, expressing opinion on draft laws related to the judiciary and submitting proposals thereon, proposing reorganizing the existing judicial bodies or establishing other bodies, merging or abolishing them[20].

In order to guarantee the immunity and security of tenure of members of judicial bodies, Article (120) stipulates that "A member of the judiciary shall not be dismissed, discharged, transferred from work, or disciplinary action, except by virtue of a reasoned decision from the Supreme Judicial Council in accordance with the guarantees and cases specified by law. Other than the case of flagrante delicto, it is not permissible to take measures that violate the rights and liberties in confronting him without the permission of the Supreme Judicial Council".

The draft constitution shall determine the principle of litigation at two levels in all cases, except for violations and cases of minor importance, which were left to be defined by the law[21]. And also, to decide the principle of public hearings except in juvenile courts or in order to observe public order and morals, and in all cases the pronouncement of judgments shall be public[22]. To affirm the mandatory enforcement of judicial rulings and their implementation, Article (134) states that "judicial rulings are binding, and it is prohibited to refrain from implementing them, or to suspend the enforceable from them without a legal justification."

20 Article (125) of the draft constitution.

21 Article (122) of the draft constitution.

22 Article (121) of the draft constitution.

Regarding the military judiciary, Article (133) of the draft stipulates that "the military judiciary is a judiciary competent to consider military crimes committed by military personnel...." This article is criticised for not excluding human rights violations committed by the military from this mandate. In its 1998 observation on Ecuador, the Human Rights Committee welcomed the notion that the jurisdiction of military courts is limited to members of the armed forces in the exercise of their official duties, and that these courts have no authority over civilians, and that cases of human rights violations committed by members of the military or security forces fall under the jurisdiction of civilian courts[23].

Finally, the draft put in place some important guarantees during the application of the state of emergency or martial law when it prohibited the imposition of restrictions on basic rights and freedoms except to the extent necessary to maintain security and public safety, the subjection of all decisions and actions to judicial oversight, the prohibition of trying civilians before military courts, and the state's obligation to respect the principle of legality (Article 189). Not to mention the prohibition of amending texts established for rights and freedoms except for the purpose of amending them (Article 195).

Independence of the judiciary

The requirement for the jurisdiction, independence and impartiality of the judiciary within the meaning of Article 14, paragraph 1, of the International Covenant on Civil and Political Rights is an absolute right that is not subject to any exception. The requirement of independence of the judiciary refers, in particular, to the procedures for appointing judges, their qualifications and guarantees of their security of tenure until they reach the mandatory retirement age or, if there is a specific term of office, the expiry of their term of office, the conditions governing promotion, transfer, suspension and suspension of the exercise of employment, and the effective independence of the judiciary on political interference by the executive and legislative branches. If states want to ensure the independence

23 CCPR/C/79/Add.92 para. 7.

of the judiciary and protect judges from the subjection of their decisions to any political influence, they should take specific measures through the constitution or adopt laws that clearly define procedures and objective criteria for appointing members of the judiciary, their remuneration, job stability, promotions, suspension and dismissal, and specifying disciplinary sanctions. that are taken against them. Any situation in which a clear distinction is not made between the functions and competencies of the judiciary and the executive and that the executive can control or direct the judiciary is inconsistent with the principle of judicial independence. It is essential to protect judges from conflicts of interest and intimidation. Preserving the independence of judges requires the proper maintenance of their status by law, including their tenure, independence, security, adequacy of wages, conditions of service, pensions, and retirement age[24].

Since 2011, many amendments have been made to the Judicial System Law 6/2006 that would give a character of independence to the judicial institution, the first of which was under Law 4/2011, which was replaced by the Supreme Council of Judicial Bodies - which was headed by the Minister of Justice and includes in its membership the heads of affiliated departments (inspection[25], cases[26], lawyers[27], law[28]) which allowed the dominance of

24 CCPR/C/79/Add.92 para. 19.

25 It is a judicial body and is specialized in inspecting all members of judicial bodies to follow up their work, identify their keenness to perform the duties of their jobs, achieve performance rates established under the provisions of this regulation, investigate complaints lodged against them, file disciplinary cases against them and initiate them before the Supreme Council of Judicial Bodies. It conducts an urgent or sudden inspection of their work and behavior, in addition to the other competencies included in the decision of the Supreme Council of Judicial Bodies No. (4) of 2008 regarding the Judicial Inspection Regulations.

26 Established by Law No. (87) of 1971, it is considered one of the judicial bodies and acts on behalf of the government, public bodies and institutions in the cases filed against them or against them before the courts of different types and degrees and with other bodies that the law gives them judicial jurisdiction, in addition to the other competencies stipulated by the law.

27 Established by Law No. (4) of 1981, it is considered one of the judicial bodies, and it guides and educates citizens about the various provisions of laws and regulations related to their rights, duties and interests, and assists citizens in ending their disputes by reconciliation, in addition to other competencies stipulated by the law.

28 Established by Law No. (6) of 1992 and is considered one of the judicial bodies. It is concerned

the executive authority in the work of the judiciary and the Supreme Judicial Council. Then this dominance was abolished by re-forming it to become the president of the Supreme Court as president, and the attorney general as his deputy, with the membership of the heads of the courts of appeal, In order to achieve part of its independence, but this amendment did not prove long, as the General National Congress issued Law 14/2013 to restore the situation to what it was before Law 4, with the exception of excluding the Minister of Justice from the composition of the Council, when it stipulated that it be constituted by:

1. Adviser. From the Supreme Court, elected by the General Assembly of the Supreme Court by secret ballot.

2. Head of the Judicial Bodies Inspection Department.

3. Counsellor for each court of appeal, elected by the General Assembly by secret ballot.

4. Attorney General.

5. One member of each of the following: administration of cases, the Department of People's Advocacy and the Department of Law, These members rank should not be lower than the grade modified for that of an advisor to the Court of Appeal, who is elected by members of his rank from among the members of the department by secret ballot.

The conditions are also set for selecting the council's president and its members, which are summed up in not holding the position of "People's Conference Secretary," a member of its secretariat, or a member of a popular committee at all levels; He should not have worked as a member of the court or the competent prosecution in cases arising from the February 17 revolution, or in the state security court or prosecution, or in the specialized court or prosecution to which the cases were referred at the discretion of the Attorney General, the People's Court, or the People's Prosecution Office

with reviewing draft laws referred to it by public authorities, interpreting laws, regulations and decisions, reviewing and drafting draft treaties and agreements, in addition to other competencies stipulated by law.

the Permanent Revolutionary Court, the Revolution Security Prosecution, the head of one of the purification committees, or a collaborator with one of the security agencies in the previous regime; not have been subjected to a disciplinary judgment; You may not have obtained a final grade of less than above average.

The first article of Law 14/2013 also included the allocation of a budget independent of the state's general budget; This is in order to run the work of the Supreme Judicial Council in a way that achieves the financial independence of the judicial institution. This article gives the Supreme Judicial Council a degree of authority over the expenditure of its own budget, but the Supreme Judicial Council is supposed to be empowered to proactively participate in budget discussions of the entire judiciary. The Minister of Justice retains the authority to supervise the budget of the judiciary, including with regard to the salaries of judges, training and the Higher Judicial Institute[29].

Unsafe environment for judicial work

Whenever there is an environment of fear and intimidation, it often paralyzes the criminal justice system, resulting in a failure to investigate and prosecute crimes. In such a scenario, although the justice system is adequate, it does not function due to the fear of reprisals. It is the responsibility of each state to protect judicial actors from attacks, intimidation, threats, reprisals, and retaliation. There is a need for States to understand the root causes of attacks, threats and intimidation, to identify the actors who are making these threats, to thoroughly investigate all allegations and complaints, and to ensure that there is accountability if complaints are substantiated[30].

During the transitional period, many members of the judiciary were subjected to violent attacks due to the state of lawlessness and the spread of armed groups and militias, which amounted to killing, kidnapping and arrest. These violations against members of the judiciary began in 2013, when a member of the North Benghazi prosecutor was arrested, detained for

29 International Commission of Jurists, Challenges to the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality, p. 32.

30 A/65/274, para. 26.

five days, and beaten; The assassination of Muhammad Najib Huwaidi, the judge of the Jabal Al-Akhdar Court of Appeal, as soon as he left his office at the Court of Appeal in Derna; The assassination of the Attorney General of the Jabal Al-Akhdar Court of Appeal, Muhammad Khalifa Al-Naas, by an explosive device planted under his car in the city of Derna[31]. During 2014, the former attorney general and advisor to the Supreme Court, Abdelaziz Al-Hasadi, was shot dead; Miloud Ammar Al-Rajhi, a judge in the South Benghazi Court of First Instance, was assassinated with an explosive device; Attempted assassination of Counselor Tawfiq Al-Hassi, President of the Ajdabiya Court, and Judge Hilal Boufares, in addition to the kidnapping of the Assistant Public Prosecutor in southern Benghazi, Abdel Nasser Al-Jrushi, by an armed group[32]. In 2015, Counsellor Muhammad Salem al-Namli was assassinated near the city of Sirte, and the Public Prosecution Prosecutor in southern Tripoli, Talib Hussein Ajaj, was kidnapped by an unknown group[33]. And in 2016, the head of the North Tripoli Court, Counselor Mahmoud Abu Amid, was kidnapped by an armed group. In 2017, three cases of kidnapping were recorded during the months of February and March. The Public Prosecutor of Al-Zawiya city, Odman Al-Ajmi, was kidnapped by an armed group against the background of an ongoing criminal case; The judge of the Tobruk Court of First Instance, Nasser Al-Darsi, by the Anti-Terrorism Department at the Umm Al-Razm Gate, and the Buriqa Prosecutor Salem Al-Mashri by a military group[34].

This is in addition to the targeting of some judicial headquarters, for example, the targeting of the Court of First Instance in the city of Derna with explosive devices by an armed group, in 2013, after a group of judges demanded that the courts return to work; Ajdabiya Court of First Instance was targeted with explosive devices during 2014; bombing of Tarhuna court in early 2016; ISIS carried out a suicide attack inside the court complex in the city of Misurata during October 2017.

31 Review: Marwan Tashani, The Libyan Judiciary: An Authority that Works from the Heart of the Conflict, p. 124, published in: A democracy that has lost its way, Cairo Institute for Human Rights Studies.

32 Marwan Tashani, Ibid.

33 Marwan Tashani, Ibid.

34 Marwan Tashani, Ibid.

In view of the heavy blows to the members of the judiciary and its headquarters, especially after the attacks on the Court of Appeal in the Jabal Al-Akhdar region and the Office of the Public Prosecutor in Benghazi, a number of senior judges threatened to suspend the work of the courts if they did not have security guarantees[35]. From January 15 to May 5, 2020, Libyan courts only heard civil and personal status cases. Criminal cases were adjourned because prosecutors failed to investigate or were unable to do so due to fear of reprisals from armed groups. Following the declaration of a state of emergency due to Covid-19, on March 14, 2020, the Supreme Judicial Council issued a decision the following day to postpone the procedures for civil and criminal cases until the end of May 2020, with the possibility of further delay. This decision entails imposing restrictions on attendance at court proceedings, including the appearance of defendants in criminal cases[36].

This environment also has repercussions for lawyers and police officers who are responsible for accepting reports of crimes committed. In an interview with a female lawyer[37] from the city of Tripoli, she decided that she would prefer not to act on behalf of victims who had been abused by armed groups or militias for fear of being threatened or being harmed. She gave us an example of this, that she was asked to defend a person kidnapped by the deterrence (Rad'e) forces. A judicial decision was issued to release him, but it was not implemented. However, she refused to file a complaint with the Public Prosecution, given that the group involved in the violation is the protector of the Public Prosecutor. This is in addition to being subjected to a humiliating treatment within the Tripoli Prosecution by militias responsible for protection, and it was not possible to file a complaint in order to preserve her safety.

In another interview with a lawyer[38] from the city of Sabha, he confirmed the difficulty of working in criminal cases because of the victims' refusal to cooperate and accuse perpetrators due to lack of confidence in the judicial

35 S/2013/104, para. 26.

36 S/2020/360

37 She preferred not to give her name for fear of persecution and threats.

38 He preferred not to give his name for fear of persecution and threats.

system and fear of persecution by armed groups. This is in addition to their conviction of the limited role and effectiveness of lawyers in a state where the law is absent due to the ongoing conflicts in Libya.

In this context, it is worth noting the assassination of a prominent human rights lawyer and political activist, Abd al-Salam al-Mismari, by unknown persons. Al-Mismari's assassination comes days after he appeared on a television channel on July 24 and talked about extrajudicial killings, the latest of which was the assassination of Major General Abdel Fattah Younis, the commander of the Libyan opposition army, who was assassinated in July 2011. The television channel criticized the Muslim Brotherhood and considered it one of those responsible for spreading chaos in Libya, and he was also known for his criticism of political Islam groups in the media or through his accounts on social networks[39].

Pre-trial detention

Pre-trial detention is one of the most dangerous measures taken by the investigative authority - the Public Prosecution or the investigative judge - in confronting the accused by isolating him from the outside world in a way that affects personal freedoms, foremost of which is the right to freedom of movement. Therefore, the law, when regulating pretrial detention, must consider that it is an exceptional measure from the "principle of the presumption of innocence" so that it does not become a punishment or a measure similar to administrative detention. This is because pretrial detention has an notorious past. It has been misused in many countries, especially in authoritarian regimes in which the authority excels by virtue of its political system. According to this procedure, the accused is placed in prison during all or part of the investigation period and exposed to a violation of his human dignity, in contrast to the condition he enjoyed while

39 The Arab Network for Human Rights Information, The Arab Network condemns the assassination of prominent lawyer and dissident Abdel Salam Al-Mismari in Libya, July 30, 2013.

he was at large, and that is due to the severe harm and violent shock that occurs to the accused, affecting his person, honor, reputation, family and interests; This inflicts severe damages that are impossible to compensate[40].

Looking at the texts regulating pretrial detention in the Code of Criminal Procedure, it is clear that they did not achieve a balance between rights and freedoms and the requirements of achieving justice for several reasons, foremost among which is the failure to set a maximum time limit for pretrial detention to allow its perpetuation and the abusive use of it. Where the law permitted the Court of First Instance to extend pretrial detention, at the request of the investigating judge, for successive periods, each of which does not exceed forty-five days, until the end of the investigation[41]. The Attorney General is also authorized, if the investigation was conducted with the knowledge of the Public Prosecution, to request an extension from the aforementioned court if the period of imprisonment exceeds ninety days, if the circumstances of the investigation necessitate that[42]. This deprives pretrial detention from its exceptional nature and makes it easier to use it as a punishment, or at least in the form of legal detention.

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40 Dr. Ahmed Fathi Sorour, Constitutional Criminal Law, Dar Al-Shorouk, 2006 edition, pg. 483.

41 Article (123) of the Code of Criminal Procedure states that "if the investigative judge decides to extend the pretrial detention in excess of what was decided in the previous article, before the expiry of the aforementioned period, the papers must be presented to one of the circuits of the Court of First Instance composed of three judges to issue its order as it sees fit after hearing the statements of The Public Prosecution Office and the accused, and the aforementioned circuit may extend the detention for successive periods, each of which does not exceed forty-five days, until the investigation is completed.

42 Article (177) of the Code of Criminal Procedure states that "if the investigation is not completed after the expiry of the period of pre-trial detention mentioned in the previous article, the Public Prosecution must submit the papers to one of the circuits of the Court of First Instance with an appellate panel to issue an order to release the accused after hearing the statements of the Public Prosecution and the accused or Extension of detention for a period or successive periods, each of which does not exceed thirty days and does not exceed in total ninety days. However, the matter must be submitted to the Public Prosecutor or his authorized representative to request the aforementioned body to increase the periods of pretrial detention beyond the limit determined in the previous paragraph if the circumstances of the investigation or act as necessary."

In order to give priority to the requirements of justice without considering the rights of the accused, the law permitted pretrial detention in felonies and misdemeanours punishable by more than 3 months[43], as it is a serious misdemeanour without applying it to minor violations and misdemeanours. This limitation was consistent with the principle of limiting pretrial detention to serious misdemeanours, when penal legislation was fair in criminalizing. However, this principle was violated after these legislations witnessed an exaggeration in criminalization in a way that only a small number of misdemeanours in the Libyan legal system have the punishment for which the prescribed penalty does not exceed three months, and pretrial detention is not permissible accordingly.

The law also neglected the right of the accused to challenge the pre-trial detention order and restricted it to the Public Prosecution if a decision was issued by the competent judge[44], in violation of Libya's international obligations under the International Covenant on Civil and Political Rights, which affirmed that "every person deprived of his liberty through arrest or detention has the right to refer to a court In order for this court to rule without delay on the lawfulness of his detention, and to order his release if the detention was unlawful[45]."

In 2013, the General National Congress issued Law No. 3 amending some provisions of the Code of Criminal Procedure, which is the competence of the Public Prosecution to investigate crimes harmful to the state entity and its internal security contained in Part One of Book Two of the Penal Code[46]. The amendments also authorized the detention of the accused in these crimes by the executive authorities for a maximum period of seven days starting from the date of the arrest, before presenting the accused to the Public Prosecution, which has the right to interrogate them within three days from the date of the referral[47], which means that the accused remains in detention for a period of up to nine days prior to conducting the

43 Article (115) of the Code of Criminal Procedure.

44 Article (176) of the Code of Criminal Procedure.

45 Article (9), paragraph 4 of the Covenant.

46 Article (187) bis (a) of the Code of Criminal Procedure.

47 Article (187) bis (b) of the Code of Criminal Procedure.

investigation, which is inconsistent with Article 9 (3) of the International Covenant on Civil and Political Rights, which requires that the person of the accused be brought before a judge "promptly," which means that the accused must be brought before a judicial authority within 48 hours of arrest[48], and the amendments also raised the power of the Public Prosecution in pretrial detention from six days[49] to two weeks, and then if an extension of imprisonment is seen, the papers must be presented to the competent judge to issue an order either to release the accused or to extend his detention for a period or successive periods, each of which does not exceed forty-five days until the end of the sentence Investigation. This confirms the direction of the Libyan legislature's will towards expanding the use of pretrial detention and not deciding alternatives to it.

In this context, the Security Council report indicates that approximately 8,800 people, 60 per cent of whom are in pretrial detention, are held in 28 official prisons nominally under the supervision of the Ministry of Justice. In all, 278 women, including 184 foreign nationals, and 109 children were in prison or in the custody of the judicial police or in both. This is in addition to thousands of others held in facilities nominally under the Ministry of Interior or the Ministry of Defense, as well as in facilities directly run by armed groups[50].

Incommunicado detention

The Code of Criminal Procedure allows both the Public Prosecution and the investigative judge to order the isolation of a pretrial prisoner from other prisoners and to deny them visits or contact with family and relatives, without prejudice to his right to contact his lawyer[51]. This is objectionable for not setting a maximum time limit for placing pretrial detainees in solitary confinement, in violation of Article (7) of the International Covenant on Civil and Political Rights, which prohibits torture and other cruel or

48 Working Group on Arbitrary Detention: Preliminary findings of the Working Group's visit to Qatar (3-14 November 2019).

49 Article (175) of the Code of Criminal Procedure.

50 S/2020/360 Article 44.

51 Article (121) of the Code of Criminal Procedure.

inhuman treatment. In this context, the General Assembly indicated that in no case should restrictions or disciplinary sanctions amount to torture, by prohibiting in particular indefinite or prolonged solitary confinement[52].

This is in addition to the law's failure to observe the effects of this crude measure, as the European Commission of Human Rights has recognized that "complete sensory isolation, accompanied by social isolation, is capable of destroying the human personality, and constitutes a kind of cruel treatment that cannot be justified by the requirements of security or any other reason[53]." That's because solitary confinement has serious and adverse health effects, including insomnia, confusion, hallucinations and mental illness. Also, the main negative factor resulting from solitary confinement is the reduction of meaningful social and psychological contact to an absolute minimum, which is not enough for most detainees to remain mentally fit. Moreover, the effects of solitary confinement on detainees under investigation may be worse than on other detainees subject to isolation, given the expected uncertainty regarding the length of the detention period, and the potential for it to be used to extract information or confessions[54].

Military Judiciary

We have previously referred to the report of the Constitutional Declaration guaranteeing recourse to the natural judge and prohibiting the establishment of exceptional courts, including military courts, due to their lack of the necessary independence and impartiality due to their subordination to one of the branches of the executive authority represented by the Ministry of Defense, where Law 1/1999 established the "General Authority for the Judiciary of The armed people" and specified its subordination to the Interim Committee for Defense[55], in addition to the competence of the Secretary of the Committee to form the Supreme Court[56] and the permanent courts

52 A/RES/70/175, Rule 43, p. 23.

53 Ilasco et al. v. Moldova and Russia, Case No. 48787/99, European Court of Human Rights, (2006), para. 432, referenced in A/66/268, para. 55.

54 A/63/175, para. 82.

55 Article (1) of the Code of Criminal Procedure in the Armed People.

56 Article (37) of the Code of Criminal Procedure in the Armed People.

of the armed people[57]. In confirmation of that subordination, the heads and members of these courts shall take the legal oath before the Chief of the General Staff of the Army[58]. Therefore, the Working Group on Arbitrary Detention considers that, whatever charges civilians face, they should not be tried before military courts because these courts cannot be considered independent and impartial courts to try civilians[59].

In addition, the lack of appropriate skills and qualifications for military judges to assume judicial positions, which makes them lose the ability to perform their functions, and to confirm this, the law did not require all judges of the Supreme Court and permanent courts to obtain a degree in law, as it was limited to one of five judges (members of the Supreme Court) and one judge from among three judges (members of the permanent courts) on this leave. The law also permitted the assignment of a judge instead of a member authorized by law, thus ensuring the military majority over the formation of these courts.

The year 2013 witnessed a remarkable development with regard to the trial of civilians before the military judiciary, when the General Conference issued Law No. 11 amending the Military Penalties and Procedures Laws, which limited the jurisdiction of the military judiciary to trying regular soldiers and regular military prisoners, and thus not extending its jurisdiction to try civilians. It is calculated for this law to oblige the military judiciary to refer cases, whether in the investigation or trial stage, to the ordinary judiciary when the defendants are not military, but this law did not prove long, as the House of Representatives issued Law 4/2017 amending the laws of penalties and military procedures, which expanded In the personal jurisdiction of the military judiciary to include, in addition to the military, civilians working in the army in a state of emergency, armed militias, and perpetrators of terrorist crimes, regardless of who committed them.

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57 Article (38) of the Code of Criminal Procedure in the Armed People.

58 Article (5/14) of Law No. (11) of 2012 establishing some provisions regarding the powers of the commanding levels of the Libyan army.

59 A/HRC/WGAD/2014/10 Article 18.

In this context, it is worth noting the expansion of Terrorism Law 3/2014 in the definition of a terrorist act, as it included the criminalization of acts that do not cause serious bodily injury to any person or lead to his death, in accordance with Security Council Resolution 1566 (2004)(60). Among the terrorist acts included in Article (2) of the law is "every use of force, violence, threat or intimidation with the aim of seriously disturbing public order or endangering the safety, interests or security of society, whenever such use would harm persons, spread terror among them, or endanger them." their lives, freedoms, public rights, or their security at risk, or harm to the environment, natural materials, antiquities, funds, buildings, public or private property, or their exploitation or appropriation, or the prevention or obstruction of public authorities, government interests, local units, diplomatic and consular missions or organizations And regional and international bodies in Libya from practicing all or some aspects of their activities, or preventing or obstructing the establishment of institutions, houses of worship, or institutions and institutes of knowledge in their work, or obstructing the application of any of the provisions of the Constitution or laws and regulations, as well as any behavior that would harm communications, information systems, or financial systems. banking, the national economy, the energy stock, the security stock of goods, food and water, or their safety. When the definition includes "damaging the environment, and preventing or obstructing public authorities, government interests, or local units from exercising their activities," it is allowed to charge protesters in front of government facilities or who are striking inside them, for terrorism, and thus this definition allows for the trial of peaceful demonstrators before military courts. . In interpretation of this, the Terrorism Law punishes with imprisonment for a period of no less than five years and not more than ten

60 It is mentioned that criminal acts, including those committed against civilians with the intent to kill or inflict serious bodily injury, or take hostages, with the aim of spreading a state of terror among the general public or a group of persons or specific persons, or to intimidate a group of the population, or to compel a government or an international organization to do or not do an act, which constitute crimes within the scope of international conventions and protocols related to terrorism as defined therein, and which cannot under any circumstances be justified by any considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature Another nature of this kind, and all states are called upon to prevent these acts and, in the event of failure to prevent them, to ensure that they are punished with penalties commensurate with their grave nature. S/RES/1566.

years "Whoever advertises, promotes, or misleads to carry out a terrorist act, whether verbally, in writing, or by any means of broadcasting or publishing, or by messages or websites(61). This text violates international standards for freedom of expression, including the circulation of information, as it punishes the promotion and dissemination of ideas without fulfilling the conditions for imminent violence, the likelihood of its occurrence, or the direct and immediate relationship between promotion and the occurrence of violence.Then the law constitutes a threat to freedom of expression. Opposition politicians, their publication and broadcasting, and penalizing opinion-holders, politicians, journalists, media professionals, or activists on the Internet or social networking sites if they promote ideas that the authorities may consider as an invitation to violence in general. Exercising these rights is fraught with the risk of long prison terms for citizens who are not associated with or support terrorist groups. The aim behind the law is to terrorize and stifle all forms of peaceful political opposition and all independent voices, including human rights defenders. Further restricting freedoms and claiming to combat terrorism, the Presidential Council of the government issued a decision to establish a deterrent device to combat organized crime and terrorism(62), which includes militias involved in violations against civilians, granting them the powers of an investigative judge and a district judge, when he designated them to eavesdrop on phone conversations and track social media sites that Information about its users that includes them in the circle of suspicion of compromising the security of the country and tampering with social peace and national security and exposing it to danger(63), in violation of Articles (79(64), 180(65)) of the Code of Criminal Procedure, where they established procedures and controls for monitoring telephone conversations and correspondence,

61 Article 15 of the Terrorism Act.

62 Resolution No. 555 of 2018, issued on July 7, 2018.

63 Article (4) of Resolution 555 of 2018.

64 Article (79) states that "the investigative judge may seize all letters, letters, newspapers, publications, and parcels at post offices, and at telegraph offices all telegrams. He may also monitor telephone conversations whenever this helps in revealing the truth."

65 Article (180) states that, "The Public Prosecution may not, in the investigation conducted by it, search non-accused, or the homes of non-accused, or seize letters and messages in the case referred to in Article 79, except upon the permission of the summary judge."

which is the jurisdiction of the judiciary as it has the jurisdiction to do so. This is in addition to violating the Constitutional Declaration, which elevated the freedom of telephone communication, correspondence and other means of communication and elevated them to the ranks of public rights and freedoms, making them, as one of the manifestations of personal freedom, a constitutional right established for the individual. The right is an excuse to storm or trespass on it. He also surrounded this freedom with a strong fence of guarantees that guarantee the right of its care and the full exercise of it to the fullest by prohibiting placing restrictions on it except in the narrowest extent and by way of exception. The order is issued by the investigating judge or the summary judge if the Public Prosecution begins the investigation with its knowledge(66).

Returning to Law 4/2017, it is clear that the military judiciary has jurisdiction to try civilians for crimes against equipment, missions, weapons, ammunition, documents and secrets of the armed forces, and crimes that occur inside camps, barracks, or places occupied by military personnel for the benefit of the armed forces. It also obligated the ordinary courts to refer their cases to the military judiciary based on this amendment.

With respect to military courts, the right to appeal partial judgments issued by a unit commander in place of a judge does not apply, and the only avenue for review is through a higher-ranking commander in charge of modifying or reversing the sentence. In addition, judgments issued by the Military Circuit Courts or the Military Field Courts are not subject to appeal. Therefore, Libyan law does not comply with international law and international standards, which clearly provide for the review of judgments issued by military courts by a higher independent civilian court[(67)].

In this context, it is worth noting that military courts have convicted hundreds of civilians in eastern Libya in secret and grossly unfair military trials aimed at punishing actual or perceived opponents and critics of the

66 Al-Bayda Appeals Court, Judgment issued in Administrative Case No. 72 of 2018, session 15 April 2019, reversing Resolution No. 555 of 2018.

67 ICJ, Accountability for Serious Crimes Under International Law in Libya: An Evaluation of the Justice System, p. 101.

Libyan Arab Armed Forces and its armed groups, Amnesty International said today. At least 22 people were sentenced to death and hundreds more were imprisoned between 2018 and 2021. Many of the accused were subjected to torture and other ill-treatment while in pretrial detention(68).

The principle of litigation at two levels in felonies

The principle in the judgments that initially decide the substantive dispute is that they may be appealed, as considering the dispute at two levels is an essential guarantee for litigation that it may not be withheld from the litigants without an express text and on objective grounds, with the effect that deviation from them is not presumed, whether or not the appeal is considered on appeal. In judgments issued in the first instance, as an inevitable way to monitor their integrity and correct their distortions, or as a means of transferring the entire dispute, and all the elements it contains, to the Court of Appeal, to re-visit it, given that a single judgment in this dispute does not provide a sufficient guarantee that upholds justice. It ensures the effectiveness of its management in accordance with the levels that civilized countries have committed to(69). This is what Article 14, paragraph 5, of the International Covenant on Civil and Political Rights expresses when it states that "everyone who has been convicted of a crime has the right to have recourse, in accordance with the law, to a higher court in order to reconsider the decision of his conviction and the punishment imposed on him."

The right to have a conviction or sentence reviewed by a higher court, as set forth in Article 14, paragraph 5, imposes on the State party a duty to effectively review, on the basis of evidence and legal basis, the conviction and sentence to the extent that the proceedings permit due consideration in the nature of the lawsuit. A review that is limited to the legal or formal aspects of the conviction without regard to any other aspect is not sufficient under the Covenant. However, article 14, paragraph 5, does not require a full

68 Amnesty International, Libya: Military courts sentence hundreds of civilians in show trials marred by torture, 26 April 2021.

69 Egyptian Supreme Constitutional Court, Case No. 39 of 15 "constitutional" judicial year, dated February 4, 1995, Technical Office 6, Part 1, p. 511.

retrial as long as the judicial body undertaking the review is able to consider the factual dimensions of the case. Thus, for example, the provisions of the Covenant are not violated when a higher court considers allegations against a convicted person very carefully, examines the evidence presented during the trial and those referred to on the appeal, finding sufficient compelling evidence to justify a conviction in a particular case[70].

In this context, we support the Constituent Assembly for the Drafting of the Constitution in its approach towards approving the principle of litigation at two levels in criminal cases, hoping that it will be approved. This is because the appeal in cassation is permitted by law in final judgments for reasons that are all due to violation of the law or error in its application or interpretation. Hence, its reasons are specific legal reasons because it is of an exceptional nature, and does not result in a re-examination of the case, because the Court of Cassation is not a second or third degree of litigation, and the appeal before it is not considered an extension of the first litigation between the litigants, but by its nature it is a private litigation permitted by law in certain cases[71].

The role of the judiciary in exercising its control over places of detention

The Criminal Procedures Law was concerned with deciding judicial oversight on places of detention, when it gave prosecutors, supervisory judges, presidents and agents of the courts of first instance and appeal the ability to visit public prisons located in their area of jurisdiction to ascertain that no one was being held illegally and to order their release[72], in addition to the Law of Correction and Rehabilitation Institutions that specialized in The Public Prosecutor and members of the Public Prosecution Office may enter at any time to visit places of detention to verify the implementation of

70 CCPR/C/GC/32, para. 48.

71 Libyan Supreme Court, March 16, 1955, Vol. 1, p. 81, referenced in: Hedi Bouhamra, Al Mujer in the Libyan Criminal Procedure Code, 2018/2019, Tripoli International Scientific Library, second edition 2018, p. 343.

72 Article (32, 33) of the Code of Criminal Procedure.

court rulings and decisions and orders of the investigation authority and the absence of a detainee without a written order issued by a judicial authority, in addition to some other competencies stipulated in the aforementioned law[73]. Paper because armed groups and militias took control of places of detention after the outbreak of the fighting. According to Amnesty International, militias, armed groups and security forces continued to arbitrarily detain thousands of people without charge or trial, some for up to ten years; In western Libya, militias affiliated with the Government of National Accord—including the Special Deterrence Forces, the Bab Tajoura Brigade, Al-Nawasi, the Abu Salim Brigade, and Al-Zawiya, the First Division Support Force—continued to unlawfully detain dozens of people[74].

In view of the widespread phenomenon of arbitrary detention, the Presidential Council issued decrees 1301 and 1304, on September 16, 2018, related to the investigation of the conditions of detainees. Decree 1301 established a three-member committee, representing the Public Prosecution, the Supreme Judicial Council and the Ministry of Justice, to investigate the conditions of detainees in Maitika Prison within a ten-day time frame. On September 17, Decree 1301 was amended by Decree 1307, according to which a representative of the Judicial Police and the Ministry of Interior was added to the committee. The deadline for completing the investigation mission has been extended by 15 days, with a report to be submitted to the Council. Decree 1304 stipulates that all persons detained after the period stipulated in the law shall be released immediately, except for those accused of crimes related to terrorism, murder, armed robbery, and drug trafficking. The decree assigned the task of implementing its provisions to the Minister of Justice in coordination with the Ministry of Interior[75].

On September 19 of the same year, the Supreme Judicial Council issued Decree No. 129 regarding the establishment of another committee to review cases of arbitrary detention in Maitika prison. Under this decree, three

73 Article (74) of Law No. (5) of 2005 regarding reform and rehabilitation institutions.

74 Amnesty International Report 2020/21, The State of Human Rights in the World, p. 153.

75 S/201 9/19, para. 33.

prosecutors were appointed to complete the task of reviewing the legality of the detention of detained individuals and preparing a report within two weeks. The commission established by the acting attorney general was given a purely judicial mandate and composition[76].

The spread of this phenomenon also has negative impacts on vulnerable groups, as migrants and refugees, including women and children, are still routinely subjected to discrimination, arrest, arbitrary detention, torture and other violations and abuses of human rights. UNSMIL has received reports of torture, denial of food, health care, enforced disappearance, and sexual and gender-based violence against detainees in centers in Suq al-Khamis, Abu Salim, al-Nasir and Abu Issa run by the Counter-Illegal Migration Authority. It is reported that some 278 women are still in detention centers that are nominally under the authority of the Ministry of Justice, and it is estimated that 200 women are being held in detention centers in Mitiga. The mission received multiple allegations of sexual violence, torture, ill-treatment and other sexual abuse by guards against women and children suspected of links to ISIS fighters, exacerbating the exacerbation of violence against women and children by the lack of female guards in prisons and detention centers. Acts of sexual and gender-based violence remain underreported in Libya due to intimidation, fear of reprisals, and false stigmatization as a result of implicit discriminatory based on gender[77].

Given the gravity of practices and abuses within places of detention, the Prosecutor of the International Criminal Court, Fatou Bensouda, urged the Government of National Unity in Libya to take urgent steps to end crimes committed in detention facilities, and to fully investigate allegations of arbitrary detention, torture, confiscation of property, rape, and other forms of sexual violence[78].

76 S/201 9/19, para. 34.

77 S/2021/62, para. 58, et seq.

78 UN News: Fatou Bensouda calls on the parties to the conflict in Libya to stop using detention facilities to commit crimes, on May 17, 2021.

Protection of victims and witnesses

The issue of the protection of victims and witnesses is important in the investigations and prosecutions of many types of crimes, including serious violations of human rights and international humanitarian law, where a body of human rights laws provide for the right of victims and witnesses to protection. At the same time, the issue of witness protection occupies a particularly prominent place in the context of the prosecution of organized criminal and terrorist groups that have the means and motivation to silence, intimidate or do both, potential witnesses; To prevent them from cooperating with law enforcement and judicial authorities[79].

The United Nations Convention against Transnational Organized Crime therefore includes the protection of witnesses and victims, when obligating States Parties, within their capabilities, to take appropriate measures to provide effective protection for witnesses who give testimony as well as their relatives and other persons closely related to them from any possible retaliation or intimidation, including Establishing procedural rules to provide physical protection to such persons, such as changing their places of residence; Allow, where appropriate, non-disclosure of information about their identity and whereabouts or restrictions on their disclosure; Providing evidence-specific rules that allow testimony to be given in a manner that ensures the safety of the witness, such as allowing testimony to be given using communications technology, for example.

Despite the critical importance of protecting victims and witnesses, Libyan legislation does not stipulate what protects them. Rather, all legal texts related to witnesses and whistleblowers are just organizational articles related to how to testify before investigation and trial bodies, the procedures for notifying witnesses and assigning them to appear, and other procedures.

79 CTOC/COP/WG.2/2013/22, paragraph 6.

Confessing under torture and cruel treatment

At the outset, it is necessary to address the crime of torture in Libyan law due to the development it witnessed during the transitional period, which avoided some criticisms of the Penal Code regarding the criminalization of torture, and then to determine the extent to which confessions were accepted under torture and other cruel, inhuman or degrading treatment.

Article (435) of the Penal Code criminalizes torture when it stipulates that "Any public official who orders the torture of the accused or personally tortures them shall be punished with imprisonment from three to ten years." This provision has been criticized for its incompatibility with the provisions of the Convention against Torture ratified by Libya in 1989. Article 1 of it states that "'torture' means any act that results in severe pain or suffering, whether physical or mental, is intentionally inflicted on a person with the intent to obtain from such person, or from a third person, on information or a confession, or punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person - or when such pain or suffering is inflicted for any reason is based on discrimination of any kind, or is the instigation, consent or acquiescence of a public official or any person acting in an official capacity, and does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." Hence, according to the Penal Code, it becomes clear that the crime of torture stipulated that the status of the "accused" be fulfilled in the victim, and then he excluded the crime of torturing the non-accused in order to force the original accused, with the result, in this case, that the perpetrator of the crime be punished

in accordance with the provisions of Articles (379[80], 380[81], 381[82]) of the Penal Code as an offense of abuse and not torture within the meaning of the Convention. The difference between the two crimes is great in terms of the applicable punishment, for the crime of torture is a felony punishable by three to ten years, while the crime of abuse is punishable by imprisonment for a period not exceeding five years at most.

However, after the issuance of Law 10/2013 regarding the criminalization of torture, enforced disappearance and discrimination, which implicitly repealed Article (435) of the Penal Code referred to above, the situation improved somewhat, as it redefined the crime of torture and established different penalties, when it stipulated in its second article that "Whoever personally or orders someone else to inflict physical or mental suffering on a detainee under his control to force him to confess what he committed or did not commit, or because of discrimination of any kind, or because of revenge, whatever the motive, shall be punished with imprisonment for a period of no less than five years. Whoever keeps silent about torture despite his ability to stop it, the penalty shall be imprisonment for a period of no less than eight years if it results in serious harm, and the penalty shall be imprisonment for a period of no less than ten years if the act results in serious harm, and in the case of the victim's death due to torture, The penalty is life

80 Article (379) of the Penal Code states that "Any person who causes injury to another person that leads to illness shall be punished by imprisonment for a period not exceeding one year or a fine not exceeding fifty dinars, and if the duration of the illness does not exceed ten days, and no aggravating circumstance is provided for According to Article (382), the crime shall not be punished except on the basis of a complaint by the injured party.

81 Article (380) of the Penal Code states that "personal abuse is grave and is punishable by imprisonment for a period not exceeding two years or a fine not exceeding one hundred dinars if one of the following two circumstances exists: If the abuse results in a disease that endangers the life of the victim or renders him unable to perform his normal work for a period not exceeding forty days, if the act is committed against the pregnant woman and results in an accelerated delivery.

82 Article (381) of the Penal Code states that "personal harm is considered serious and is punishable by imprisonment for a period not exceeding five years if the act results from:
a disease from which there is no hope of recovery or from which there is no possibility of cure; loss of or permanent impairment of the senses; loss or permanent impairment of a limb or limb, loss of utility, loss of reproductive capacity, or permanent severe difficulty speaking; permanent disfigurement in the face; Abortion of the abused pregnant woman.

imprisonment. Despite the improvements made by Law (10) with regard to the crime of torture, it is not without criticism in terms of narrowing the scope of the application of the article, when it limited the crime of torture to acts committed against detainees only, as the text took the identity of the victim and not the committed act.

As for the "responsibility of politicians and leaders" for the crimes included in the law, including the crime of torture, Article (8) of the law came with a flawed formulation that makes it impossible to implement the text and then punish them, as it stipulates that "every political, executive or administrative official shall be punished with the same punishment." or a military commander or any person acting as a military commander if he committed the crimes stipulated in the previous articles by forces under his command and control, or an employee subordinate to him in the event that it was found that he did not take the necessary measures to prevent their commission or detect them with his ability to do so or prevented in any way without submitting it to the competent authorities for discipline, investigation or trial. The use of the phrase "with the same punishment" was unknown and devoid of defining a clear punishment, so what punishment do the authors of the law mean! Does it mean the same punishment prescribed for each crime? If this is the case, it will be impossible for the judge to apply the text due to the failure to determine the penalty in a clear and specific way[83].

Despite the criminalization of torture, Libyan law does not explicitly provide for the exclusion of information obtained or extracted through torture or ill-treatment as evidence in trials, as stipulated in the Convention against Torture, the International Covenant on Civil and Political Rights

83 To explain this, the legal text may be so vague and lacking in definition that the judge›s task of interpretation is impossible. In this case, we are not just about doubting the will of the law, but we are facing a complete impossibility in determining this will. In view of the ambiguity of the text and its lack of definition, it is not possible to attribute the crime to the accused or to impose a penalty on him; Because there is no crime or punishment without a text. Ahmed Fathi Sorour, Constitutional Protection of Rights and Freedoms, Dar Al-Shorouk, second edition (2000), p. 452.

and the African Charter on Human and Peoples' Rights; Unless it is against a person accused of committing torture as evidence for making these statements(84).

Escaping from the Punishment

The inability of the judicial system to function has led to widespread impunity, exacerbated by the use of armed groups to perform the functions of government law enforcement officials. Since 2012, armed groups have been nominally integrated into various state structures, including the Ministries of Defense, Interior, and Justice, but in practice they have maintained their own command and control structures. Under this arrangement, the state continues to pay the salaries of these groups, which continue to carry out law enforcement tasks, such as arrests and management of detention centers, in the absence or weakness of oversight or oversight by the government(85).

In practice, the current litigation process in Libya and domestic redress mechanisms are subject to numerous limitations and abuses. With the spread of armed groups and the proliferation of weapons, many victims do not resort to litigation, due to the slow pace of litigation procedures and the weakness of the Public Prosecution Office in follow-up and investigation, given that it does not have an effective system of police and judicial officers, most of whom are in fact members of armed groups or at least cooperate with them. Which makes their compliance with the orders of the prosecution is left to their own discretion and the interests of the groups to which they belong(86). This inevitably leads to impunity for perpetrators of human rights violations.

While the government is primarily responsible for investigating and prosecuting serious violations and abuses, the justice system does not currently appear to have the means or capacity to conduct prompt,

84 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 15; Human Rights Committee, General Comment No. 20, para. 12, referred to in "Accountability for Serious Crimes Under International Law in Libya," op. cit., p. 95.

85 A/HRC/31/47, para. 30.

86 Marwan Tashani. Ibid.

independent and credible investigations into allegations or prosecute those responsible in accordance with human rights principles. The challenges are the lack of protection for judicial personnel, victims and witnesses; deficiencies in the legal framework and capacity of the judicial system; In some quarters, there is a lack of confidence in the ability of the judicial system to administer justice impartially, particularly in "political issues" related to the conflict[87].

Recommendations:

• Enabling the judiciary to carry out its entrusted work in accordance with the legislation, stopping violations against judges and prosecutors, holding those responsible to account and working to provide a safe work environment for them, in a necessary step to curb the phenomenon of impunity.

• Amending the legislation regulating the judiciary to ensure the institutional and personal independence of judges.

• Setting a maximum time limit for the duration of pretrial detention to ensure a balance between rights and freedoms and the requirements of achieving justice, given its exceptional nature. In this context, providing the defendants with means of appeal against the decisions issued on pretrial detention.

• Adoption of the principle of litigation at two levels in felonies.

• Enact a law to protect victims and witnesses.

• Ending armed groups' control over places of detention and immediately releasing detainees held in arbitrary detention.

• Reducing the spread of the phenomenon of detention without trial and outside the framework of criminal justice by militias and armed groups supported by the state, loyal to it, or not affiliated with it alike.

87 A/HRC/31/47, para. 70.

- Making legislative amendments to the Law of Correction and Rehabilitation Institutions to limit the possibility of using solitary confinement for prolonged periods, and limiting it to punitive cases in line with international standards for the treatment of prisoners.

- Amending the law criminalizing torture so that it is not limited to the victims of detainees, in addition to specifying the exact penalty for the crime of torture committed by political officials and leaders in order to prevent impunity.

- Repealing Law 4/2017 that allows civilians to be tried before the military court, stopping all trials before it and referring them to the ordinary judiciary, as it is the normal judiciary.

Fighting corruption in Libya: Multiple contexts and inclusive policies

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Abstract

The study assumes that corruption undermines democratic institutions and poses a threat to sustainable development and the rule of law. It represents a challenge in the way of any real political process to rebuild the Libyan state and its institutions.

The study examines corruption in all its criminalized forms in the international convention and Libyan legislation, and it is a legal-social approach study, as it pays attention to the social environment in which corruption is generated, and in which legislative policies that combat it are applied, and it is a human rights approach that assumes the strength of the relationship between corruption and human rights, whether In terms of corruption as a clear violation of human rights, or in terms of the impact of anti-corruption measures on human rights.

The study states that corruption has a reciprocal influence relationship with the surrounding environment in which it appears. It is inevitable to study corruption in all the contexts in the surrounding environment. These contexts can be political, economic, social, security, international, cultural, and human rights, including those related to the legislative, executive or judicial authority.

The study recommends that the fight against corruption should not be limited to confronting its manifestations with purely legal tools as much as it is necessary to fix the imbalances in the surrounding environment by adopting public policies to reach an institutional and societal anti-corruption vision. Accordingly, the second part of the study presented a comprehensive plan for anti-corruption measures, starting with the constitutional and legal measures, passing through the executive and supervisory measures. It did not neglect international cooperation in the fight against corruption, and it also drew up effective public policies to combat it.

1. Introduction

1.1 The focus of the study

The focus of this study is the corruption that hinders the stability of societies, undermines democratic institutions and moral values, and which endangers sustainable development and the rule of law[1]. Corruption constitutes a challenge in the way of any real political process to rebuild the Libyan state and its institutions, and the real danger of corruption lies in the future of the Libyan state, as the continuation of this bleeding of state resources and public funds will inevitably affect the fate of future generations.

Perhaps the definition of Transparency International[2] and the United Nations[3] is more accurate and comprehensive, as they agreed that corruption is the abuse of power by those entrusted with it to obtain personal gains, and to harm the public interest.

Corruption has become a phenomenon in Libya in all its forms (small and large), its motives (need and greed) and its incentives (supply and demand), and it is sufficient to refer to Libya's advanced rank in the lists of the most corrupt countries in the world according to Transparency International's indicators[4], or referral to the reports of the Bureau of Libyan accountability[5], and it is also sufficient to look at its political and economic conditions and all service facilities to be sure that the manifestations of corruption are evident for all those interested in the Libyan issue[6].

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1 This meaning is referred to in the preamble of the United Nations Convention against Corruption in its first paragraph: http://hrlibrary.umn.edu/arabic/UNCAC.pdf

2 https://www.transparency.org/en

3 The agreement criminalizes several forms that we will mention later, and in the seventh preambular paragraph by defining it as the illegal acquisition of personal wealth.

4 The Corruption Perceptions Index confirms that Libya has a score of 17/100, and a ranking of 173/180.

5 audit.gov.ly

6 Mr. Ghassan Salameh focused on the phenomenon of corruption in Libya from the beginning of his appointment until after his request to be relieved, as well as Ms Stephanie Turco Williams.

1.2 How the study approaches the problem

Time-based approach: The study focus is on the transitional phase of the Libyan state during the second decade of the third millennium from 2011 to 2021.

A holistic approach: deals with corruption in all its criminalized forms in the international convention and Libyan legislation.

Analytical approach: It follows the analysis of the reports of the Audit Bureau, Libyan legislation, and Libyan judicial rulings.

An empirical approach: it uses the qualitative methodology taking advantage of focus groups and in-depth interviews conducted by the researcher in a previous study, in addition to surveys and opinion polls conducted in Libya during the period within the scope of the research.

Legal-Social Approach: The study pays attention to the social environment in which corruption breeds, and in which legislative policies to combat it are applied.

A human rights approach: The study assumes the strength of the relationship between corruption and human rights, whether in terms of corruption constituting a clear violation of human rights[7], or in terms of the impact of anti-corruption measures on human rights[8].

1.3 Problems and hypotheses of the study

A correct understanding of the phenomenon of corruption in Libya, and an attempt to explain it, is supposed to lead to policy proposals that include more effective and efficient measures to confront it. This study is based on two hypotheses:

7 JointStatementonCorruptionandHR20May2021.docx (ohchr.org)

8 http://hrlibrary.umn.edu/arabic/AR-HRC/AHRC4-131.pdf

• A main hypothesis that corruption has a reciprocal influence relationship with the surrounding environment in which it appears since the surrounding environment has many contexts, it is imperative to follow them to monitor this effect.

• Accordingly, it is logical that the fight against corruption is not limited to confronting its manifestations with purely legal tools, as much as it is necessary to fix the imbalances in the surrounding environment by adopting public policies to reach an institutional and societal anti-corruption vision.

2. General contexts of corruption

The phenomenon of corruption does not exist in a vacuum but within certain contexts. In this part of the study, we monitor the impact of those contexts on the growth of the phenomenon of corruption, and thus the chances of any reform policy to combat it.

2.1 Political context

It is no secret to anyone that the Libyan state since 2011 has been in a state of transition from an authoritarian regime. Unfortunately, it was not a peaceful transition. There was an armed conflict, which affected the new democracy. This makes the Libyan case more vulnerable than others to corruption. Where state institutions are unable to impose order and law, and the way the armed conflict ended in 2011 and what it created of a fragile environment promising for its return again, and how to draft the interim constitutional declaration and its many amendments, and also the way in which the armed conflict ended in 2014 leading to the division of the legislative and the executive powers. In addition, to all these events, the circumstances of the 2015 Skhirat political agreement and its denial by the signatory parties caused unprecedented corruption environment. Recently, the fragile peace imposed by the road map on the warring political parties, which was the result of a negotiating process that did not escape allegations of suspected corruption[9] aggravated the situation. Although the national

9 https://www.libyanjustice.org/news/open-letter-to-the-un-and-unsml-on-allegations-of-bribery-at-the-libyan-political-dialogue-forum

unity government claims to address corruption, its claim is weak. As opening the file of corruption means confrontation with figures with regional influence and political parties, and this contradicts the government's main goal to stay away from confrontation with any party.

The legacy of the totalitarian state with long-term corruption and the legacy of corruption that has grown during the last decade paves the way towards more corruption, and it is expected that behaviours, networks and agents of corruption will be preserved, which poses a challenge to the authority of the state in the hoped-for peace period in the future. We may note a clear absence of real political will to combat Corruption is at all levels of successive transitional governments, and we will not be able to overlook the chaos faced by the transitional governments, even those created by the transitional governments themselves, thus creating a suitable climate for the growth of corruption in Libya, not to mention the institutional division, the conflict between parallel legitimacy, and the spread of armed groups around the decision making centre. All of these ensure that corruption is not seriously confronted.

2.2 International context

It must be acknowledged that corruption in Libya was not only contributed by internal parties, but external parties also intervened to take their share of the Libyan oil wealth with France being the most influential country among the Western powers in supporting the war that took place in the country in 2011 on the condition of benefiting from concessions in the oil and gas sector. The French *Libération* newspaper in 2011 reported that the Transitional Council promised Paris 35 percent of the oil contracts, which are illegal contracts signed under blackmail, the newspaper said[10].

10 Libya rebels ‹promised France 35% oil› | News24

The Qatari interference was also clear in its relationship with the Libyan oil file, as Oil Minister Naji Al-Maghrabi stated in press statements that Qatar, through a company that produces about 240,000 barrels per day, registered in Switzerland, seized 19.5 percent of the company's revenues, which is a violation and infringement of the rights of the Libyan people[11].

On October 22, 2017, international newspapers reported on Libyan corruption incidents, such as: smuggling Libyan fuel worth $35 million from the Zawia oil refinery (west of the capital) and selling it in the markets of European countries[12].

In addition, some multinational companies and other globally influential economic entities have been exposed to corruption factors and manifestations[13]. It is not difficult to find examples related to the Libyan case. What is being raised in Belgium[14] and in Canada[15], and what has been said about Sarkozy relationship with Libya[16]. All these facts are examples of international corruption related to Libya.

2.3 Economic context

Libyan corruption has often been justified by the identity of the "rentier" Libyan economy on the basis that the rentier state[17] is a suitable environment for its birth and growth. The rentier economy is based mainly on the

11 https://www.lananews.com/ar/?p=65097

12 https://www.reuters.com/article/us-italy-crime-libya-idUSKBN1CN2HI

13 Abdel Majid Mahmoud Abdel Majid, Corruption... its definition - its forms - its relationship to other criminal activities, «Part One», Egypt›s Renaissance Publishing House, first edition 2014, p: 60.

14 https://www.forbes.com/sites/dominicdudley/2021/02/16/libya-and-belgium-clash-over-fate-of-sovereign-wealth-funds-frozen-assets/

15 https://www.bbc.com/arabic/world-47472975

16 An article in sputnik news reveals allegations of corruption involving Sarkozy and Libya.

17 The concept of the rentier state: It means limiting the source of the economy to nature, meaning the main source of the rentier state's resources comes from what is found in the underground (the mineral and oil wealth) which the state invests in, and the purely human product does not participate in crystallizing and building its economy, meaning that the purely human effort diminishes. In building the economy in the rentier state, dependence remains almost entirely on what is extracted from the ground, so that the ruling authority acquires this source and monopolizes the legality of its

exploitation of influence and power and not on knowledge, competition or quality, and therefore it represents the great bribery and corruption in its greatest manifestations, for the simple reason that it spreads bribery, a culture of dependence, lack of creativity, imitation and complacency. The rentier economy is a dangerous enemy of social and economic rights and it contradicts the law, transparency and good economic governance(18).

Libya is a rentier state. Reliance on oil is the only resource for the state(19), dependence on the state in all sectors(20) is evident and the state is responsible to pay the salaries of almost all Libyans(21) as a hidden share in the economic return. Issues like the absence of legal regulation and supervision of the local private sector, and the reluctance of foreign investors(22), who was supposed to compete for quality and effectiveness, to invest in Libya, contributed to the growth of corruption.

Also, since 2013, Libyan banks have been without investment and without credit, and the financial markets have disappeared. In fact, the political division that appeared in the presence of two governments worsened the banking situation, as the interim government borrowed from banks, making them unable to provide the normal service in monetizing salaries, which caused the financial crisis. which the country is currently suffering from, in addition to many other reasons.

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possession, the legality of its distribution and the legality of selling it.

18 Rentier Economy Fueling Unemployment and Poor Job Quality in the Arab World - Carnegie Middle East Center - Carnegie Endowment for International Peace (carnegie-mec.org)

19 Oil control in Libya has failed since the first barrel of oil left the oil ports in 1964. This was famously echoed in a cultural confrontation denouncing the oil policy through a poem attributed to Mr. Jaafar al-Habbouni published in the work newspaper 1963, he says at the beginning: (Hey brokers, where is the oil wealth. What we got is only its news in the Radio).

20 Also, the state funds allocated for the development of education, health and infrastructure go to a small group and are often smuggled abroad. Issa Bagni, Corruption and Legalized Corruption.

21 The status of public servant is required, but it is a disguised unemployment, as there is no real jobs in many cases.

22 "The country's bad reputation leads to the reluctance of major companies to invest in Libya, and raise the prices of projects established in Libya that cost more than double compared to Tunisia, for example, and that is why many foreign companies apologize for working in Libya in addition to the security turmoil in the entire region." Issa Bagni, Corruption and legal corruption,

Everyone in Libya, if they are corrupt, can easily get power and to own and spend undeserved money. This is because of the centralization of revenue and treasury and the absence of financial independence for any Libyan institution since 1969, and fictitious public budgets, as well as there is no accounting basis of revenues and expenses[23].

The absence of dependence on the domestic product from ports and airports fees, the absence of effective mechanisms for tax collection, and the absence of diversification of the Libyan economy, whether tourism, agriculture or industry, are economic factors that contribute to the spread of corruption.

In addition to the legislator's confusion regarding the enactment of what shows and strengthens the identity of the national economy. The existing legislative system assumes the socialist identity of the Libyan economy, and the current reality shows that the Libyan economy has turned to capitalism without legal regulation, and this legislative gap creates an environment favorable to corruption.

4 Cultural context

The Libyan collective mind is dominated by a group of cultures that enhance the chances of the spread of corruption, as they prepare the society for not disapproving of it, for example: the culture of dependency, the culture of spoils, and the culture of rentierism, where total dependence on the state in distributing natural income resources without real work persists. This culture is reflected in common sayings usually heard among Libyans involved in corruption "the livelihood of a government. The lord ensures it lasts", "it is already corrupted" and "Do not blame me"[24]. These are vocabulary from the local Libyan dictionary with which some individuals

23 Saad Al Ariel, The Curse of Ibn Khaldun Chasing Libyans, News Libya 9/6/2016. https://www.libyaakhbar.com/libya-news/114178.html

24 All of them are examples that make stealing public money easy and permissible and call for negligence in protecting and maintaining public money.

justify their embezzlement, waste and theft of state funds, or the treatment of its property by vandalism and neglect. All of these are negative cultures that have contributed to the perpetuation of corruption.

Perhaps the administrative system with bad values is an additional cultural factor, and among those negative values are procrastination, superiority complex and ignorance, abuse of influence, and neglect.

It is also possible to monitor the absence of the Libyan administrative culture that binds the state through its public facilities, to perform the services for citizens in a duly manner and in a reasonable time without compensation, with the exception of legally imposed taxes or fees.

Despite the declaration of the majority of Libyans (80.4%) of their commitment to the ideal moral values and their absolute refusal to accept bribes in return for performing their duties[25], the reality of the situation shows how they deal with it and issue religious fatwas permitting bribes[26]. This reinforces the culture of submissiveness and acquiescence to this disgraceful behaviour. It is a fatwa authorizing an act that is legally prohibited. This lessens the prestige of the legal text in the hearts of individuals and compels them to violate it. The Libyan legal system criminalizes the act of the briber and punishes him with imprisonment. The fact that the employee is entitled to a right to this briber is not taken into account except in the matter of reducing the penalty (Articles 22/25 of the Economic Crimes Law No. 2 of 1997).

25 Comprehensive Survey of Libyan Opinions on Values, Publications of the Research and Consultation Center. University of Benghazi, December 2015. Previous reference, p: 7.

26 This is indicated by the issuance of a religious fatwa by the Libyan Dar al-Ifta that authorizes financial bribery in case of necessity. "But if a person is prevented from his right until it reaches the point of necessity, such as housing, clothing, sustenance and travel, then it is permissible for him to do with his money what will ward off harm from him, and the sin is on the taker, just as it is permissible for him to pay a bribe to obtain a passport to spend his urgent and urgent affairs." Fatwa No. 2376, published on the official page of the Libyan Dar Al Iftaa on the social networking site, May 14, 2015.

2.5 Social Context

Corruption cracks the social structure and erodes the middle class, especially in a society characterized by a consumerist style[27], and this pattern when combined with difficult economic factors, such as the liquidity crisis that Libyan society has been experiencing since 2014, may make some people ready to adopt corruption to maintain a certain social standard of living, especially In the absence of a stigma for those who are known to be corrupted. It is noticeable that the local community celebrates the rich without paying attention to the source of their wealth, especially in light of the prevalence of manifestations of extravagance and luxury, and the term "thieves' neighborhood" is currently common in social circles to denote a residential neighborhood inhabited by the rich from White collar class. There is also the term "money laundering street" which is commonly used to denote a commercial street full of suspicious-source shops that spread during the armed conflict and whose owners are strangers to the official commercial register, without entailing a social reaction that represents a rejection of these thieves or those corrupted individuals, either by refraining from accepting their marriage offers or reluctance to buy from them or otherwise.

At the level of administrative transactions, we note that societal acceptance of corruption and its manifestations negate the character of social deviation from corruption, which is an important factor for the spread of this phenomenon.

Among the very important social factors are familial and tribal loyalties, even regional ones, which are loyalties whose influence in the administrative and institutional milieu turns them into negative values and results in more negative values, including favoritism and nepotism, and the spread of a culture of covering up corruption when the offender is a friend or a close

27 Muhammad Omar Ahabeel, "The social and cultural manifestations specific to the pattern of consumption in Libyan society," the comprehensive magazine issued by Al-Zawiya University, No. 15, Volume Two, p.: 227.

relative[28], where social cover, such as tribes, take over and justify the abuses committed by the officials who belongs to them, and then demand that to postpone questioning them.

2.6 The human rights context

It is important to highlight the negative impact of corruption from a human rights perspective. If an individual benefits because of exploiting his job position, or paying a bribe, then a violation of the rights of others will happen. If what the corrupt person obtained was a job for their son or one of their relatives, then he or she has deprived another person who might needs this job more or is more qualified to do it. This violated the right to fair competition for employment. If what the corrupt person obtained is a license to operate a passenger bus, a change in the nature of land usage, a permit to open a gas station, an exemption from a fine, a university seat a relative, or a scholarship for a brother, then he or she has violated the right to Equality and fair treatment. The failure to allow citizens to participate in real political life and the management of their public affairs, and the payment of bribes by politicians to buy votes are clear forms of violations of political and civil rights in many countries.

Corruption leads to the creation of criminal networks that increase human rights violations and inflict the greatest harm on the poor and marginalized groups. Although corruption generally violates the rights of all individuals affected by it, this impact is magnified and takes place especially when these individuals are among the marginalized and most vulnerable groups, such as children, women, migrant workers, persons with disabilities, refugees, prisoners, and the poor.

It is known that the powerful perpetrators of corruption crimes protect themselves from justice in various ways and do their utmost to retain the power they have gained.

28 Salama bin Salim Al-Rifai, The National Anti-Corruption Authority and its role in combating financial corruption: A comparative study, 2015. P: 297. https://books.google.com.ly

It is the vulnerability of these groups that makes them easy victims of corruption, as they end up paying bribes, or being sexually exploited, to gain protection or enjoy some benefits. The migrant workers without legal residence are exploited to pay bribes to avoid deportation or smuggle them across the borders of developed countries[29].

On the other hand, there is a fear that effective measures to combat corruption will sometimes turn into practices that violate human rights, and therefore the legislator and implementer of these measures must reconcile sensitive contradictions (such as the public interest and the rights and freedoms of the accused and access to information and the right to privacy)[30].

An example of those measures related to the assassination of the character [31] "It is used to destroy the credibility and reputation of a natural or legal person, and rumors and false accusations related to his honesty and morals are used, and half of the facts and fabricated and unproven narratives are used, and accusations of financial and administrative corruption are charged to him, all to liquidate the opponent politically and socially in public life[32]"

In addition, accusations were issued regarding the management of the money and property of some persons in Libya and abroad, and their families, without a judicial ruling. However, there was also a demand for criminalizing character assassination which can be an obstacle for civil society organizations and the media to play their role as mechanisms for controlling corruption and practicing constructive criticism.

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29 Jordan›s Commissioner-General for Human Rights, and Chair of the International Ad Hoc Team to Negotiate the United Nations Convention Against Corruption.

30 OHCHR Report 2020 "Challenges faced by states and the best practices they apply in integrating human rights into their national anti-corruption strategy and policy". Document https://undocs.org/A/HRC/44/27

31 Mr. Aqila Saleh, Speaker of the House of Representatives, referred to the phenomenon of personality assassination and its use in Libya against many honourable representatives in the interview that the researcher conducted with him in the city of Al-Qubba on 01/24/2019

32 Aref Bani « Assassination of the character « 2018, Jordanian headquarters https://maqar.com/2018/08/22

In practice, whistle-blowers and witnesses are required to provide evidence of the validity of what they claim, otherwise they will be accused of defamation and disturbing the authorities, and this evidence may call for a confrontation with the accused in a way that contradicts the idea of protecting witnesses and whistle-blowers, which requires them to remain in secret far from the accused's knowledge of their personalities.

It is also not considered a good criminal legal policy to advise the criminal legislator to stipulate the right of the state to track the money in any hand, even if it is transferred to a responsibility other than the responsibility of the offender. Because, although it is effective in reducing corruption and in reducing the harm to the public interest, it is still unconstitutional. These texts are in violation of the principle of personal punishment[33].

2.7 Security context

It is important to emphasize that armed conflicts, which are accompanied by the worst forms of excessive use of power, are among the most important contexts influencing corruption. The lawlessness and the spread of weapons outside the control of the state lead to the interrelationship between corruption and violence as corruption needs physical violence to be practiced, leading to "predatory behaviour"[34]. There have been many incidents about economic corruption practiced by armed militias. For example, we cite the testimony of the United Nations Group of Experts which was established by resolution 1973 of 2011, in its interim report in September 2018 addressed to the President of the Security Council that the Libyan Investment Corporation, the National Oil Corporation and the Central Bank of Libya are targets for threats and attacks from armed groups, which affected the performance of the oil and financial sectors in the country. Armed groups operating nominally under the supervision

33 OHCHR report "Best Practices in Efforts to Combat the Negative Effects of Corruption on the Enjoyment of All Human Rights" Document A/HRC/32/22 https://digitallibrary.un.org/record/841796?ln=ar

34 This is how it was described in the international report of the experts of the sanctions committee onLibyahttps://www.un.org/securitycouncil/ar/sanctions/1970/committee-reports

of the Ministry of Interior in the Government of National Accord in the west of the country, kidnapped, tortured and killed employees in sovereign institutions, including the National Oil Corporation and the Libyan Investment Company, and the report expressed this in terms of "the militia's share in the parallel economy[35]" The Internal affairs Secretary during The National Conference jurisdiction indicated that the Ministry monitored and stopped many manifestations of financial corruption practiced by the Supreme Security Committee[36]. This confirms the close relationship between the two poles of corruption and violence.

Armed groups organized into criminal networks reap significant benefits from trafficking in persons and smuggling of migrants which fuels instability and undermines the official economy. Furthermore, the illegal exports of crude oil and refined petroleum products, including those committed by parallel institutions that did not recognize the Government of National Accord, are considered organized corruption[37], and this description applies also to smuggling of currency, drugs, antiquities and precious metals.

While the process of combating corruption requires strong security mechanisms and agencies to control and stop the corrupt individuals who looted public money, Libya is in fact facing the problem of the fragility of the state and its institutions, and the more it thinks about dissolving the militias, the more the state becomes involved with them.

35 Report of the United Nations Support Mission in Libya submitted pursuant to Security Council resolution 2434 (2018) at the January 7, 2019 session.

36 "Bills for local and international phone calls and hotel reservations, not to mention receiving more than one salary due to double job" Ashour Shawael, former Secretary of Internal Affairs in the Zaidan government, an interview conducted by the researcher in Benghazi on: 12/26/2019.

37 It was mentioned in the report of the experts of the United Nations established by Resolution 1973 of 2011, (September 2018) addressed to the President of the Security Council. Resolution 2441 (2018) Security Council, 8389th meeting on 5 November 2018

2.8 Impact of the performance of different authorities on corruption

2.8.1 Legislature

Can the legislature be convicted of aiding the growth of corruption in Libya? The abolition of previous laws without proper evaluation, the introduction of new laws without a legislative philosophy, and the disparity in the legislative policies of the successive authorities in a manner similar to violent and opposing waves in a kind of legislative absurdity created a suitable environment for corruption(38).

This includes issuing laws and decisions that facilitate, directly or indirectly, the spread of corruption, or impede ways to combat it. Perhaps one of the forms of corruption is that the legislative authority issues laws and decisions that advance the private interest of its members over the public interest(39). There is a negative role of the legislative authority in increasing corruption by refraining from issuing legislation that helps to reduce it such as a special regulation to prevent corruption.

Perhaps legislative corruption is a form of political corruption, as the legislator is the political opponent who won the elections, and after he became the country's legislative authority, he decided to detail laws and constitutional amendments that impede his opponent's access to power in accordance with the principle of peaceful transition and partisan pluralism which constitutes a real obstacle to national reconciliation(40), and the

38 The French constitutional jurist "Frederic Bassina" says in his valuable book "The Law" translated by "Dean Russell"

(People naturally rebel against the injustice to which they are victims, so when plunder is organized by law for the benefit of those who make law, all the plundered classes will try to enter some way by "peaceful or revolutionary" means in the law-making process and these plundered classes according to their degree of knowledge and enlightenment will be presented as one. of two very different goals when you get political power...Either they will really want to stop the legal plunder or maybe they›ll take part in it...!»

39 Abdullah Al-Thani, Prime Minister of the Interim Government in the East, confirms in an interview conducted with him by the researcher in Qurnada on 2/1/2019 that the representatives of the Libyan Parliament only think about their personal interests.

40 Khaled Al-Sharif, President of the Benghazi Court of First Instance, in an interview with the

evidence for legalized corruption can be found in Law No. 36 of 2012 regarding the management of funds and properties of some persons[41], as amended by Law No. 47 of 2012[42] that allows the executive authority to dispose of the funds of supporters of the former regime and their families without the need for a court ruling, simply because of suspicions of corruption. In addition, many jurists consider the Political Isolation Law (PIL) a legalized political corruption[43].

One of the most important forms of serious political corruption is the fact that the party in power clings to its political position and prevents a peaceful transition of power. Perhaps the Libyan legislator was alerted to this type of corruption represented in deviation from the laws and regulations regulating the electoral process, and away from the integrity required to manage it without falsifying the results or exercising physical and moral coercion or intimidation or enticement to tamper with the popular will, since 1985, trying to counter it by criminalizing it in Law No. 22 of 1985 regarding combating abuse of office or profession and deviation from acts of popular escalation[44]. Article two of it stipulated that (anyone who influences acts of popular escalation shall be punished by imprisonment...), which is what all electoral laws issued in Libya after 2011 were keen to include in the section on electoral crimes.

Perhaps it is important to point out that the laws are free from criminalizing behaviour that helps corruption, for example, there is no effective and precise prohibition that prevents a public employee from combining a public job with work in the private sector, especially if the work is directly related to the public job, and there is no ban on those who have Senior positions to prevent them from undertaking private business immediately after leaving a position related to their previous position.

researcher in Benghazi on 12/25/2018.

41 Published in the Official Gazette, first year, issue 11, dated: 18/6/2012. p: 617.

42 Published in the Official Gazette Year 1, Issue 13. p: 782.

43 http://alwasat.ly/news/libya/55477

44 Published in Official Gazette No. 30 of 1985.

2.8.2 Judicial Authority

Perhaps one of the manifestations of the judicial environment that contributes to the growth of corruption is the weak effectiveness of law enforcement, and the issuance of judicial rulings under the grip of armed militias, not to mention the exclusion of the competent[45] and then the judicial scene is dominated by those who are less qualified, and the use of the law as a dangerous tool in the hands of those who do not use it properly, and these are influential factors in rampant corruption.

Perhaps the most serious form of judicial corruption is represented in issuing judicial rulings or refraining from issuing them for political reasons[46]. Judicial corruption may also be represented in the misuse of the judicial authority by the public prosecutor in the procedures of arrest, search and torture, which resulted in the victim prosecuting him for compensation, conviction and litigation[47].

We can monitor many judicial attempts to address the corrupts, but these procedures stop at issuance of arrest warrants and subpoenas, for example: the Libyan Public Prosecutor issued a package of arrest decisions in late 2020 against a large number of Libyan officials on charges of corruption, exploitation of public money, profiteering and others, which included the director of the Foreign Bank of Libya, the director of the investment sector of the bank, on charges that the bank issued approximately $80 million in unlisted investments, which resulted in serious damage to public money[48].

The arrest warrants also included the delegated Minister of Local Government, officials with the rank of undersecretaries of the Ministry of Finance, Education, Local Government and Health, the Dean of Bani Walid Municipality, the Undersecretary of the Ministry of Education, the

45 Since 2011, these signs of exclusion have appeared for everyone who worked with the previous regime.

46 Khaled Al-Sharif, President of the Benghazi Court of First Instance, in an interview with the researcher previously mentioned.

47 This was referred to in a Supreme Court ruling, session: 6/21/2004. Civil Appeal No. 117 of 49 BC. East Laws Network https://www.eastlaws.com/Default.aspx

48 https://al-ain.com/article/corruption-of-al-wefaq-ministry-official

Undersecretary of the Ministry of Finance, the director of the accounts department in the same ministry, and the Undersecretary for Court Affairs at the Ministry of Local Government, in the Government of National Accord headed by Fayez Al-Sarraj.

The Public Prosecutor also issued a decision to suspend the Chairman and members of the Board of Directors of the Public Health Insurance Fund from work, because they defrauded official authorities for suspicious purposes and caused harm to public money and harmed others.

On October 17, 2020, the Head of the Investigations Department at the Attorney General's Office, "Al-Siddiq Al-Sour" ordered the suspension of any financial transactions of the Corona Virus Procurement Committee of the Ministry of Health of the Government of National Accord headed by Fayez Al-Sarraj, due to financial irregularities that affected the Corona Virus Procurement Committee[49].

2.8.3 The Executive authority

The executive authority has a role in the spread of corruption in that it is actually responsible for activating the most important means of the legislative authority in the fight against corruption as it is concerned with implementing the laws issued by that authority. These laws can be ineffective or just a formality and does not achieve its content and objectives if the executive authority are not trying to apply them. The executive authority is also in control of the public money which makes it the main player in the presence of corruption and in combating it[50]. For example, we mention the controversy between the head of the Civil Status Authority and the Governor of the Central Bank, when the Governor of the Central Bank indicated the existence of fraud in the national number system and considered it a reason for his decision to stop the disbursement of the heads of families grant[51], and the existing impasse between the Central Bank and the House

49 https://libyanstand.com/defaultnews/2020-12-14/13589

50 Rahim Hassan Al-Akaili, Corruption: its definition, causes, and effects. www.nazaha.iq/body.asp?field=news_arabic&id=48

51 Alaraby.co.uk

of Representatives on legality and dependency[52], which negatively affected the central's respect for the legislation issued by Representatives Law No. 7 of 2015 amending Law No. 1 of 2013 regarding the prevention of usurious transactions[53].

2.9 Legislative contexts in the face of corruption

2.9.1 Constitutional Regulation

The 2011 Constitutional Declaration was issued without an explicit reference to or combating corruption, even though it was not without a reference to some integrity mechanisms (Article 6 Equality of Equal Opportunities / Article 8 The state guarantees equal opportunities)

As for the draft constitution issued in 2017, the reference to integrity mechanisms and controls has increased. Article 15 affirms that transparency, quality and accountability are among the foundations of the Libyan economy. Article 16 is dedicated to confirming the principle of equal opportunities for citizens. Article 17 makes merit the most significant criterion for assuming public office. Article 21 states utilities are established and managed with good governance and integrity.

The draft constitution went further than that through its article 23 entitled combating corruption, as it obligated the state to take the necessary measures to combat administrative and financial corruption, reveal its cases and address its effects, and it also provided for a complementary penalty that prohibits those convicted of a misdemeanour or felony of corruption

52 Since the beginning of the political division over legitimacy in Libya in 2014, between the House of Representatives in Tobruk and the General National Congress in Tripoli, the state's sovereign institutions and positions have entered the cycle of conflict between the two parties, and the Central Bank is the most important sovereign institution in the state, which made each party monopolize for itself legitimacy and try to submit The central bank has its power to ensure the supply of funds to it and to maintain its influence.

53 Al-Siddiq Al-Kabeer indicated in his aforementioned interview that this law is not applied in the western region for several reasons, perhaps the most important of which is the presence of Dar Al-Ifta, which prohibits usurious interests, which was behind the issuance of a law criminalizing it.

from assuming positions in the cases specified by law. The draft constitution did not neglect the constitution of an independent transparency body to combat corruption in Article 163 of it.

However, the 2017 draft did not contain a provision that corruption crimes would not be extinguished by amnesty or statute of limitations, nor did it obligate the state to review investment contracts that have evidence of financial or administrative corruption, despite the importance of this review as a mechanism of transitional justice, and the 2016 draft contained the provision for review. In Article 207, the text was deleted from the last draft of the draft constitution.

With regard to the governing political agreements directed at public policies, we have seen a regression in the 2021 agreement from the 2015 agreement with regard to confronting corruption while the 2015 political agreement decided that the Government of National Accord should be keen on enabling oversight bodies, such as the Audit Bureau and parliamentary committees, to follow up and evaluate the government's performance during its implementation of its program and its reflection on the established budget by submitting periodic reports, supporting anti-corruption mechanisms, and establishing effective practices aimed at transparency and combating Corruption (the last item in Annex V related to the principles of financial policy and management of national assets) and stressed that reconstruction must take into account international standards for accountability, transparency and anti-corruption (No. 9 of the economic priorities), and considered among the governing principles the commitment to the principles of transparency and anti-corruption in all state contracts, internal dealings, and the Ministry of Foreign Affairs (item 30), while the 2021 road map is satisfied that fighting corruption is one of its secondary objectives (paragraph 6/2 of Article One), and the executive authority works to combat corruption and cooperate effectively with oversight bodies during the preliminary stage for a comprehensive solution (paragraph 7 of Article 6).

2.9.2 Legislative version

In the transitional period, the Libyan state inherited a collection of anti-corruption laws, and it has worked to confirm their validity and stipulate them in the laws issued on corruption after 2011. This legislative behaviour may be viewed with satisfaction because of the implementation of the principle of accumulation, but the impossibility of being satisfied with it is due to the principle of accumulation goes beyond the neglect of the previous legacy to the implementation of its consideration and revision if necessary, which is what the transitional legislator neglected despite its multiplicity into three successive legislative councils (transitional council / national conference / parliament).

There were many Libyan laws concerned with combating corruption before 2011, including the General Penal Code, then complementary special laws, Economic Crimes Law No. 2 of 1979, Abuse of Job or Profession Law No. 22 of 1985, Mediation and Favouritism Law No. 5 of 1985, Law (Where Did You Get This From) No. 3 of 1985, Law Purge No. 10 of 1994, Anti-Money Laundering Law No. 2 of 2005, Law No. 1 of 2005 regarding banks, and the most recent of which is Law 5 of 2010 regarding the ratification of the Anti-Corruption Agreement.

It is a legislative bundle of laws characterized by the fact that it was issued in different periods of time, and some of them are general and others are private, and all of them are objective in terms of provisions, and therefore it was good legislative policy to look at them, and it includes among them one anti-corruption legislation.

Features of the criminal policy:

All of these laws agree in the general criminal treatment in terms of considering the legal place of criminal protection to be the public interest, and that corruption crimes are financial administrative crimes, committed

against the interests of the Libyan state. In fact, the Libyan judiciary did not hesitate to consider the tax certification of contracts for a foreign company Violating the law, such as acts harmful to the interests of the country[54].

The forms of criminal behaviour that are described as corruption vary, as it includes, directly or indirectly, any harm to public money, by any means committed.

Crimes against the public administration, crimes against public trust, money laundering crimes, economic crimes including bribery, crimes of abuse of office or profession, violations of the rules of administrative contracts, tenders and auctions, as well as administrative and financial violations committed by public officials, and crimes of favouritism, mediation[55] and nepotism[56]. The Libyan law stated that it was mentioned in the first article of Law No. 6 of 1985 regarding the criminalization of mediation and nepotism as synonymous definitions for one behaviour, which is everything that would affect the entitlement of a benefit or service provided by public and private legal persons of public benefit, with the intention of preventing or disabling it, or violation of the priority right to obtain it, which was confirmed in Article 16 of Law No. 10 of 1994 regarding purification.

And by way of calibrating this Libyan criminal policy with the forms of criminalization stipulated in the United Nations Convention against Corruption, that convention which considered corruption crimes: bribery even in the field of the private sector, trading in influence, embezzlement and waste even in the private sector, and misuse of a public official's functions or duties illicit enrichment, and the laundering of criminal proceeds. It is clear that the agreement expanded the criminalization more than the Libyan law, which did not enter into the criminalization circle the actions of the

54 https://www.eastlaws.com/Default.aspx

55 Mediation by any means with the authority or authority to obtain a self-interest or for others, whether rightly or unjustly.

56 Bullying oneself or others by any means, whether this third party is a natural or legal person or a group with the intention of influencing any person with authority or authority to obtain an interest, rightly or not.

employee in the private sector in all its successive laws, and from here we appeal to the Libyan legislator to update his criminal policy by adopting the draft anti-corruption law.

Corruption in the concept of Libyan law requires an offender described as a public official, and the Libyan Penal Code issued in 1954 and in force until the present time in the fourth paragraph of Article 16 defines a public official as "anyone who is entrusted with a public task in the service of the government, states or public bodies." The other, whether he or she is an employee or a permanent or temporary employee, with or without a salary…." In addition, in Article 229 bis c "the heads and members of parliamentary or local bodies, whether they are elected or chosen, and chairmen and members of boards of directors and employees of companies and the like if the state contributes 10 of 1994 expands the range of offenders to include "judges, prosecutors, the People's Prosecution Office and other members of judicial bodies, as well as lawyers, notaries, doctors, arbitrators, experts, translators, officers, members of the armed people, police, customs guards, municipal guards, and agricultural inspections." And others who have the capacity of judicial control and those who work in public and private bodies of public interest...".

It is worth commending Law No. 3 of 1986 regarding "Where did you get this from", as it criminalizes the act of any person who gains money, benefit, or material or moral advantage from favouritism, threat, or violation of the law, or the gain is from unknown source or is not commensurate with the person's legitimate resources (Article The first of it) and Law No. 10 of 1994 regarding "Purification" subject to its provisions whoever holds a license to practice a profession, craft, industry or work, whether alone or within a partnership, as well as anyone who practices any economic activity without a license (Article 1 thereof).

With regard to the crime of bribery, stipulated in Articles (21 and beyond) of the Economic Crimes Law, the Libyan criminal policy is in line with the call of the United Nations Convention against Corruption in Article 16 of it to criminalize various forms of bribery behaviour from public officials and those in charge of the public service, and those forms included the promise of bribery or offering or giving it to any of these, whether for his

benefit or for the benefit of another body or person in return for his action or omission within the scope of his official duties, and it also included the form of requesting bribery and participating in any of its forms. Bribery if committed by a foreign public official[57] or an international civil servant, which is an important step in the criminalization of international bribery, in Article 17 thereof.

Bribery has many uncountable forms. It may be by providing financial, in-kind and moral gifts, and it may be a sexual bribery, an administrative bribery, or any benefit that achieves a personal interest. Perhaps the most dangerous of them is the so-called political administrative bribery[58]. It is administrative in terms of the place. Bribery is the job in which the citizen is appointed incompetent, unworthy, or at least unhelpful. It is political because it is granted in order for the donor to obtain a political advantage or gift represented in mobilizing the votes that support his political position, whether these votes belong to the sons of the beneficiary's family and tribe or belong to the people of his region and city[59].

The agreement also criminalizes the act of waste or diversion of public property, money and securities, in Article 17 of it. The agreement calls for criminalizing bribery and embezzlement in the private sector in Articles 20 and 21, which we do not find adoption in Libyan legislation.

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57 The Libyan judiciary did not hesitate to charge Italians with offering a bribe to a Libyan employee in exchange for illegal work. They were convicted and punished with 8 years in prison and a fine of 5,000 Libyan dinars. This was referred to in the ruling of the Supreme Court, session 12/11/2008 previously referred to.

58 Jazia Jibril Muhammad, The Phenomenon of Administrative Corruption in the Culture of Libyan Society, Issue 6 of the Legal Agenda, Tunis, 11/28/2016, http://legal-agenda.com/article.php?id=3262.

59 We can represent this kind of bribery with many of the facts referred to by Mr. Adel Al-Hassi, the «Libyan Consul in Egypt» on one of the Libyan channels, revealing corruption incidents involving the Accord and Interim Governments and some members of the House of Representatives. https://www.libyaakhbar.com/business-news/668660.html

Article 18 of the agreement also criminalizes trading in influence and defines it with a promise to the public official or the public official's acceptance of any advantage undue, directly or indirectly, to incite him to abuse his actual or supposed influence with the aim of obtaining from the administration an undue advantage for the inciting person, while Article 19 of it criminalizes abuse of power. Job exploitation is doing or not doing something while carrying out the job in order to obtain an undue advantage for him or for another person or entity, which the Libyan legislator has already criminalized in the text of Article 30 of the Economic Crimes Law.

While Article 20 of it criminalizes the public official's intentional illicit enrichment, in the sense of increasing his property a significant increase that he cannot reasonably explain in relation to his legitimate income, which is what the Libyan criminal legislator addressed in my law (Where did you get this from) and purification.

It goes without saying that corruption crimes are crimes with a material consequence, which is the harm that affects the public interest as a result of material behaviour, and although most of its behaviour is positive, the legislator has prohibited many negative forms of corruption, perhaps including the public employee's failure to save public money or Its maintenance is in charge of its preservation (Article 15 of the Economic Crimes Law).

It is noted that the Libyan legislator has expanded the protection department in the face of corruption, as it criminalized many actions related to the corrupt behaviour of the employee and criminalizing the act of someone who offers a public servant a gift or even a promise of a subsequent gift, even if he does not accept that (Article 22 of the Economic Crimes Law), but rather punishes the mere person who took the gift with the intention of delivering it to the employee knowing that it was a bribe (Article 26 of the aforementioned law).

Sanctions against corruption

There are many criminal penalties stipulated in Libyan laws up to the death penalty for the intentional act of sabotaging oil installations or one of its annexes (Article 4 of the Economic Crimes Law). It is useful to warn the criminal legislator to the questioning of criminal policy scholars about the efficacy of short-term deprivation of liberty penalties and to call for appropriate alternatives that avoid their many shortcomings[60]. One of the very useful alternatives for the perpetrator in some corruption crimes and for the Libyan society at present is the punishment of working for the public interest.

It is also noted that the criminal legislator relied on the penalty of an ordinary fine, which may reach fifty thousand (Banks Law No. 5 of 2005), and this financial value of the fine appears disproportionate to the severity of the damage when the outcome of the corruption crime is estimated in the billions, and therefore it is preferable for the legislator to adopt the relative fines in addition to confirming the response money and state compensation for damages caused to the public interest, and we find an example of this in the text of Article 9 of the Economic Crimes Law (a fine of one thousand dinars and not exceeding the value of the damage and compensation for damages caused by public money or public interest), as stipulated in Article 35 of the law The aforementioned) The offender shall be sentenced... to a fine equal to twice what he evaded, embezzled, requested, accepted, promised, offered, obtained, seized, or compelled others to give, and confiscate or return the sums he obtained due to committing the crimes set forth in The articles referred to in this article) and the complementary penalty of refunding money was mentioned in most laws that criminalize forms of corruption, including: Law No. 3 of 1985, where did you get this from, the sixth article of which required the return of funds to the public treasury, and Law No. 10 of 1994 regarding To purify, Article 15 of it stipulates that the court must decide to return the excess money that is proven to be illegal gain and becomes a right of the public treasury.

60 Musa Arhouma, General Provisions of the Libyan Penal Code, Part Two, The General Theory of Criminal Penalty (Punishment and Precautionary Measures), 2nd Edition, 2017, International Mediterranean University. Benghazi. Libya. p: 64.

The Libyan legislator was keen to mention several accessory penalties, including: deprivation of civil rights (Article 36 of the Economic Crimes Law / Article 1 of Law 22 of 1985 regarding combating abuse of office or profession and deviation from acts of popular escalation / Article 24 of Law 10 of 1994 regarding purification Publication of the judgment at the expense of the convict (Article 25 of the Purification Law 10 of 1994), inability to testify before the judiciary, inability to undertake guardianship and guardianship affairs, inability to assume any job or stay in it, and failure to grant him a certificate of good conduct and behaviour (Article 24 of Law No. 10 of 1994 regarding purification).

It did not overlook the enactment of several precautionary penalties: confiscation in some conditional cases, freezing, seizure and seizure, locking of the violating bank's account by the Central Bank, withdrawal of the license and closing the facility for legal persons. Among the notable measures in Libyan law are the issuance of a final judgment of conviction which results in placing the accused who was favoured at the bottom of the list of those entitled to the favour, as well as the recovery of the benefits or services obtained because of it (Article 25 of Law No. 10 of 1994 regarding purification).

Among the dangerous precautionary measures in the face of financial, administrative and political corruption is what the Transitional Council decided in Law No. 36 of 2012 regarding the management of some people's money and property in and outside Libya and the children of "natural" persons among them and their spouses, which included tables with the names of these persons and those funds, while delegating the authority The executive branch is represented in the Council of Ministers by adding people or funds not included in those schedules. Despite the appeal against this ruling of unconstitutionality due to its conflicting provisions with original constitutional rights and principles, the Constitutional Chamber of the Supreme Court considered otherwise[61], which I think was wrong. The law has gone too far in attacking, without a court ruling, the suspects' money and property (current and potential) to the extent that it permits the

61 https://www.eastlaws.com/Default.aspx

General Guardian to sell them with the permission of the Minister of Justice (Article IV thereof). In whichever hand it was, even if it was transferred to a liability other than that of the offender because although it is effective in limiting corruption and in reducing the harm to the public interest, it is still threatened by the judiciary with unconstitutionality because these texts are in violation of the principle of personal punishment.

It is noted that the legislator has adopted a rational criminal policy that it adopts the idea of amnesty from punishment if the offender reports the crime of money laundering before it is discovered by the competent authorities (Article 5 of Law 2 of 2005 regarding money laundering), and perhaps in generalizing this policy to images of corruption crimes The other has many economic benefits in a way that achieves the general interest of the Libyan state, which is the subject of criminal protection, before it is discovered by the competent authorities.

Dealing with criminal forms of corruption is fraught with difficulties. This is due to many factors, perhaps the most important of which are the characteristics of corruption crimes related to the perpetrator and victim and the circumstances of their perpetration. The perpetrator of corruption crimes is a public official committed by taking advantage of his actual powers and legal privileges to enable him to provide a cover for his crime, as it is a white-collar crime that enjoys the advantages of a strong offender in the face of oversight and investigation authorities, especially with the presence of the huge amount of immunities that impede the freedom of the prosecution to raise The lawsuit before the judiciary, which the wide sector of state employees is keen to advance in the face of any measure intended to reveal the facts of corruption and helps them to do so by the contradiction between the rules of the criminal law criminalizing forms of corruption with regard to permission restrictions, demand and complaint when some require it (Article 10 of the Economic Crimes Law), others lift it from the Public Prosecution Office (Article Seven of Law 23 of 1985, where did you get this from / Article 18 of Law 10 of 1994 Purification).

The victim of corruption crimes is not a natural person. These crimes affect mostly a legal person "the state, its facilities and its money". This sometimes weakens the individual incentive to pursue due to the absence of direct harm resulting from the crime and places the entire burden on the monitoring and investigation authorities.

What distinguishes corruption crimes also is that they are hidden crimes that are difficult to detect and control, and perhaps most of their cases are committed in secrecy and belong to the crimes of the black number that does not appear in the statistics(62), and regarding proving them we will find a real dilemma, which is the problem of not disclosing the secret of the profession. As the whistle- blower is often a public servant in one of the institutions in which corruption is practiced, and assuming that he or she is an ordinary citizen, the situation is no less serious, which makes many reluctance to report this due to the many difficulties surrounding this procedure, perhaps the most important of which is turning him or her into an accused with the crime of false communication or the crime of defamation, unless evidence is established for the validity of what was attributed to him or declared in the face of those who claim his corruption (Article 440 of the Penal Code), and perhaps it is the only case in which the burden of proof shifts from the shoulders of the prosecution to the shoulders of the accused. Citizen Documents and documents proving the corruption of some influential persons in the state in particular.

Regarding procedural mechanisms to combat corruption, a question arises about two issues that are effective in confronting corruption. The first is local, related to the adequacy of the regulatory bodies that detect corruption, and the second is international, related to ways to confront trans-regional corruption in Libyan criminal procedures.

62 This problem of statistics arranged a problem no less complex. It has caused serious results according to the documentation of crimes after their discovery. When there is a discrepancy in the statistics, scientists may interpret it and resort to very dangerous interpretations; For example, in a geographical study (Al-Haddad previously mentioned) he linked corruption with the geographical scope in which it is committed. Corruption is more in the East than in the West, and this can be easily refuted as these statistics may be inaccurate and suffer from darkening or a black number.

1. The adequacy of domestic regulatory bodies

There are many oversight bodies concerned with combating corruption, including:

• The Medicines and Food Control Center, the Tax Authority, the Libyan Customs Authority, and the Administrative Control Authority regulated by Law 20 of 2013.

• The Financial Information Unit in the Banking and Monetary Control Department of the Central Bank and its sub-units in banks operating in the country and established pursuant to Resolution No. 40 of 2002[63], is responsible for monitoring and following up on all operations and transactions conducted by the bank or financial institution, or those dealing with the bank or financial institution, which they are suspected of being related to illegal transactions or money laundering operations, or operations related to depositing or transferring funds of unknown origin. These sub-units are also responsible for reporting information or data related to these operations to the Financial Information Unit of the Central Bank of Libya. The National Anti-Money Laundering and Terrorist Financing Committee, established under Article 13 of Law No. 2 of 2005 regarding combating money laundering, is also a monitoring tool.

• The Audit Bureau reorganized by Law No. 19 of 2013 and amended by Law No. 24 of 2013. Perhaps it is important to mention that the law, in its third article, does not grant the Audit Bureau the authority to monitor the private sector unless the state contributes to the company's capital by 25% At least, or that the company had taken a loan from the state and stipulated in the loan contract that it be subject to the Audit Bureau, and the law does not

63 Taking into consideration the directives of the Central Bank of Libya referred to banks in accordance with the decision of the Governor of the Central Bank of Libya No. 40 of 2002 issued on May 28, 2002 regarding the establishment of the Financial Information Unit at the Central Bank of Libya, and which are described in Circular No. (1) of 2002 regarding measures to combat money laundering. And circular letter No. 20/2009 dated 02/05/2009 regarding referring the decision of the Governor of the Central Bank of Libya, Chairman of the National Anti-Money Laundering Committee No. 2 of 2008 issued on 16/12/2008 regarding the organization of sub-units for financial information.

allow the Audit Bureau to monitor the House of Representatives, according to an official statement of the Bureau, the city of Al-Bayda, dated: October 17, 2018, but rather it strips it of all the competencies The investigation, the text of the law obliges him in Article 27 of it to refer the incident to the administrative control or the Public Prosecution, if an administrative or criminal violation is found. 42) A case There are (25) cases under referral to the investigation authorities(64).

Perhaps what is worth noting in Law No. (11) of 2014 establishing the National Anti-Corruption Commission is its stipulation in Article 26 that corruption crimes shall not be subject to a statute of limitations, and in Article 22 it stipulates the protection of witnesses, experts and whistleblowers of corruption crimes, and granting the authority's employees the status of an official Judicial arrest in Article 5 thereof and confirming their powers to inspect the suspect's books, as well as obtain information and seek the assistance of experts, and have the right to view all documents even if they are confidential, and they have the right to summon whoever they deem necessary to hear his statements.

• The Anti-Corruption Commission, stipulated in Law 63 of 2012, was repealed by Law 11 of 2014 establishing the National Anti-Corruption Commission, and was suspended pursuant to Resolution No. (119) of 2017 regarding the suspension of some employees of the National Anti-Corruption Commission, as a precaution in the interest of the investigation.

Perhaps it is unfortunate to say that the anti-corruption bodies, since their establishment in 2012(65), have spent many budgets on them, and many of them have been accused of corruption, and they have not been able to achieve any useful achievement in any field of anti-corruption where the first commission was accused of corruption that marred its formation procedures, it was formed in violation of the law and without taking the

64 https://www.libyaakhbar.com/libya-news/775083.html

65 It should be noted that in 2010 a draft law was put forward to establish a national transparency authority in Libya that is independent and reports directly to the legislative authority. Official bodies rejected this and the law turned into a mere project to enhance integrity and is supervised by the Government's General People's Committee and the Economic Development Council in cooperation with the United Nations.

constitutional oath before the legislative authority, as well as by appointing employees with invalid and violating decisions and spending the approved budget estimated at forty-five million dinars, and squandering it unjustly, the authority's account was frozen until the issue is addressed legislatively in order to preserve public money[66]. As for the new formation of the authority, it is also not safe from the suspicion of corruption, as it was formed through the Speaker of the Libyan House of Representatives by issuing an individual decision No. (65) of 2014 renaming the head of the Anti-Corruption Authority and its members established by law No. 63 of 2012 - canceled by virtue of Law No. 11 of 2014 establishing the National Anti-Corruption Authority - which called on the Libyan Transparency Association (a civil organization founded in 2011) to appeal the decision before the administrative court with a lawsuit registered in the public registry under No. (217/2015) On Monday, April 24, 2017, the court ruled that the decision of the Speaker of the Libyan House of Representatives No. 65 of 2014 regarding naming the head of the Anti-Corruption Authority and its members was null and void. The authority believes that it is based on a decision of the Prime Minister of the Government of National Accord, which is not a decision to be issued by a non-qualified person, as its decision was not issued by the legislative authority in the country (the House of Representatives, the National Congress), and this is in violation of Law No. 11 of 2014 establishing the National Anti-Corruption Authority, which called for the Transparency Association Accordingly, the Law Department in Tripoli issued a fatwa confirming the vacancy of the position of the head of the National Anti-Corruption Commission since the issuance of Law No. 11 of 2014 and the jurisdiction of the legislative authority alone to appoint,

66 A letter was addressed to the President of the General National Congress No. (1085) of March 4, 2015 confirming the abolition of the capacity of president, deputy and members of the Anti-Corruption Commission and the capacity of the steering committee of the body established by Law No. 63 of 2012, and ended in his book to the speedy issuance of a decision naming the president, agent and members The four, as stipulated in Law (11) of 2014, in order for the authority to exercise its functions in the city of Sabha.

and that Mr Noman MahFoud (the head of the National Anti-Corruption Commission) is a usurper of power[67]. Thus, it is clear that this entity, which was hoped to confront the Libyan corruption, has been wiped out.

What hinders the procedurally effective confrontation is the lack of cooperation between the concerned parties. For example, the head of the Financial Information Unit at the Central Bank of Libya confirms that their work is for nothing because they are just writing ineffective reports and these reports are not evidence because they are not judicial control officers, these reports are referred to the Attorney General, on the basis that the unit aims to assist the judicial authorities, but what happens in reality is that the relevant laws stipulate reconciliation, and when reconciliation is presented to the Attorney General, he orders that there is no reason to file a lawsuit[68].

Hence, we may suggest to the legislator the inclusion of all these supervisory authorities in one supervisory authority, or at least there should be a central supervisory authority to be followed by all the qualitative supervisory authorities.

Regarding the investigation and trial authorities, the Libyan legislature has adopted two different policies. Sometimes, the People's Prosecution Office is exclusively competent to investigate and dispose of some corruption crimes, and the People's Court is exclusively competent to adjudicate cases arising from some corruption crimes, in accordance with what is determined by the Purification Law (Articles 28 and 29 thereof), and at other times it has delegated jurisdiction to the Public Prosecution and the ordinary judiciary. As in other laws such as the Penal Code and the Economic Crimes Law, this hindered the accumulation of judicial expertise in the field of combating corruption.

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67 And that is in the letter of the Head of the Law Department dated 11/23/2017 with the reference number (1/13/198). Mrs. Amal Bugaighis, Vice-President of the Commission formed by Resolution No. 56 of 2014 issued by the Libyan House of Representatives, elaborated on the background of this internal corruption of the anti-corruption bodies. Corruption in the interview that the researcher conducted with her in Benghazi on: 31/12/2018.

68 Head of the Financial Information Unit at the Central Bank of Libya, an intervention in the Anti-Corruption Conference in Libya, held by the Research and Consultation Center in Al-Bayda, 4-5 November 2017.

It may be noted that the Public Prosecution and the ordinary judiciary are not sufficiently competent, whether in terms of lack of financial and economic experience or in terms of judicial accumulation. Therefore, it may be good to raise the issue for community participation and for legal and legal specialists to discuss the feasibility and efficacy of finding a competent prosecution (Corruption Crimes Prosecution Or the Public Funds Crimes Prosecution) and a specialized judiciary (circuits for hearing corruption cases in the courts of appeal).

2.9.3 Resolutions and Regulations

Although corrupt money overshadowed the birth of the government with allegations of "bribes" being offered and received or rejected among the corridors of political dialogue[69]. The new national unity government has begun its work, with successive decisions that economists consider necessary to pursue corruption and stop wasting public money as part of measures to reform the economy.

Including a decision to stop the accounts of public companies and investment funds. The Presidency of the Government stated that this decision came "in the interest of the National Unity Government to preserve public money and to avoid any suspicions of corruption and unlawful disposition of state funds[70]."

Including the decision to dissolve the Supreme Committee to confront the Corona epidemic, which was formed from the Presidential Council of the former Government of National Accord, and to form a new committee[71].

69 Alaraby website

70 Alaraby website.

71 https://hakomitna.ly/government-resolutions

3.0 Inclusiveness of Policies

3.1 Legislative policies to combat corruption

3.1.1 Constitutional Policies

It obliges the Libyan state to embrace the democratic system and all its mechanisms because tyranny is a cause of corruption, and global indicators confirm that the percentage of democracy and its tools reduce corruption, and it is also necessary to adopt a free economic approach based on economic diversification and a real effective partnership between the private and public sectors. It is good to adopt the existing orientation in the 2017 draft constitution with regard to combating corruption. It is also worth including in the constitution a ban on the Libyan legislator from granting all kinds of legislative immunities: request, permission, and others, which are considered restrictions on the Public Prosecution's freedom to initiate criminal proceedings for corruption crimes, whether committed by officials. Public service appointed or elected by senior officials, including the head of the executive authority, members of the government, legislative councils, and members of the judiciary[72].

The constitutional legislator should also not lose sight of the fact that some constitutional rules confirm the rentier nature of the state and consolidate administrative centralization. Some of them even reinforce the culture of the citizen's right to work in a way that establishes an environment conducive to forms of corruption that may not be sufficient in confronting those constitutional rules announced for combating it and adopting integrity, transparency, competitiveness and oversight. and so on.

72 Mr. Khaled Al-Sharif referred to the vast amount of procedural restrictions contained in Libyan laws; Whether in the Police Law (10 of 1992 until the new 6 of 2018), the Guard Law (1 of 2016), the Intelligence Law (7 of 2012), the Law of Lawyers (3 of 2014), the Banking Law (1 of 2005) or Education (18 of 2010).) or the commission (3 for the year 2012) or the judicial bodies (6 for the year 2006). As for the ministers and the prime minister, they rely on the immunities stipulated in Law No. 1 of 1375 AH regarding the secretaries of the people's committees.

3.1.2 Legal Policies

The Libyan state is obligated to fulfil its obligations resulting from its ratification of the Anti-Corruption Convention by Law No. (10) of 2005 regarding the ratification of international treaties, agreements and protocols concluded between the Great Socialist People's Libyan Arab Jamahiriya and other countries within the framework of regional and international organizations and to make fundamental amendments to its legislative system.

The Libyan legislature requires an amendment to extend the application of the Libyan Criminal Code to crimes of international bribery committed by foreign public officials or employees of international institutions to the detriment of the interests of Libya or the interests of a Libyan citizen, and to extend Libyan jurisdiction to prosecute the perpetrators of these crimes when they occur abroad. Criminalizing bribery of a legal person, it is necessary to stipulate that the text criminalizing bribery will apply to the actions of those belonging to the private sector.

It is good to expand financial penalties without depriving them of liberty because it is more effective in terms of its treatment of the offender, contrary to the intention of the crime, which is the enrichment of the financial liability, which has the penalty of bribery, and a relative fine, for example, should be 30% of the value of the bribery on public funds of the state.

Rapid legislative intervention is required to ban all those images outside the circle of criminalization, including the criminalization of conflict of interest, and the criminalization of manipulation of government support that some obtain to provide goods or services, through which they take possession of state funds, for example: credits, goods, fuel and others.

The diaspora included all the texts related to the forms of corruption crimes contained in separate laws in general legislation under the name "Anti-Corruption Law".

One of the deterrent measures is for the offender to know that his crime will not be subject to a statute of limitations or amnesty. Therefore, we commend the position of Amnesty Law 6 of 2015 issued by the House of Representatives, whereby corruption crimes were excluded from the general amnesty.

It is important that the file of corruption be treated as one of the human rights violations that fall under the framework of transitional justice. Therefore, we affirm that the Transitional Justice Law No. 29 of 2013, when it stipulated the foundation of institutional reform, should have referred to the fight against corruption[73] because the fight against corruption is one of the mechanisms of transitional justice, and this legislative demand supports the unanimity of the Libyans on the need to expel those who are proven to have contributed to political, financial or administrative corruption[74].

It is necessary to adopt the principle of transparency in employers and state institutions, and here it should focus on the necessity of issuing a law that guarantees the right of access to information to translate the constitutional awareness expressed in the draft Libyan constitution 2017, where it stipulates in Article 46 of it that the state puts in place the necessary measures for transparency and ensures receiving, transferring and exchanging information It is worth mentioning that transparency is concerned with legislation due to its clarity, objectivity, stability, flexibility and development according to changes in the political, social, economic, cultural or technological circumstances surrounding it.

73 Amal Bugaighis, in an interview mentioned earlier.

74 Results of the comprehensive national survey on the constitution, Research and Consultation Center - University of Benghazi, February-March 2013. p 86.

We also call on the criminal legislator to include in its punitive texts a text criminalizing character assassination[75], and the Libyan legislator is obliged to find a system to protect witnesses and whistleblowers[76], and to criminalize assault on them and face it with a real punishment with a serious felony, whether assaulting them by any means, including threats and intimidation[77], and exemption from punishment for those involved in Corruption then reported about it, as well as providing rewards for some witnesses[78].

On the other hand, work is supposed to be in two complementary and correlative tracks: the punitive treatment of corruption, curative and preventive. This is done as a means to prevent terrorist violence and to prevent the continuation of institutional division. The reform program of state institutions after their unification and the elimination of violence and manifestations of armament outside the framework of the military institution is a decisive factor in eliminating corruption.

The criminal legislator should make a practical trade-off about measures to confront corruption between taking penalties for not impunity for the perpetrators in order to achieve private and public deterrence, but these are wasting financial and economic benefits for the Libyan state in exchange for the practical and useful criminal procedure of reconciling with the offender in exchange for returning the looted funds.

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75 Similar to the text of Article 23 of the Jordanian Anti-Corruption Commission Law, "Anyone who unjustly spreads, attributed or attributed to a person or contributed to that by any public means, any of the acts of corruption stipulated in Article (5) of this law led to offense For his reputation, insult to his dignity, or assassination of his personality, he was punished with a fine of no less than thirty thousand dinars and not more than sixty thousand dinars.

76 Similar to its Jordanian counterpart, which stipulated in Article 23 of the Anti-Corruption Commission Law No. 62 of 2006. The Jordanian Official Gazette No. 4794, p. 4534, as amended by Law No. 10 of 2012 published in the Official Gazette No. 5151.

77 Similar to the Algerian legislator in the text of Article 45 of Law No. 06-01 on the prevention and control of corruption, i: 1. D.O.A.T. 2006. https://droit.mjustice.dz/loi_prev_lut_corrupt_ar.pdf

78 The Iraqi legislator decided rewards of up to one million Iraqi dinars for providing information on financial and administrative corruption, in Law No. 33 of 2008 rewarding whistleblowers. Published in: Source: Iraqi Waka'a, Issue No.: 4085, date: 09/01/2008. p:3.

3.2 Executive policies to combat corruption

It is possible to envision a package of executive policies that help in combating corruption, dependent on a political will that lays down a vision and strategy for combating corruption such as:

- Unification of the Libyan state institutions, especially the sovereign and financial institutions.
- Work on financial reform within financial institutions and companies through activating the role of general assemblies, boards of directors, and regulatory bodies and offices
- Improving administrative policies, modernizing the administrative apparatus, increasing employee incomes, and achieving social justice[79]
- Implementation of quality standards and performance evaluation in state institutions
- Publication by the state of transfers provided by the state, credits and oil revenues through the National Oil Corporation and the publication of all contractual investment transactions regarding the reconstruction and reconstruction of the state and for all organizations working to support state institutions "municipalities, universities..etc."
- Reforming customs, improving the tax system, giving personal appreciation to the tax collector, trying to simplify its procedures, controlling contracts[80] and disclosing property.

All of the above policies should apply even to the private sector, and perhaps lifting subsidies on fuels and basic commodities and replacing them with cash support for those who deserve it will represent an effective policy in reducing many forms of corruption.

79 Edgardo Buscaglia and Jan Van Djik. controlling organized crime and corruption in the public sector. united nations crime prevention and criminal justice office,2004.

80 It is useful to be guided by the warnings about fraud and corruption in contracts issued by the Asian organizations of the Supreme Oversight Organization (ASOSAI) 3rd Edition Translation: Translation Section. Training Department and International Organizations. Accounting office. State of Kuwait, p. 48. file:///C:/Users/Smax/Downloads

At the administrative level, it is necessary to:

- Studying bylaws, regulations and decisions to introduce appropriate amendments to them
- Designing simplified and completed administrative procedures for citizens' transactions
- Introducing mechanization to enable electronic administrations
- Promote integrity, honesty and responsibility among public officials
- Respect for staffing in administrative institutions
- Working on the application of codes or standards of behaviour for the correct, honourable and proper performance of public functions, and it may be guided in this by the international code of conduct for public officials adopted since 1996
- Imposing oversight on senior officials, ministers and parliamentarians and asking them for periodic reports on their properties and the covenants under their hands
- Activating internal control bodies (internal "observer"[81]) and external (inspector) over administrative and financial institutions
- Studying the salaries and wages of workers in the country and making necessary adjustments to the salary grades in proportion to living standards and market conditions in order to achieve a decent life for employees.
- Positive punishment through reward and reward for the honest employee in support of the idea of encouraging integrity at the individual and collective level. This penalty may be in the form of incentives or by choosing the ideal employee in a periodic competition
- Putting restrictions on gifts and other benefits[82].

81 The Ministry of Finance and Planning of the Libyan Interim Government issued the Code of Conduct for the Financial Controller on 1/1/2017. http://mofp-ly.com/documents/Mdoona.pdf

82 European Commission for Democracy through Law (Venice Commission) Rule of Law Check-

- Organizing training courses for employees in all parties to introduce the importance and nature of transparency and work on applying it to become one of the basic principles for the success of administrative work in various fields in order to enhance integrity(83).
- The international emphasis on the requirement of transparency and accountability to present any strategic plans for support or partnership with the Libyan state enhances the Libyan state's endeavour to implement them(84).

3.3 Control policies to combat corruption

To ensure the realization of the controls imposed on the political authority, it is necessary to restructure and activate the supervisory and judicial institutions, and their independence and freedom of decision must be ensured from all types of material and moral coercion, with the need to implement the procedural and substantive provisions related to combating money laundering, and perhaps focusing on: the Anti-Corruption Authority, and the Oversight Administrative, audit bureau, follow-up committees of oversight bodies in the legislative institution in terms of the human cadre in these institutions, by rehabilitating those present and making sure to select employees with qualifications, who are highly qualified and have decent morals, and it is good that their salaries and incentives are distinguished to meet the pretext of the need that may open the door to bribery in all its forms. It is important to stress the need to establish financial or administrative regulations for the Anti-Corruption Authority(85).

list "List of Rule of Law Standards" www.venice.coe.int p: 42

83 Mahdi Zayer Jassim, The Role of Transparency in Reducing Financial and Administrative Corruption, Civil Dialogue Issue 2702 on 9/7/2009. Available at: http://www.m.ahewar.org/s.

84 The World Bank Group announced that its strategy to support Libya is based on economic recovery and improving the living conditions of Libyans during three years starting from February 19, 2019. It stated that transparency and accountability are required to implement this strategy and to ensure its success. www.worldbank.org/

85 Amal Bugaighis, in an interview mentioned earlier.

Create and develop mechanisms to report corruption, including protected hotlines to receive reports without asking about the identity of the reporter, provided that it is clearly announced to the public in the various media[86].

Activating the role of civil society organizations and enabling them to carry out their duties based on a real and effective partnership with government agencies, so that they have all the information that would help them carry out their responsibilities to achieve the public interest, in the awareness of the state of the importance of its vital role in consolidating the principle of transparency through the exercise of its previous or subsequent oversight functions, Involve them in formulating policies, implementing plans, developing programs and activities aimed at combating corruption and achieving financial and administrative reforms, and training them in monitoring corruption cases and how to civilly address it. Perhaps it is practical to allow civil society institutions to file a complaint and have an interest in reporting corruption in order to activate their role in follow-up. Rather, they can follow up on procedures and measures to recover funds and proceeds resulting from corruption crimes. On the other hand, civil society organizations can play an important role in spreading this Effectively carry out culture among the community through the design of special programs to clarify the implications of corruption. It can also design special programs for mechanisms for receiving reports, communications and complaints related to corruption crimes[87].

3.4 International Cooperation Policies

Among the international initiatives that assist countries in combating corruption: Recognizing the authority of judicial rulings and orders issued by countries, including a judicial cooperation agreement or in accordance with the rules of reciprocity, the legal provision for the international

86 Ahmed Zayed, member of the Transparency and Integrity Committee of the Ministry of State for Administrative Development, during a press investigation conducted by Shaima Hamdi on 9/19/2010 for the seventh Egyptian day. https://www.youm7.com/story/2010/9/19

87 Abdul Rahman Al-Tamimi, Civil Society Organizations and their Role in Combating Corruption Among the working papers presented in the training workshop "The Role of Civil Society Organizations in Combating Corruption" Ramallah, Palestine, 8/27/2013 p.: 13 of the paper. https://www.pacc.pna.ps

exchange of information on corruption crimes, and the inclusion of the legal system that facilitates legal aid of various kinds. Perhaps the most important of which is the judicial representation as mechanisms for international cooperation, where the focus must be on confiscating and recovering the proceeds of corruption that smuggled across borders, which requires effective international cooperation. It is very important to develop the concept of jurisdiction with an international standard(88), especially with the development and complexity of modern means of communication such as the Internet and the mechanism of instant bank transfers, to include crimes of systematic corruption and so that it is not limited by the immunity of state officials, with the need to prepare a central database at the regional and international level to monitor the manifestations of the phenomenon of corruption(89). It may be useful for international or mixed review committees to review all the administrative and financial work and procedures that took place during the period of institutional division(90).

3.5 Public Policies Against Corruption

Criminalizing corruption is in the public interest. However, the most important manifestation of any anti-corruption policy is the integrity of public officials and improving anti-corruption law is not enough. To fight corruption a comprehensive view is needed:

• There is a need to address the imbalances in the value system of the Libyan society and creating a culture based on clarity, disclosure, freedom of expression and accountability, and creating a more challenging environment for corruption. Therefore, it was necessary to establish and strengthen the principle of transparency as one of the most important means to combat corruption, and the successful way to implement this principle is awareness and education through the media and through schools and Universities'

88 http://legal.un.org/ilc/reports/2016/arabic/chp11.pdf

89 Civil society in the Arab world and its role in combating corruption referred to the book: The Arab Integrity System in the Face of Corruption, the reference book, by Transparency International, the Lebanese Center for Studies 2005. p: 19 of the paper. https://www.aman-palestine.org

90 The start of that review with regard to the Central Bank of Libya's actions in the west and east was indicated in the interview of both Al-Sarraj and Al-Kabeer, and the UN envoy to Libya, Ghassan Salameh, welcomed the move during his briefing to the Security Council on 7/1/2019.

curricula and all means of community education. Transparency is not an end in itself as much as it is a means that helps in the process of accountability and oversight, which achieves the goal of integrity. Transparency is a citizen's inherent right to which the state is committed to, and it is an indication of the rationality of governance and the state's democracy.

• Perhaps it is important to emphasize that education is one of the means of upbringing worthy of correcting the deviation in social and individual values, so that honesty becomes one of the lofty virtues worthy of appreciation and praise, and material and moral chastity returns to individuals and groups, and corruption settles in the Libyan social milieu so that it establishes a vice that requires shame. And slander, and education has a role in spreading awareness among citizens of their inherent rights to serve for free without falling prey to blackmailing employees and having to bribe them.

• It is useful to include Friday sermons and sermons on religious occasions calling for the integrity of administrative work because it is a social function to serve the community and preserve public money, and it is recommended to issue religious fatwas that prohibit manifestations of corruption based on the verses of the Noble Qur'an and the Sunnah of the Prophet, exposing its methods and alerting to its devastating effects on the state and society, in order to strengthen the religious faith of citizens, the remaining protection mechanism in the absence of legal injunction[91].

• When we call for the importance of the media in exposing corruption and the corrupt, this is because the work of investigative journalism in particular and the media in general if it is practiced professionally and professionally and is based on supported documents, data and evidence will be a means of control and a pressure mechanism, and therefore it is necessary for the state to guarantee the freedom and independence of the media and to guarantee the safety of its workers It is a kind of material and moral coercion, with the

91 Abbas Hamza Nazzal, The Role of the Religious Institution in Combating Corruption Crimes, Al-Qadisiyah Journal for Human Sciences, College of Arts, University of Al-Qadisiyah 2017, http://qu.edu.iq/repository/wp-content/uploads/2017/06

necessity of emphasizing the necessity of obligating workers in the Fourth Authority to the Code of Ethics for the profession through their unions responsible for the extent of their integrity and credibility.

Finally, we emphasize the importance of research centers and academic institutions, in terms of directing studies, research work and academic activities to study the phenomenon of corruption and to provide a comprehensive vision to combat it and to develop a short, medium and long-term strategic plan to confront it and prevent it[92].

92 The first forum of government research centers under the slogan «Enhancing the participation of research centers in reducing corruption» was held on 10/24/2017 Al-Nahrain Center for Strategic Studies in cooperation with the Integrity Commission. Iraq. https://www.alnahrain.iq/post/189

The economic agenda of violence and its role in the continuation of conflicts and civil wars: a study of the Libyan case

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Abstract

Using the approach of the political economy of civil wars, this paper presented an analysis of the conflict that has been going on in Libya for years, and explained that the adoption of an economic agenda for violence in Libya by armed groups and the parties involved in it led to the emergence of dynamics that would prolong and sustain the conflict in the country. Ignoring the economic agenda of violence in Libya when designing initiatives and efforts to end the conflict, achieve national reconciliation, and lay the foundations for peace would undermine and thwart these efforts. Any serious initiative to end the conflict in Libya must include, among other things, measures that address the economic agenda of violence, so that the cost of resorting to, using or threatening violence increases, and the material gains and returns resulting from its use decrease.

Keywords: the political economy of civil conflicts and wars, the economic functions of violence, the Libyan civil war, the economics of war.

1. Introduction

On the seventeenth of February of the year 2011, Libya witnessed the start of peaceful protests and demonstrations calling for a change of the Gaddafi regime. However, these protests quickly turned into an armed conflict between the Libyans, and Libya entered a bloody civil conflict. As soon as it calms down, it erupts again, and the national reconciliation efforts undertaken by international, regional and even local parties and organizations during the past years failed in laying the foundations for a lasting peace in the country. Despite the attractiveness of the idea and concept of reconciliation and peace, and the ugliness and brutality of war and its inhumanity and the devastation, destruction and loss of lives and resources it causes, human history is full of the experiences of peoples who chose the path of wars instead of reconciliation to deal with their internal differences and conflicting factional interests. A deep analysis of the causes of wars enables us to understand the reasons for some parties resorting to the path of war and destruction to achieve their goals, and enables us also to

understand the motives, incentives and circumstances that lead these parties to adopt the conflict as a tool to achieve their interests. A deep analysis of the causes of civil wars also contributes to directing reconciliation efforts and proposing policies and initiatives to stop the war when it erupts, or even prevent the chances of its eruption if signs of its outbreak appear.

The increase in the incidence of civil wars since the end of the Cold War led to a significant increase in the political, economic and social literature that attempted to understand the causes of the emergence of civil wars and the behavior and motives of the parties involved in them. This literature has witnessed a steady increase since the mid-nineties of the last century[1].

Some of these studies focused on the determinants and factors related to the economic and financial aspect. These studies argue that to understand the nature of the civil war it is necessary to understand the economic aspects of the war or what is known as the economic agenda of the civil war. The conflicting parties in civil wars usually tend to raise slogans that justify resorting to violence and war on the basis that some wars can be just and justified, but often these slogans and justifications hide economic reasons. Therefore, ignoring the potential interaction between the political agenda of war and its economic agenda can lead to an incomplete understanding of the motives and causes of war and consequently leads to the failure of reconciliation and peace efforts.

This paper aims to investigate the evidence of the economic agenda of the conflicting parties in Libya and the possible role of this agenda in prolonging the Libyan conflict.

2. The political economy of conflicts and civil wars

Economists in the late 1990s and early 2000s showed an interest in understanding the drivers and causes of wars and civil strife, and this interest produced an economic literature now known as the political economy of

1 L. Cederman, and M. Vogt, "Dynamics and Logics of Civil war" *Journal of Conflict Resolution*, 61, no. 61 (2017): 1992-2016.

civil wars. The writings and ideas of Paul Collier formed the basis of most studies in this literature. Collier's ideas became known as the "greedy and grievance" hypothesis in the civil wars[2].

This hypothesis argues that even when political and military causes and objectives are clear and provide a logical understanding of the conflict, conflicts are deeply influenced by the economic motives and opportunities offered by civil wars, and indeed that economic considerations and agendas may shift the objective of the war itself from the traditional objective (winning the war and defeating the enemy) to another goal which is to maintain the continuation of the war in itself, as the war becomes an economic project that benefits those who ignite it. This is because civil wars are not a static phenomenon, but rather a constantly shifting phenomenon in which the importance of close and direct goals increases with the passage of time, as these goals become a factor pushing towards the continuation and prolongation of the war. New and additional deprivation all contribute to creating and feeding the economic drivers of violence.

The political economy of civil wars is concerned with this complex network of motives and interactions, and it must not be understood that the political economy of civil wars claims to provide a comprehensive explanation of civil wars, or that it claims that economic motives alone are capable of explaining civil wars, but rather that political economy adds economic motives to a set of motives and causes Civil wars posed by other sciences[3].

Political economy focuses on identifying the economic functions of violence in countries that are economically weak and politically fragmented. Paul Collier argues that economic goals lie at the heart of understanding the

2 P. Collier, "On economic causes of civil war," *Oxford Economic Papers*, 50, no. 4(1998): 563–573. And P. Collier, "Rebellion as a quasi-criminal activity," *Journal of Conflict Resolution*, 44, no. 6 (2000): 839–853. P. Collier, and A. Hoeffler, "Greed and grievance in civil war," *Oxford Economic Papers*, 56, no. 4 (2004): 563–595.

3 Mats Berdal and David M. Malone, "Introduction" in Mats Berdal and David M. Malone (ed.), Greed and Grievance: Economic Agendas in Civil Wars (Ottawa: Lynne Rienner Publishers, 2000), 1-6.

causes of the emergence and persistence of civil wars. For example, William Rene notes that civil wars in Central Africa represent the best embodiment of the economic drivers of war[4], since the wars in Central Africa represent a profitable enterprise and a way to achieve material accumulation and wealth for those involved. One of the most telling examples of this is Charles Taylor, who earned an estimated $400 million annually from the Liberian civil war in the years 1992-1996[5]. In Angola, the National Union for Total Independence (UNITA) controlled about 70% of the country's diamond production. This allowed the UNITA to continue the war and created conditions that allowed local merchants, brokers, and regional military leaders to make huge fortunes. On the part of the Angolan government, the MPLA was also able to benefit from the civil war by granting preferential import licenses, access to foreign exchange, and the sale of arms to UNITA fighters. This cooperation and interaction between the warring parties in Angola is no exception and is not a unique case in civil wars. In Cambodia, many Khmer Rouge military leaders, Cambodian government employees and officers from the Thai army have engaged in joint cooperation in order to make fortunes for themselves through illegal logging activities and the gem trade, although they were warring parties from 1993 to 1997. This type of cooperation made them not interested in ending the war in Cambodia as its continuity would guarantee them the realization of wealth.

The political economy of civil wars does not depend only on the anecdotal evidence mentioned above but provides statistically acceptable evidence of a positive correlation between the abundance of natural resources, especially mineral ones, and civil wars[6]. This evidence supports the political economy of civil wars argument that understanding the causes and sources of violence requires an understanding of the economic logic of war.

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4 William. Reno, "Shadow States and the Political Economy of Civil Wars" in Mats Berdal and David M. Malone (ed.), Greed and Grievance: Economic Agendas in Civil Wars (Ottawa: Lynne Rienner Publishers, 2000), 43-68.

5 Stephen. Ellis, The Mask of Anarchy: The Destruction of Liberia and the Religious Roots of an African Civil War (London: Hurst and Company, 2001), 145-164.

6 Indra de Soysa, "The Resource Curse: Are Civil Wars Driven by Rapacity or Paucity" in Mats Berdal and David M. Malone (ed.), *Greed and Grievance: Economic Agendas in Civil Wars* (Ottawa: Lynne Rienner Publishers, 2000): 113-135.

2.1 The Grievances and Political Violence Hypothesis

The grievance hypothesis claims that high levels of inequality, loss of political rights, and ethnic and religious divisions all create a sense of injustice in society which leads to the emergence of armed violence and rebellion, that is, this hypothesis sees conflicts and civil wars as a reaction to injustice and social, economic and political unfairness, and Gurr Ted's ideas about relative deprivation are the basis from which the grievance hypothesis is based[7].

Gurr defines relative deprivation as the difference between what individuals aspire to in terms of economic and political goals and believe they are entitled to according to their capabilities and what they actually achieve. The hypothesis of grievances in this sense is based on a psychological explanation of the inclination of individuals to violence, when a section of society feels that its aspirations and what they consider their right are less than what they actually obtain and achieve in the political and economic field, and when there are no sound and democratic means by which this section can express the injustice it feels He demands and works to raise it, so they resorts to adopting armed violence and rebellion against the ruling authority, and thus civil war arises.

2.2 Greed hypothesis

The greed hypothesis stems from a microeconomic analysis of the behavior of individuals, as this hypothesis sees that the tendency to violence or not depend on the rational calculation of the benefits and costs associated with the decision to adopt violence and armed rebellion, and not depend on the emotional and uncalculated (irrational) response to injustice. Where Collier sees that the hypothesis of grievances is not important in understanding and explaining the emergence of civil wars and conflicts. This is because grievances are common in many countries that have not experienced any wars or civil strife[8], and he argues that grievances are used only as an

7 T. Gurr, "A causal model of civil strife: A comparative analysis using new indices," *American Political Science Review,* 62, no. 4 (1968): 1104–1124.

8 P. Collier, "On Economic Causes of Civil War," Oxford Economic Papers, 50, no. 4(1998): 563–573.

ideological argument by greedy rebel leaders who are influenced not so much by political ideas as by accurate calculations of profit and material loss from the adoption of violence and the use of arms. According to microeconomic hypotheses, civil war will arise only when the opportunity to fight is low because of poverty, for example, and the gains from fighting and the looting associated with it guarantee the individual wealth of those involved in it and provide the necessary funding for the continuation of the insurgents' combat activities, that is, the rebellion and political violence in this sense, an industry that generates profit through looting, as does the work of criminal gangs and pirates[9]. In short, this hypothesis holds that violence and civil wars are understood in terms of conditions that provide opportunities for material gain and profit and are not motivated by a sense of injustice.

2.3 Mobilization Hypothesis

The concept of mobilization in the framework of this hypothesis refers to the degree of organization and commitment of a particular group to collective action to achieve its interests, as well as the group's ability to provide and mobilize the necessary resources for the continuity of collective action. According to the mobilization hypothesis, social mobility in general and collective action is determined by calculation and the rational balance between costs and incentives, that is, social mobility is determined through the principle of (calculated risk). Political violence and rebellion are two types of collective action. The mobilization hypothesis holds that injustice alone is not enough for the emergence of political violence. Rather, the emergence of political violence on a large scale depends on the group's ability to mobilize itself to engage in political violence. The group's ability to mobilize depends on the opportunities, incentives, and costs imposed by the group's surroundings. Tilly[10] believes that political violence arises when the political environment provides opportunities and incentives to participate

9 H. Grossman, "A General Equilibrium Model of Insurrections," *American Economic Review,* 81, no. 4 (1991): 912–21. And H. Grossman, "Kleptocracy and Revolutions," *Oxford Economic Papers,* 51, no. 2 (1999): 267–83.

10 C. Tilly, The Politics of Collective Violence, (Cambridge, MA: Cambridge University Press, 2003).

in political violence, as individuals engage in political violence when they realize that the existing situation is worse than the situation that would prevail if they took up arms. The mobilization hypothesis believes that the existence of injustice does not automatically guarantee that mobilization will be achieved to confront this injustice, but rather that mobilization is achieved after a rational calculation of the possibilities of winning and the consequences of failure for political violence.

3. The Economic Functions of Violence

The presence of economic motives and commercial agendas in wars in general is not a new phenomenon. These motives and agendas have always been present in the analysis and study of the phenomenon of war, as the war was described by some historians as a private project to achieve profits(11). In the context of analytical studies of wars and civil conflicts, attention to economic aspects has been greatly delayed(12). Many studies have focused on primitive tendencies of violence and the emergence of hidden historical hatreds and hostilities between tribes and various ethnic and religious minorities as causes of civil wars, and accordingly, civil wars have been described as irrational wars in which conflicting parties multiply and undisciplined militias' number increases without a clear sequence of orders and directive mechanisms. Civilians will be exposed to violence of all kinds without exception(13).

This understanding of civil war leads to a misleading belief that civil war and the accompanying violence and destruction are a disaster for all parties involved in it, and therefore it is in everyone's interest to work on ending it or avoiding it in the first place, but the reality indicates the frequency of civil wars and their continuation for long years. How can this be explained?

David Keen argues that the explanation for this dilemma lies in researching what the function that the use of violence fulfils for parties involved in civil war, and Keen distinguishes between two types

11 See for example: M. S. Anderson, War and Society in Europe of the Old Regime, 1618- 1789 (London: Fontana Press, 1988), 48.

12 Mats Berdal and David Keen, "Violence and Eco- nomic Agendas in Civil Wars: Considerations for Policymakers," Millennium 26, no. 3, (1997): 795-818

13 Ibid.

:of violence in civil wars

1- The first type is violence that is intended to change the set of laws and administrative procedures prevailing in society, or what is known collectively as the rules of the game, and this type of violence is characterized by seeking to bring about change at the national level by changing the existing system, in short, we can say that the first type of violence serves purposes of a primarily political nature. Therefore, it is described as political violence. And includes within this type the revolutionary struggles seeking to change the regime, as well as the separatist struggles seeking the separation of a region from the mother country.

2- The second type of violence is intended to circumvent and bypass laws and procedures without going into the process of changing them at the national level, meaning that this type of violence is concerned with bringing about changes of a local and direct nature related to objectives of an economic, security and psychological nature. In the economic aspect, the use of violence or the threat of its use can achieve profits and economic benefits for the parties involved in the conflict. Looting, smuggling, kidnapping and extortion are the most obvious forms of economic violence.

In the security aspect, joining an armed group provides a sense of security and protection for the members of this group, especially if there is a spread of acts of violence directed against civilians. As for the psychological aspect, the use of violence provides an opportunity to carry out acts of revenge against the practices of domination and humiliation that prevailed before the conflict. joining an armed group and engaging in violence gives a sense of pride, adventure, and suspense, and satisfies the feeling of wanting to belong to a group. According to Keen, it is a mixture of fear, need and greed that often drives individuals to engage in the second type of violence.

Keen argues that civil wars are not a static phenomenon, but rather are shifting over time, as many civil wars begin with the aim of controlling the state and changing the system of government or separating from it (political violence), but quickly turn into a war with a direct local agenda, and the economic agenda is at the forefront of the agenda associated with this transformation. This shift in the war agenda results in a change in the goal of the war itself from the traditional goal of any war, which is to

defeat the opponent and subjugate or eliminate it to the goal of ensuring the continuation of the war itself, in order to ensure the continuation of material and economic gains and benefits resulting from the use of violence, where violence becomes an economic activity It brings profit to those involved. War provides the necessary legitimacy to use and threaten violence[14].

4. The economic agenda in the Libyan conflict

In February of 2011, Libya witnessed a popular uprising demanding freedom, justice and democracy against the authoritarian Gaddafi regime, and this uprising quickly turned into an armed conflict that led the country to a civil war, resulting in many transformations, including the collapse of various state institutions and the occurrence of a major security vacuum as a result of the absence of a active security sector. Despite the completion of the first legislative elections in 2012 and the formation of an elected government that was supposed to achieve comprehensive national reconciliation, lay the foundations for the modern state in Libya and draft a permanent constitution for the country - the conflict soon resumed again in the second half of 2014 and the election of a new parliament in the same year led to a split in the executive and legislative authority. The Moroccan Skhirat agreement signed at the end of 2015 between the Libyan parties under international and regional auspices failed to end the political division in the country. Conflicts continued during the years from 2015 to 2018, albeit with low intensity, until a major conflict erupted in April 2019, and in October of the year 2020, a ceasefire was finally reached. This paved the way for the beginning of negotiations between the conflicting parties in Tunisia and then Geneva, which culminated in the announcement of a national unity government that won the confidence of Parliament in March 2021, thus ending the political division in the country that began in 2014. Despite the unification of the executive authority, there are many important institutions that have not unified like the security sector institutions and the army. The government is still unable to extend its control over all parts of the

14 David Keen, "Incentives and Disincentives for Violence" in Mats Berdal and David M. Malone (ed.), Greed and Grievance: Economic Agendas in Civil Wars (Ottawa: Lynne Rienner Publishers, 2000): 19-41.

country, and has not achieved the minimum level of national reconciliation that would allow the return of the displaced. This threatens the political process and the fragile peace reached through the Geneva Accord.

4.1 Change in the security sector in the post-2011 period

This part traces the developments that took place in the Libyan security sector, especially in the army and police, that occurred after 2011. Studies that focused on the developments of the security sector in Libya[15] indicate that hybridization and division are among the most important developments that occurred in the Libyan security sector after 2011. In addition, fragmentation can be referred to as one of the most important developments in the Libyan security sector, especially after the political division occurred in 2014.

Hybridization

Hybridization means the joining of civilians to security sector units (army and police) and other security agencies, or the creation of civilian units and their formal incorporation into the security sector units. It can be said that the hybridization process began with the beginning of the armed conflict in 2011. Although most of the sources and studies that followed the development in the Libyan security sector focused on the developments that took place on the side of the revolution camp, where many civilians took up arms early to confront the forces of the Gaddafi regime. The followers of the events of the first conflict in 2011 can note that the hybridization process also took place in the camp of Gaddafi's forces. The introduction of the forces that Gaddafi sent to subdue the east in March 2011 was led by a civilian figure and was not a professional military, and the force he led called "the formation of the Fateh Eagles" was a problem mainly of volunteers from some tribes loyal to the Gaddafi regime.

15 See for example: Wolfram Lacher and Peter Cole, "Politics by Other Means: Conflicting Interests in Libya's Security Sector," Small Arms Survey Working Paper no. 20, 2014 (Geneva: small Arms survey).

The establishment of the Supreme Security Committee in 2011 and the Shield Forces in 2012 is one of the clearest manifestations of the hybridization process, as many civilians, some of whom did not participate in the fighting against the forces of the Gaddafi regime, were included in the police force through the establishment of the Supreme Security Committee and the army through the establishment of a chain Armed formations known as shields, and other units were established to accommodate civilians, such as the Preventive Security Service, the Borders Guard, and the security of vital facilities.

It is worth noting that the subsequent conflicts in 2014 and 2019 also witnessed additional hybridization operations, as names such as the youth of the regions and the supporting forces appeared in addition to the revolutionaries to describe armed formations that were included in the security sector, especially the army. This may be due to the inability and inadequacy of the regular units and perhaps even their reluctance to participate effectively in the conflict.

Division

The division in the Libyan security sector blatantly appeared at the end of 2014, when two military leaderships emerged, each of which derives its legitimacy from a different political system (executive authority and legislative authority). In western Libya, the military formations united in the Libya Dawn alliance, which was based on the legitimacy of the General National Congress and the Salvation Government, and this division continued even after the Skhirat Agreement that produced the Government of National Accord at the end of 2015. It is worth noting that the division in the security sector preceded In both cases, the political division, and perhaps these military divisions was one of the main factors driving the political division, or at least it can be said that it provided the geographical and spatial space that helped these authorities and political entities to carry out their work. For the interim government, as well as in western Libya, the Libya Dawn alliance and a coercion operation appeared before the General National Congress refused to transfer power to the new parliament and the formation of the Salvation Government.

Although most studies concerned with the Libyan conflict focus on the division that occurred in 2014, a closer look at the sequence of events shows that the first seed of the political and security division was laid in 2011, when the security sector was divided into two parties, the first pro-Gaddafi regime, which was made up of security battalions in addition to the internal security and police units in the western regions of the country, while in the east of the country, some traditional army units such as the Sa'iqa in Benghazi and air force units such as the Benina base supported the people's uprising.

Fragmentation

In addition to the division in the Libyan security sector into two warring sectors, within each sector there are more divisions, fissures, and disparities that make it difficult to assume that the leadership of each section has complete control and control over the formations affiliated with its camp. In 2011, the pro-uprising camp was heterogeneous and did not have a unified leadership in the true sense. In the east, the camp was divided into units with an Islamist and jihadist orientation, and units with a regional and tribal orientation, such as the forces of Misurata, Zintan, and the Tebu... etc. Similarly, in 2014, there was a clear discrepancy in the Libya Dawn camp between the Misurata formations and the Tripoli formations, and the Karama camp also contained some clear differences between the forces of the General Command in the east, the Petroleum Facilities Guards in the Oil Crescent and the Zintan forces, although they all were in conflict with the Libya Dawn coalition.

One of the manifestations of this fragmentation was the emergence of some conflicts and skirmishes between the different units within the same camp, and the reasons for this fragmentation and what it suffers from conflicts and skirmishes can be traced back to the inability of each camp to develop systems to control the affiliated units, as well as due to competition for opportunities and material gains.

4.2 Patterns of economic gains achieved by armed formations from the continuation of the conflict in Libya

This part traces the patterns and methods used by the conflicting parties in Libya and their armed formations to obtain the necessary funding for the continuation of their presence and activities and to achieve material gains for the leaders and members of these formations. A distinction can be made between two types of gains on which these formations relied on: obtaining direct government funding through the state's general budget, which we can call official financing, and informal financing, which is what armed formations obtain from financial resources by engaging in illegal and criminal activities.

4.2.1 Official financing through the government budget

The general budget, with its three chapters, is the main official source through which the financial resources of the security sector flow. The first chapter of the budget includes salaries and similar rewards and financial incentives, in addition to subsistence and caring (e.g. formal clothing) allocations. The second chapter includes general expenses such as electricity, fuel, stationery, ammunition, light equipment and the like. As for the third chapter, it includes capital expenditures such as spending on building headquarters and camps, purchasing heavy equipment, devices, cars, armored vehicles, and the like.

Table No. (1) presents the total financial flows to the security sector in both parts (the Ministry of Interior and the Ministry of Defense) during the years from 2010 to 2018, the last year for which published data on public spending in Libya are available. The table also displays oil and non-oil public revenues in addition to total government expenditures according to budget sections.

From the table, it is clear that after one year of the conflict the proceeds of public revenues returned to their levels prior to the conflict, as the total public revenues jumped from about 16.5 billion dinars in the year 2011 to 70.1 billion dinars in 2012, an increase of 300% compared to 2011 and by 18 % compared to 2010. This is due to the success in raising oil production

levels to what they were before the conflict, and this significant rise in public revenues led to an increase in public spending, as public expenditures increased from about 49.1 billion in 2012 to 65.6 billion in In 2013, a relative increase of 33.5%. Similarly, spending on the security sector increased from 8.1 billion dinars in 2012 to 9.9 billion dinars in 2013, i.e. a relative increase of 21.1%. It should be noted here that the relative increase in spending on the security sector was Less than the relative increase in total public spending, and this means that there are other sectors in which the rate of spending grew faster than the growth of spending on the security sector in general, but the increase in spending on the security sector appears clearly when we compare spending levels before the start of the conflict in 2011, and unfortunately, there is no data available on spending on the Ministry of Defense for the year 2010, but the General Budget Law No. (2) issued by the General People's Congress in 2010 clarifies the size of the allocations of the Ministry of Interior (the People's Committee for Public Security), which amounted to 1.9 billion dinars. While the expenditures of the Ministry of Interior in 2012 amounted to 2.8 billion dinars, an increase of 47%, and this indicates the large amount of expenditure received by the Ministry of Interior after the conflict compared to the pre-conflict period.

Table 1. Revenues and overheads (value in millions of dinars)

Revenues	2010	2011	2012	2013	2014	2015	2016	2017	2018
Oil revenue	55,713	15,846	66,932	51,776	19,977	10,598	6,666	19,209	33,476
Sovereign revenue	3,409	698	3,199	2,988	1,567	1,288	1,923	2,789	2,436
overhead	2010	2011	2012	2013	2014	2015	2016	2017	2018
Category One			16,560	25,150	23,632	20,307	19,531	20,289	23,667
Category Two			13,183	15,206	3,260	3,626	2,857	4,488	6,286
Category Three			4,799	12,626	4,645	3,862	1,501	1,911	3,734
Category Four			11,423	10,426	12,730	8,220	5,800	5,970	6,470
off-budget/emergency			3,148	2,153			786		900
Total			**49,113**	**65,561**	**44,267**	**36,015**	**30,475**	**32,658**	**41,057**
Ministry of Interior Affairs	2010	2011	2012	2013	2014	2015	2016	2017	2018
Category One	1,436		1,427	2,116	3,914	1,129	869	1,083	1,189
Category Two	241		110	127	154	9	3	15	25
Category Three	250			781	36				50
off-budget/emergency			1,292	26				31	60
Total	**1,927**	**0**	**2,829**	**3,050**	**4,104**	**1,138**	**872**	**1,129**	**1,324**
Ministry of Defense	2010	2011	2012	2013	2014	2015	2016	2017	2018
Category One			2,475	3,533	3,674	3,162	1,639	2,746	2,900
Category Two			1,293	1,508	1,105	36	57	170	400
Category Three				878	0	595	0	0	
off-budget/emergency			1,550	900	0	0	35	296	
Total	**0**	**0**	**5,318**	**6,819**	**4,779**	**3,793**	**1,731**	**3,212**	**3,300**
security sector	2010	2011	2012	2013	2014	2015	2016	2017	2018
Category One	1,436		3,902	5,649	7,588	4,291	2,508	3,829	4,089
Category Two	241		1,403	1,635	1,259	45	60	185	425
Category Three	250			1,659	36	595			50
off-budget/emergency			2,842	926			35	327	60
Total	**1,927**		**8,147**	**9,869**	**8,883**	**4,931**	**2,603**	**4,341**	**4,624**

Source: State Audit Bureau report, various issues.

Expenditure on the security sector accounted for approximately 16% of total public spending during these two years, as spending on the Ministry of Defense constituted about 10% of total public spending, while the Ministry of Interior obtained about 6% of total public spending, as is evident From Table (2).

Table 2. Ratio of spending on the security sector to total public spending.

	2012	2013	2014	2015	2016	2017	2018
Ministry of interior Affairs	5.8%	4.7%	9.3%	3.2%	2.9%	3.5%	3.2%
Ministry of Defense	10.8%	10.4%	10.8%	10.5%	5.7%	9.8%	8.0%
Security Sector	16.6%	15.1%	20.1%	13.7%	8.5%	13.3%	11.3%

Source: Calculated by the researcher based on the data published in the reports of the Audit Bureau.

A large proportion of spending on the security sector during this period goes to pay salaries and the like, as the total expenditures of category One of the sector increased from 3.9 billion in 2012 to 5.6 billion dinars in 2013, and this increase in the salary item reflects the expansion in the increase in the size of the workforce In the security sector. As a result of the hybridization processes mentioned above, a large number of civilians joined the security sector. Table (3) shows the increase in the number of workers in the security sector in 2014 compared to their number in 2010, when the number of workers in the government sector in 2010 was 895,410 individuals, of whom 266,543 individuals work in the security sector and constitute 29.8% of the total Employees in the government sector, and the number of employees in the government sector increased in 2014 to 1,524,078 individuals, of whom 480,502 individuals work in the security sector and constitute 31.5% of the total employees in the government sector. It is clear from the table that, unlike the absolute increase in the number of workers in the security sector, the relative increase in the number of workers in this sector was, on average, higher than the rate of relative increase of workers in the government sector in general, although this increase is considered relatively small. Available

data indicate that the security sector is the second largest sector in terms of the number of employees after the education sector, which had 512,904 employees in 2014.

Table 3. Number of workers in the security sector.

	2010	%	2013	%
Total employees in the public sector	895,410		1,524,078	
Total employees in the Ministry of the Interior	190,543	21.3%	289,899	19.0%
Total employees in the Ministry of Defense	76,000	8.5%	190,603	12.5%
Total employees in the security sector	266,543	29.8%	480,502	31.5%

Source: Audit Bureau report, various issues, and the General Budget Law for the year 2010.

Resources also flow into the security sector through category Two of the budget, which mostly covers operating expenses. It is clear from Table (1) that the expenditures of this section have increased slightly from 1.4 billion in 2012 to 1.6 billion in 2013, a relative increase of 14%. It is worth noting that some of the expenses that are recorded under category Two are in fact allocated in the form of rewards, which means that a significant part of the expenses calculated under category Two is actually an expenditure on category One, for example, the Audit Bureau noted in 2012 That 31% of spending on category Two, amounting to 1,318 million Libyan dinars, was allocated rewards to the revolutionaries, amounting to 409 million dinars.

To deal with some special circumstances that require allocating additional resources to this sector, the government allocates special budgets or emergency budgets for spending. Perhaps the most prominent example of this is the decision of the National Transitional Council No. (8) of 2012 to approve an amount of three billion dinars as an exceptional budget. It is noteworthy that the law stipulated the exclusion of this budget from the provisions of the state's financial law and its executive regulations, and Cabinet Resolution No. (113) for the year 2012 was issued, which excluded

the implementation of the budget from the provisions of the administrative contracts regulation, and thus the implementation of this budget is almost not subject to any control restrictions .

Table (4) shows the distribution of the allocations of this budget between the security sector and the rest of the government sectors, and as it appears from the table, about 83% of this budget was allocated to the security sector as shown in the table, where the Chief of Staff received 1150 million dinars, and the borders guards 256 million 528 million dinars and the Supreme Security Committee, 683 million dinars were allocated to the Ministry of the Interior, and the rest 383 million dinars were distributed to other sectors.

Table 4. Distribution of the emergency budget for the year 2012 (value in millions of dinars).

Category of expenditure	Value	%
Headquarter of Military Staff	1,150	38.3%
Borders Guards	256	8.5%
Supreme Security Committee	528	17.6%
Ministry of Interior Affairs	683	22.8%
Total Security Sector	2,617	87.2%
The rest of the non-security sectors	383	12.8%
Total	3,000	100.0%

Source: Audit Bureau report for the year 2013.

The figures in the above tables illustrate the importance of official government funding obtained by the various armed formations in Libya, where spending on the security sector constituted about 15% on average of the total public spending during the period from 2012 to 2018, and given that the conflicting armed formations in Libya belongs in one way or another to the official state agencies and receives official financial allocations from the state it can be said that the Libyan civil war is officially funded by the state. Given the awareness of the conflicting parties in Libya of the importance of official government funding for the armed formations

of your team, each team was keen to find a mechanism to ensure the flow of government funding for its formations, and when the political division occurred in the country after mid-2014, the financial institutions were also divided, as an additional central bank appeared in eastern Libya followed by a group of commercial banks and a central bank in the west of the country, followed by a group of commercial banks, and the two banks contributed to providing financial resources to the armed formations that fall within their areas of control[16].

4.2.2 Informal financing (via illegal activities)

Public revenues began to decline since 2014, as shown in Table (1), due to the decrease in the quantities produced and exported of oil after the crisis of closing oil ports in late 2013, as well as the drop in oil prices, as public revenues decreased from 51.7 billion dinars in 2013 to 19.9 billion dinars in 2014 to reach its lowest level in 2016 to reach 6.6 billion dinars before rising again in 2017, but it did not reach its levels in 2012. The decline in public revenues led the government to reduce public expenditures in order to control the budget deficit, Total public expenditures decreased from 65.6 billion dinars in 2013 to 44.2 in 2014 until it reached its lowest value in 2016, reaching 30.4 billion dinars. This decrease in public expenditures was reflected in spending on the security sector, which decreased from 9.8 billion dinars. dinars in 2013 to 4.9 in 2015 to reach its lowest value in 2016, 2.6 billion.

This decrease in official spending on the security sector and the formations affiliated with it has led many of these formations to engage in illegal activities in order to maintain their military presence and their continued ability to recruit individuals. The following are the most important sources and illegal activities that some formations relied on to compensate for the decrease In the flow of official financial resources from the government.

16 Of Tanks and Banks: Stopping a Dangerous Escalation in Libya, International Crisis Group, May (2019).

Looting

Looting is one of the first sources of obtaining funds and material assets that the armed formations have been involved in since the beginning of the conflict in 2011. The seizure of funds and fixed and movable assets of supporters and symbols of the former regime in the areas of Sirte, Tripoli and other cities are among the most prominent examples of organized looting carried out by the rebel formations during the year 2011 and thereafter. Although some of these formations handed over the funds they obtained to the Transitional Council at the time, the bulk of these funds went to the accounts of the leaders and members of these formations. The looting continued in the following phases of the conflict in Benghazi, Tripoli and other areas, where, for example, many of the money and property of the displaced from Benghazi who were believed to have organizational or even family ties with individuals and leaders of terrorist organizations such as Ansar al-Sharia and ISIS were seized, or who had ties to Ansar al-Sharia and ISIS or with members of the Shura Council of Benghazi Revolutionaries and shields.

The looting also affected the assets of Libyan state-owned public companies, as well as the assets of some foreign companies operating in Libya, especially in the construction and oil sector, where cars, trucks and equipment of these companies were seized and sold in the local market or smuggled abroad to neighboring countries or they are kept and used for the personal purposes of the leaders and members of these formations or for the benefit of the formations themselves.

Some formations have also been active in seizing the funds of commercial banks as well as the funds of the Central Bank. The seizure of armed formations in the city of Sirte on shipments of funds to the Central Bank that were on their way to the bank's branch in the city in 2016 is among the most prominent examples of the looting of bank funds.

Smuggling

Smuggling is one of the well-established activities in Libya before the conflict erupted in 2011. Libya has a common land border with six countries: Egypt in the east, Sudan, Chad and Niger in the south, Tunisia and Algeria in the west. The length of these land borders is 4000 km, in addition to a coastal strip on the Mediterranean, with a length of 1700 km, makes border control a difficult and complex task even during the rule of Gaddafi, when many goods were smuggled to and from Libya, but with the collapse of the institutions responsible for borders control and surveillance of land and sea ports and airports some armed formations took overin order to supervise them, some formations have engaged in various types of smuggling or in cooperation with smugglers for the purpose of financial gain. The following are the most important smuggling activities in which some armed formations affiliated with security sector institutions have been involved in:

A- rms smuggling

Smuggling and trade in arms is one of the first activities in which many armed formations and their members were involved at an early stage of the conflict. The report of the Committee of Experts established pursuant to UN Security Council Resolution No. 1973 of 2011 on Libya stated that a shipment of weapons, explosives and mines was seized on the border with Niger, on June 12, 2011 coming from Libya. This shipment contained large quantities of explosives and mines (about 40 cars loaded with these materials). Subsequent investigations carried out by the Committee of Experts proved that these weapons and explosives belong to the arsenal of the Gaddafi regime, and that this shipment was in on their way to Mali, where Al-Qaeda cells in the Islamic Maghreb are stationed, the report also mentioned that Tunisia, Egypt and Sudan seized several shipments of weapons coming from the border with Libya.

Several factors contributed to the emergence of this type of smuggling at a very early stage:

- The presence of a very large and diverse stock of weapons in Libya that was accumulated during the rule of Gaddafi, especially in the seventies and eighties of the last century, estimated to be among the largest in the region, and some of these weapons are of excellent quality and high financial value, such as anti-aircraft missile systems that are mounted on shoulder, in other words, there is a large supply of weapons stock in Libya, arising mainly from Gaddafi's weapons stockpile, in addition to what flowed to the parties to the conflict from abroad with the beginning of the war in 2011.

-The instability in the countries of the African Sahel, Mali, Niger and Sudan, and the activity and spread of terrorist groups and insurgencies in this region constituted a great demand for various weapons and munitions, whether light weapons and their ammunition or specific weapons such as explosives, detonators, mines and shoulder-mounted missile systems.

-The weakness of the procedures and measures for managing this stockpile, securing and controlling it by the competent state agencies, in addition to the weak state control over its borders, led to a decrease in the cost of engaging in arms smuggling and selling operations.

All these factors combined made Libya an attractive market for the illegal arms trade. The armed formations realized very early on the importance of controlling the accumulated stockpile of weapons in Libya, whether because the weapons enhance their influence and security and political influence, or provide them with the ability to achieve a significant amount of finance by engaging in the cross-border arms trade and smuggling. Therefore, some armed formations took the initiative to try to communicate with arms dealers and foreign intermediaries with the intention of selling part of the stockpile of weapons they control. Similarly, some terrorist groups, such as Nigeria's Boko Haram and Al-Qaeda in the Islamic Maghreb, and rebel movements supported by regional and international parties, such as *Al-Adl wal Mossawa* and the Chadian opposition, active in the Sahel region to try to obtain weapons, ammunition and military equipment from Libya. These groups request, according to the report of the expert committee, was mainly focused on man-portable air defense systems, as well as light and medium-caliber 12.5 and 14.5 mm machine guns and their ammunition.

As a result of this interaction between the presence of a large supply of various weapons and the urgent demand by groups and organizations with high organizational capabilities, a large and popular market for arms smuggling and trade in Libya quickly emerged. Although it is difficult to give numerical estimates of the value of this market and the amount of financial returns to those involved in this trade - it is believed that it provided significant financial returns for the formations involved. For more details on this trade see the report of the 2012 Expert Committee. In addition, according to the report of the sanctions committee, there have been conflicts between armed formations to control and dispose of this stockpile.

b- Fuel smuggling

Fuel prices in Libya are among the lowest in the world. This makes trading in and smuggling it to generate income a profitable business with a very large return. This type of smuggling was prevalent during the rule of Gaddafi, especially through the Ras Jedir crossing and the southern borders of Libya, but after 2011, and especially after 2013 and 2014, this type of smuggling turned to completely different levels, both in terms of size and revenues, or in terms of parties. The fuel smuggling activity was carried out both internally and externally. In the period prior to 2011, fuel smuggling activity was carried out across the Tunisian and southern land borders with Niger, Chad and Sudan. The smuggled quantities were relatively small, in addition to the low level of the organizational level of the parties involved, as the fuel smuggling activity was managed by unorganized individuals or belonging to armed formations.

A major and qualitative shift occurred in fuel smuggling operations after 2013. This shift included the techniques used in smuggling, the nature of the parties involved in it, the smuggled quantities and the intertwining with other smuggling activities, as well as the geographical scope of smuggling. Smuggling has become mainly by sea, and the city of Zuwara and Al-Zawiya have become centers for smuggling fuel by sea to Europe via Malta, and some formations that follow the official security sector, such as the Petroleum Facilities Guard and the Coast Drilling in these cities, participate

in the smuggling operations. The fuel is smuggled via sea off the Libyan coast, where it is shipped in tankers owned by the fuel smuggling mafias. In addition to smuggling fuel by sea, fuel is also smuggled by land to Tunisia, and the armed formations responsible for border control receive royalties from smugglers in exchange for allowing them to carry out their activities.

The fuel smuggling activity generates huge returns for the parties involved, as the head of the National Oil Corporation estimated the losses resulting from fuel smuggling at about one billion dinars annually[17].

c- Smuggling goods

Libya adopts a system to support some types of basic food commodities such as wheat, flour, sugar, tea, rice, pastries and some medicines. This support system leads to lower prices for these commodities compared to their prices in other countries which creates a profit from the process of trading in these commodities on the black and smuggling them to market countries. This type of trade and smuggling was popular even before the year 2011, but with the weak state control over the borders, especially the southern borders and land ports in the east and west of the country, the popularity of these items increased trade, and there is some evidence of the involvement of some armed formations, especially in the southern border areas, and those controlling land ports, in this trade, either directly or indirectly by imposing protection funds on smugglers of these goods to allow them to engage in smuggling and provide protection within the areas where they control smuggling convoys. The 2014 Audit Bureau reports indicate that the Libyan state spent more than two billion Libyan dinars during 2012 on subsidizing basic food commodities, and this is almost three times what was assigned to subsidizing food commodities before 2011. This significant increase in spending on subsidizing food commodities suggests that about two-thirds of what was spent on food commodities was smuggled.

17 Sami Zaptia$750" . m worth of Libyan fuel is stolen: Sanalla," Libya Herald, 19 April (2018) https://www.libyaherald.com/2018/04/20/750-m-worth-of-libyan-fuel-is-stolen-sanalla/

d- People smuggling (illegal immigration)

Illegal immigration activity through Libya was not a highly organized activity before 2011, but the collapse of state institutions for controlling and surveillance of borders, land, seaports, and airports caused this activity to expand significantly, especially after 2014, when the report of the Committee of Experts for the year 2016 devoted a special part from the report to document the processes, activities and parties involved in migration from Africa to Europe via Libya.

The report indicates that international cross-border criminal networks are behind the organization and conduct of convoys of illegal immigrants through Libyan territory. Qatrun and Ubari in the south and Ajdabiya, Tripoli and Benghazi in the north, while Zuwara and Sabratha are the main ports from which illegal immigrants depart for Europe, and the available evidence indicates the involvement of armed formations in these areas, in addition to units of the Coast Guard in illegal immigration operations.

It is believed that the activities of illegal immigration generate very large financial returns for the organized parties and their participation in them. For example, the report of the Expert Committee for the year 2017 stated that about 800 to 1,000 migrants cross the Libyan territory daily, and an amount of $5000 is charged for each migrant in exchange for organizing the process of transferring him from his country of origin to Europe. Thus, it can be concluded that the annual revenue from illegal immigration activity through Libya ranges between 1.4 and 1.8 billion US dollars annually. Armed formations in Libya receive a significant share of these funds for their role in protecting and facilitating the passage of migrant convoys through the areas they control.

Use of force

Armed force grants some military formations a kind of influence and authority in the areas under their control. Armed formations use their force to achieve financial gains and returns for their members, leaders, or formations as organizations. The use of force takes several forms and patterns, the following are the most important of these patterns:

Kidnapping and detention for extortion

Kidnapping and forced detention are among the tools used by some armed formations to extort money and property from individuals and some state officials. The report of the Committee of Experts for the year 2015 referred to the spread of the phenomenon of forced detention and kidnapping and stated that among the reasons for this phenomenon is extortion and obtaining money from individuals, especially former regime officials, for example, one of the leaders of the armed formations in Tajoura set up a detention center in Mashrou' al-Na'am, and detained a number of former regime officials and their sympathizers, and blackmailed their relatives and visitors, and seized huge sums of money from them. The same report also referred to the occurrence of extortion and seizure of Funds from detainees or their families in Al-Jazeera Prison, Al-Assa and Judayim prisons in the Zawiya area. The same thing was repeated in Mitiga prison. In addition, some groups arrest or kidnap some wealthy people, businessmen and state officials to bargain with them to obtain money, real estate and land in exchange for their release.

Royalties and protection money

Some armed formations in major urban and commercial centers, especially Tripoli, impose protection fees and royalties on business and trade owners in a manner similar to that of mafia gangs in exchange for not being exposed to their activities and allowing them to work within the areas of control of these formations, and some formations use the same method with various state institutions and administrations to obtain gains. For example, the report of the Experts Committee for the year 2017 mentioned that some armed formations in Tripoli threatened and blackmailed employees of commercial banks and the Central Bank to obtain preferential letters of guarantee for the benefit of some companies cooperating with these formations in order to benefit from these letters through the profit margin provided by the difference between the official foreign exchange rate (dollar and euro) and its black market rate. Likewise, the Special Deterrence Force used its influence to ensure that some companies obtain preferential contracts in the field of building and construction, and the influence of some other formations on the Libyan Investment Corporation

and telecommunications companies increased and secured memberships for individuals close to them in the management of these institutions and companies which eventually enabled them to make financial gains.

The previous presentation shows the huge amount of money and economic benefits achieved by the various armed formations in Libya as a result of the weakness of the state and its lack of control over the security sector.

5. The economic agenda and the prolongation of the conflict in Libya

The fall of the Gaddafi regime at the end of 2011 led to a collapse in the security sector and the army and police institutions, and a major security vacuum occurred, and the state's control over the means of coercion was greatly weakened, and the Transitional Council and the authorities following it failed to fill this security vacuum, despite all efforts made in this context, which resulted in the formation of armed groups that nominally follow the state and receive funding from, but enjoy a great deal of independence, and the security sector has become composed of formations that express regional, tribal and ideological affiliations and interests that are not linked by a clear chain of command. Several factors contributed to the emergence of this reality, including:

- The inability of the successive authorities to develop a clear strategy for dealing with the armed formations that were formed during the conflict with the forces of the Gaddafi regime.
- The inability of the authorities to activate the various security services, including the army and the police. This created a huge security vacuum that made the state appear helpless in the face of various security challenges, from controlling security and combating crime to preventing local and regional conflicts, and the inability to secure borders, land ports, airports, and ports.
- Some formations filling a part of the security vacuum left by the weakness of the state apparatus. This gave a kind of local legitimacy and acceptance to these formations in the areas they controlled.

- The availability of large quantities of stockpiles of weapons and ammunition that the Gaddafi regime accumulated during the past decades, and the weak procedures for controlling this stockpile by state agencies, in addition to the flow of weapons from abroad,
- The state pays salaries and material benefits to members and leaders of armed formations, in an attempt to contain them.
- The high unemployment among young people and the state's inability to create a suitable environment for the growth of economic activities and employment. This made joining armed formations an attractive alternative for young people.

5.1 The shift from political violence to economic violence

When the protests and demonstrations developed into an armed conflict in 2011 between the forces of the rebel camp and the forces of the Gaddafi regime, the goal of the revolutionaries was to overthrow the Gaddafi regime and bring about a comprehensive political change in the way the country is governed, i.e. changing the rules of the game, while the goal of the Gaddafi regime forces was to eliminate the rebellion and maintain the continuation of the existing political system, meaning that the conflict in 2011 falls within what is known as political violence, which aims either to change the rules of the game in society or to preserve the existing rules and end the rebellion against them.

After the fall of the Gaddafi regime, the rising political forces realized early on the importance and centrality of controlling the security sector in the ruling equation in Libya. Political power is closely related to military power and the ability to use it to impose its will and achieve its interests. The inability of the Transitional National Council to build a security force that would submit to it and obey its command led the emerging political parties to compete to restructure the security sector in a way that ensures the achievement of their interests. This competition has taken several forms, the most important of which are competition in the field of leadership and

organization, competition in the field of mobilization and recruitment, and competition in the field of budgets and financial resources allocated to the sector.

The competition in the field of organization and administration took the form of an attempt to take over the highest military and security positions in the Ministry of Defense, the Ministry of Interior Affairs, and the Chief of Staff of the army. The distribution of these positions after 2011 reflected the balances of emerging forces in Misurata and Zintan. As for the competition in the field of mobilization and recruitment, it included the expansion of the inclusion of new members to existing armed formations or the creation of new ones, while competition over funding sources took several forms, including exaggeration in preparing the general forces of these armed formations, and the exaggeration in the expenses of subsistence, accommodation, and uniforms.

In the midst of this process of competition, the formations realized that they could achieve greater supremacy and influence by brandishing or using violence to a limited extent against the state and government officials. Therefore, the armed formations, especially those in the capital, engaged in a race to control the sites of ministries and important government departments, under the pretext of guarding and securing them. This situation prompted some armed formations outside the capital to use vital facilities located within their areas of control to pressure and blackmail the government to achieve its demands and interests, for example, controlling oil production, export and refining facilities, and similarly other formations' control of airports and land ports, as is the case with Tripoli Airport Before the year 2014 and the port of Ras Ajdir.

The competition between the formations over vital facilities and the opportunities they provide to blackmail state agencies and government officials has led to an increase in security tensions and armed confrontations between them to divide and re-divide areas of influence, and thus a shift occurred in the goal of using violence and threatening it from a political goal that seeks to bring about a long-term change in the political system violence that seeks direct and short-term material and economic gains.

5.2 The principle of maintaining the balance of power and sustaining the conflict in Libya

The previous section clarified that there is a fundamental shift in the goals of violence and conflict after 2011, as there is no specific enemy to defeat and eliminate it, and there is no clear political goal to achieve, but rather the struggle to ensure the achievement of material and economic gains and an increase in the level of influence in the authority of the state. And the related competition between armed formations, with the exception of the conflict with ISIS and some other terrorist groups such as Ansar al-Sharia in the east and center of the country, where the armed formations realized the size of the economic benefits and gains accruing to them from exploiting the opportunities provided by the war economy. Hence, these formations have a vested interest in maintaining and consolidating the status quo, including ensuring the continued weakness of the state and resisting any real effort to reform the security sector and building professional security capabilities that follow the orders of the state.

Preserving the interests of the armed formations necessarily requires the continuation of competition among them, including the occurrence of limited conflicts among them to maintain the status quo, and the intensity of the conflicts after 2014 reflects this fact, which prompted the description of the war in Libya as a war of low casualties and low intensity[18].

The state of continuous competition between formations results in a kind of balance of power between these formations that includes a specific distribution of benefits and material and economic gains that reflects the relative strengths of these formations. This balance of forces and this relative distribution of gains will continue until one of the formations seriously threatens this balance, then the competing formations will come together to confront this threat and confront it to maintain the existing balance of power[19]. The response of the Tripoli formations to the attack of the Seventh Brigade in October of 2018, a prominent example of this. The attack of the

18 See as an example: Jason Pack, "Kingdom of Militias: Libya's Second War of Post-Qadhafi Succession," Italian Institute for International Political Studies, May 31, 2019.

19 Ibid.

Seventh Brigade on Tripoli threatened the existing balance of power in the capital. Therefore, the dominant formations in Tripoli overlooked the state of competition and the low-intensity conflict that prevailed between them, and formed a front by the same logic, it is possible to understand the unification of the various formations in western Libya despite the competition and conflict prevailing between them to confront the attack of the Libyan National Army forces led by Haftar, as this attack posed a real threat to the balance of power prevailing in the western region in general and the capital in particular.

As a result of the previous analysis, it can be said that the armed formations' efforts to maintain the principle of balance of power and the constant competition among them and their resistance to any effort to build a professional security sector subject to authority - leads to the emergence of a dynamic that will sustain conflict and instability in Libya.

6. Conclusion and recommendations

This paper aimed to investigate the evidence of the economic agenda of the conflicting parties and armed formations in Libya, and the potential role of this agenda in prolonging the conflict in the country. The paper used the political economy approach to wars and civil conflicts to study the Libyan situation and to show the role of the economic agenda in the war in the country since 2011. The paper first provided a quick description of the developments that occurred in the Libyan security sector after 2011.

The paper notes that after the fall of the Gaddafi regime and the collapse of security institutions and the inability of the transitional state authorities to revive these security institutions and fill the resulting security vacuum, and their inability to adopt effective policies to integrate the armed formations that were formed during the conflict with Gaddafi's forces - this inability led to a growing role these formations and the intensification of competition between them to take advantage of the opportunities to accumulate influence and material gains provided by the weakness of the state and the security vacuum. This competition was manifested in the field of organizing and managing the security sector and controlling senior security positions, and in the field of mobilization and recruitment, as the various

formations increased the number of their members and created new ones. The competition also included the area of benefiting from government funding allocated to the security sector.

The paper also presented the patterns of economic gains achieved by armed formations from the use or threat of violence. It is possible to distinguish between two basic types of these patterns. The first relates to the funds and allocations that the formations receive officially through the state's general budget and emergency budgets allocated to the Ministries of Defense and Interior Affairs. The second type is related to money and material gains that it achieves informally and by engaging in some illegal and criminal activities. There are many forms of these activities such as looting, smuggling including fuel and human smuggling, kidnapping, extortion, imposing royalties and protection funds. The paper provided data and estimates of the magnitude of these huge gains and benefits.

To ensure the continuity of these gains, the formations worked to thwart any effort to reform the security sector to keep the state always in a weak position, and they also entered into a state of competition with each other in order to increase their share of the gains provided by the war economy. At the same time, these formations resorted to cooperating with each other to confront any threats that would change the prevailing balance of power. Following this strategy has led to a transformation in the nature of conflict and violence in Libya from political violence aimed at bringing about a comprehensive change in the political system to violence with an economic agenda. Its goal is to prolong and sustain the war.

The adoption of this strategy by the armed formations has dangerous implications for the chances of achieving interests and laying the foundations for peace, and ignoring the economic agenda of violence in Libya when designing reconciliation efforts and ending the state of conflict would frustrate and fail these efforts. Any effective initiative to end conflict and violence in Libya must include clear visions to address the economic agenda of conflict and violence in Libya, and must adopt measures that work to undermine the gains that violence brings to the formations and

parties involved in it, so as to raise to the maximum extent possible these measures the cost of using violence and resorting to it on the one hand, and on the other hand, its benefits are reduced to a minimum.

There is no doubt that designing such measures requires a deeper study of the Libyan war economy and the economic agenda of violence in Libya.