

Draft Law on Reconciliation

The House of Representatives,

Upon review of:

- The interim Constitutional Declaration issued on 3 August 2011 AD and amendments thereto;
- Law No. (10) of 2014 AD on electing a House of Representatives during the transitional period and amendments thereto;
- The Penal Code, the Code of Criminal Procedure and their supplementary provisions and amendments thereto;
- The Military Penal Code and Code of Criminal Procedure and amendments thereto;
- The Civil Code;
- The Code of Civil and Commercial Procedure and the amendments thereto;
- Law No. (2) of 2005 AD on combating money laundering;
- Law No. (6) of 2006 AD on the judicial system and amendments thereto;
- Law No. (38) of 2012 AD on some procedures concerning the transitional phase;
- Law No. (29) of 2013 AD on transitional justice;
- Law No. (6) of 2015 AD on general amnesty;
- The international treaties concluded between Libya and other states and within the context of regional and international organizations;
- The conclusions of the House of Representatives in their () ordinary session held on ();

Hereby issues the following Law:

Chapter (1)

General Provisions

Article (1)

Definitions

The following terms shall, wherever found in this Law, have the meanings set out next to each, unless the context requires otherwise:

The Commission: The Truth and Reconciliation Commission.

Reconciliation: All procedures and measures that would improve the social fabric, enhance civil peace and national unity, and restore citizens' trust in state institutions and in each other as citizens and rights holders. Reconciliation shall not, under any circumstances, imply impunity and non-accountability for perpetrators.

Violation: Every infringement that constitutes a gross or systematic violation of the International Human Rights Law, including economic, social and cultural rights and gender-based violations, or constitutes a serious violation of the International Humanitarian Law, committed by state agencies, groups or individuals acting on their behalf, under their protection or with their knowledge, even if they did not have the capacity or authority to do so. The term “violation” also refers to any serious and systematic infringement of a human right committed by organized groups.

Victims: Persons who have suffered harm, individually or collectively, including physical or mental harm, psychological suffering, economic loss, or significant deprivation of their fundamental rights, as a result of an action or inaction that constitutes a serious violation of the International Human Rights Law and the International Humanitarian Law. The term “victim” shall also refer to family members who have been harmed because of their relationship to the victim, as well as all the persons harmed during their intervention to help the victim or prevent them from being abused.

Article (2)

Objectives and Principles of the Law

This Law aims to achieve a comprehensive and sustainable national reconciliation that contributes to building a state founded on the respect of rights, law and peace, through official and societal transitional justice mechanisms that take into consideration the values and traditions of Libyan society as well as internationally recognized standards. It is based on the following principles:

1. Uncovering the truth
2. Criminal accountability
3. Reparations
4. Institutional reforms
5. Central role of victims
6. Upholding the values of tolerance and non-violence
7. Serving public interest
8. Equal citizenship
9. Community participation
10. Building on previous efforts

Article (3)

Substantive Scope of the Law

The provisions of this Law shall apply to human rights violations as defined in Article 1, particularly the arbitrary deprivation of the right to life, enforced disappearance, torture, rape, enslavement, summary execution, and the requisition of funds without compensation.

Article (4)

Timeframe

This Law shall apply to violations committed since the first of September 1969 until the election of the legislature based on the permanent Constitution.

Article (5)

Jurisdiction to Look into Violations

The Truth and Reconciliation Commission shall have jurisdiction to look into transitional justice issues, and its decisions in this regard shall be final.

In criminal matters, the jurisdiction to investigate and file human rights violations cases shall rest with a specialized prosecution agency called the “Transitional Justice Prosecution Office.” These cases shall be adjudicated by special chambers at the courts of appeal called “Transitional Justice Chambers” as mentioned in Chapter 4 of this Law.

No other entity, as of the date of entry into force of this Law, shall be allowed to look into any claims or requests related to these violations, nor to continue looking into claims or requests submitted prior to the issuance of this Law.

Chapter (2)

Truth and Reconciliation Commission

Article (6)

Establishment and Headquarters of the Commission

A commission shall be established under the name ‘Truth and Reconciliation Commission.’ Its headquarters shall be located in Tripoli, and it shall possess independent legal personality and financial independence and answer to the legislature. The Commission may carry out its tasks in any other city if necessary and establish a branch or office in other cities if needed.

Article (7)

Competencies of the Commission

The Commission shall implement this Law, and its duties shall comprise the following:

1. Conduct a fact-finding investigation of violations specified in Article (3) of this Law. To this end, it may hear and document the testimonies of the victims and build a database that includes a unified record of the victims.
2. If finding facts about violations requires criminal proceedings, refer said violations to the competent authorities in accordance with this Law and follow up on the actions taken by the latter.

3. Design and implement a comprehensive program for individual or collective reparation for victims of violations stipulated in Article 2, based on the recognition of the violations they have suffered, and build on previously implemented administrative or judicial decisions and procedures or reconciliation records, within the state's capabilities.
4. Look into the issue of missing persons and detainees, uncover their fate, and take appropriate measures.
5. Assess the situation of migrants and displaced persons inside and outside the country and propose the necessary measures to ensure their return and repair the damage they have suffered.
6. Conduct a general historical analysis of policies, causes and conflicts in a way that offers an understanding of the causes of their occurrence and how to avoid their recurrence. The results of this analysis are to be included in a final and comprehensive unified report.
7. Implement reconciliation mechanisms in a way that enhances national unity, in accordance with an appropriate vision and a national strategy based on the principles of human rights and the rule of law.
8. Conduct research and studies, hold seminars, conferences, panel discussions and workshops, and prepare media programs in order to raise awareness about reconciliation.

Article (8)

The Commission's Term

The term of the commission shall be four years starting from the date of appointing its Board of Directors. This term may be extended once by virtue of a decision issued by the legislature, based on a request submitted by the Commission's Board of Directors three months prior to the end of the original term.

Article (9)

The Commission's Board of Directors

The Commission shall be directed by a Board of Directors composed of a chairperson and six members to be appointed by the legislature; they shall work on a full-time basis. The Board shall hold its meetings at the invitation of its chairperson or one-third of its members. The meeting shall not be valid unless attended by the absolute majority and the deliberations shall be confidential. The Commission's decisions shall be taken by consensus, and, when that is not possible, by the absolute majority of the present members; in case of an equal vote, the chairperson shall have the casting vote.

Article (10)

The Board of Directors' Membership Criteria

The Commission shall have a Board of Directors composed of a chairperson and members appointed by the legislature; they shall be reputed for their impartiality, integrity and qualifications. Diversity shall be observed in the selection of the chairperson and members, and they must meet the following criteria:

1. Hold Libyan nationality.
2. Not be convicted of any crime and not be dismissed from a job or profession for disciplinary reasons.
3. Be in a good physical shape.

These criteria shall be considered in selecting the directors of the Commission's branches, offices and committees.

Article (11)

Competencies of the Board of Directors

The Board of Directors shall establish the Commission's public policies, work procedures and implementation process. Such establishing shall include the following competencies:

1. Establish branches or offices inside the country, as needed.
2. Create departments and committees related to its competence, as needed.
3. Lay down rules and regulations for the Commission's work, its organizational structure, and the work of its affiliated committees.
4. Establish an administrative body to handle administrative, financial and technical matters, trainings and resource management issues; this administrative body may seek the assistance of local and international experts.
5. Review the reports of the departments and specialized committees and draw up the final report upon completion of their work.
6. Implement reconciliation plans and programs.
7. Approve the budget proposal and final account in accordance with the legislation in force.
8. Form task forces, assign consultants to the Commission and determine their compensation.

Article (12)

Competencies of the Chairperson of the Board

The Chairperson of the Board of Directors shall be the legal representative of the Commission in its relations with third parties and before the judiciary. They shall be responsible for running and overseeing its work, and their duties shall include the following:

1. Follow up on the implementation of the decisions of the Board of Directors.
2. Invite the Board of Directors to meetings, preside over its meetings and sign its decisions.
3. Exercise the competencies related to the administrative and financial affairs of the Commission's employees and consultants.
4. Prepare the draft budget and final account and present it to the Board of Directors.
5. Propose the internal structure, staffing and regulations of the Commission and submit them to the Board of Directors for approval.
6. Prepare periodic reports on the Commission's activity and present them to the Board of Directors.
7. Fulfil any tasks assigned to them in accordance with the legislation in force.

The Chairperson of the Commission's Board of Directors may delegate some of their competencies to a member of the Board of Directors.

Article (13)

Legal Oath

Before taking office, the Chairperson and members of the Commission, and the directors and members of its affiliated branches, committees and administrations shall take the following legal oath:

"I hereby swear by God Almighty to perform my duties with loyalty, honesty, and integrity." The Chairperson and members of the Board of Directors shall take the oath before the president of the Supreme Court, whereas the remaining members shall take the oath before the Chairperson of the Commission's Board of Directors or their representative.

Article (14)

Financial Compensation for Board of Directors Members

The financial compensation of the Chairperson and members of the Board of Directors of the Commission shall be determined by virtue of a decision issued by the head of the legislature. The Council of Ministers, based on the Commission's proposal, shall issue a special regulation for the salaries and bonuses of the Commission's employees and consultants.

Article (15)

Full-time Membership of the Board of Directors

The Chairperson and members of the Commission's Board of Directors shall carry out their work on a full-time basis. During their membership in the Commission, they may not carry out any other work in parallel.

Article (16)

Obligation to Preserve the Commission's Status and Prestige

The members of the Commission and all of its employees shall refrain from performing any act or behavior that might undermine the Commission's status and prestige.

Article (17)

Confidentiality of Information

The Chairperson and members of the Board of Directors and other employees of the Commission shall maintain confidential the information they obtain in the course of exercising their functions. This obligation shall not end with the termination of employment.

Article (18)

Disclosure of Funds and Property

Before assuming their duties, all members of the Commission must disclose their property, as well as the property of their spouses and children, to the Anti-Corruption Commission.

Article (19)

Seeking Assistance

The Commission may seek the assistance of members of the Police and other statutory bodies, as well as local administration other employees.

Article (20)

The Commission's Resources

The Commission's resources shall consist of:

1. The resources allocated to it in the state's general budget.
2. Unconditional donations and grants.
3. Any other resources allocated to it by the Council of Ministers.

Article (21)

Budget and Financial Control

The Commission shall prepare its estimated budget in coordination with the Ministry of Finance before submitting it to the legislature for approval.

The Commission shall be subject to the subsequent financial control of the Audit Bureau.

Article (22)

Conflict of Interest

The Chairperson and members of the Commission's Board of Directors, and the chairpersons and members of the committees, shall be committed to impartiality and shall refrain from considering cases in which they, or one of their relatives up to the third degree, have a direct interest.

Concerned persons may submit a reasoned request to change the person responsible for examining any of the issues under the Commission's mandate; the Commission's Board of Directors shall make the final decision on the request within ten days from the date of its submission.

The person subject of the request shall not participate in the deliberations.

Article (23)

The Commission's General Powers

In order to accomplish its tasks, the Commission shall have the following powers:

1. Receive complaints and reports related to violations covered by this Law.
2. Investigate the facts in cases of violations covered by this Law by all appropriate means and mechanisms, provided that the right to defense is observed; it may summon any person whose testimony or statement it believes should be heard.
3. Access the National Archives held by any entity.
4. Require the judicial and administrative authorities, other public institutions, and natural and legal persons to provide it with the documents and information in their possession.
5. Examine court cases and the judgments and orders issued in their regard.
6. Request information from foreign official entities or foreign non-governmental organizations in accordance with international conventions and treaties concluded in this regard; and collect any information from victims, witnesses, employees or other individuals from other countries in coordination with the Ministry of Foreign Affairs.
7. Facilitate the granting of an amnesty to every person who fully discloses the facts related to cases of violations subject to this Law.
8. Inspect and search public and private places related to the cases in which facts are being investigated and seize documents and evidence. In this context, the Commission shall possess the powers of the judicial police.
9. Follow amicable mechanisms and exert good offices to resolve disputes, including mediation and arbitration; the Commission may seek the assistance of persons who are known for their effective role in resolving civil disputes according to customs.

Article (24)

The Commission's Mandate over Cases

The period for reporting the violations covered by this Law and submitting requests for reparations shall be six months, starting from the date on which the Commission announces the beginning of its work; the announcement shall be published in the Official Gazette and on the Commission's website and other media outlets.

Complaints and requests are submitted by:

1. Victims.
2. Civil society organizations concerned with human rights.
3. Public authorities.

The Commission may, of its own accord, take the initiative to look into a case if it deems it necessary.

Article (25)

Organizational Structure of the Commission

The Commission shall consist of:

1. Commission's Board of Directors
2. Chairperson of the Commission's Board of Directors.
3. Commission's departments, which include:
 - a. Administrative and Financial Affairs Department.
 - b. Documentation and IT Department.
 - c. Research and Studies Department.
1. The Commission's committees, which include:
 - a. Truth Committee.
 - b. Reparations Committee.
 - c. Institutional Reform Committee.

The Commission's Board of Directors may establish any department or committee it deems necessary.

The Board of Directors sets the rules and regulations governing the work of the Commission, its administration, and its affiliated committees.

Chapter (3)

Uncovering the Truth

Article (26)

The Truth Committee

The Commission shall undertake to uncover the truth behind violations while determining their causes, how they occurred, their circumstances, their impact, the identity of the perpetrators and the fate of the victims, through a Truth Committee that it shall set up for this purpose, in such a way as to achieve a balance between the interests of the victims, their dignity and the rights of the perpetrators of such violations.

Article (27)

The Truth Committee's Public Hearings

The hearings of the Truth Committee shall be public, and the Committee may hold secret sessions, if necessary, to hear the statements of victims, suspects, witnesses, experts and anyone whose statement it deems useful to hear.

Article (28)

The Truth Committee's Report

The committee shall prepare a report to the Board of Directors on each incident submitted to it, provided that the report includes the following:

1. A full statement of facts supported by evidence.
2. Its findings, including an identification of the perpetrators of the violation and the fate of the victims.
3. The Committee's recommendations regarding the violation: either stating that it has no jurisdiction, archiving the case, or referring it to the competent authority inside or outside the Commission.

Chapter (4)

Criminal Accountability

Article (29)

The Obligation of Criminal Accountability

The state shall work to ensure that the perpetrators of violations are held accountable in order to prevent impunity.

Article (30)

The Pillars of Criminal Accountability

The criminal accountability system within this Law shall be based on the following pillars:

1. Determining the violations that constitute crimes whose perpetrators shall be referred to trial.
2. Determining the violations that constitute crimes for which judicial follow-up is postponed.
3. Implementation of the principle of amnesty if its conditions are met.
4. Reconciliation in crimes of economic or financial nature.

Article (31)

Amnesty Prohibitions

Perpetrators of violations that are considered crimes against humanity or war crimes may not be given amnesty.

Article (32)

The Transitional Justice Chambers

The Transitional Justice Chambers within the Courts of Appeal adjudicating crimes subject to this Law shall be composed of judges selected by their general assemblies; the judges shall undergo a special training in the field of transitional justice.

Article (33)

The Transitional Justice Prosecution Office

A Transitional Justice Prosecution Office, acting as a public prosecution, shall be formed to investigate, file and follow up on criminal cases subject to this Law. It shall consist of members selected by the Public Prosecutor, who shall undergo a special training in the field of transitional justice.

Article (34)

Statutory Limitations, Prior Dismissal, Death of the Accused, and Amnesty

Statutory limitations, prior dismissal, death of the accused, or amnesty shall not preclude uncovering the truth behind the violations and providing reparations to the victims in accordance with this Law.

Article (35)

Superiors' Responsibility

Shall be liable under the provisions of this Law any person who refrains from taking measures that they could have taken by virtue of their position or authority to prevent human rights violations or bring suspects to justice. In this regard, it shall be considered unacceptable for superiors to argue that their subordinates are not disciplined or acted independently or that they were unaware of their actions.

Chapter (5)

Reparations

Article (36)

The Obligation of Reparation: Limitations and Forms

The state shall guarantee reparation to victims for the damage they have suffered as a result of the violations perpetrated by the state or by other parties, without prejudice to its right to recourse against such parties later on, commensurate with the gravity of these violations and the resulting damage, the situation of the victim and the state's capabilities. Reparation shall take one or more of the following forms:

1. Respond in a way that shall ensure, to the extent possible, that the victims regain their situation prior to the occurrence of the violation.
2. Financial compensation for material damage within the limits of the loss suffered by the victim, excluding the loss of gain, provided that the damage is estimated according to the time of its occurrence, taking into consideration inflation. The compensation may be in the form of salaries, shares, bonds, or scholarships.
3. Rehabilitation, which includes providing medical and psychological care and legal and social services.
4. A public apology to the victims and the community, including acknowledgment of the facts and responsibilities.
5. Commemorate the event as decided by the Commission.
6. Any other form the Commission shall deem right to repair the damage.

Article (37)

Urgent Care and Temporary Financial Support

The Commission shall provide urgent care and temporary financial support to victims who need it, especially the elderly, women, children, disabled people and the sick through the Victims Compensation Fund, without waiting for reparations decisions to be issued.

Article (38)

Reparation for Collective Damages

The state shall repair damages of a collective nature caused to groups or regions resulting from the violations covered by this Law through reconstruction and local development programs. The state shall remove any legislative and administrative obstacles in this regard.

Article (39)

The Reparations Committee

The Commission's Board of Directors shall establish a "Reparations Committee" headed by a judge and four members. It shall issue its reasoned recommendations for reparation in the forms specified in Article (34), provided that the recommendations be approved by a decision of the Commission's Board of Directors.

Article (40)

The Creation of a Victims Compensation Fund

A Victims Compensation Fund shall be established. It shall have its headquarters in Tripoli and shall possess independent legal personality and financial independence. The Commission's Board of Directors shall issue a decision to establish and organize it.

Article (41)

Resources of the Victims Compensation Fund

The Fund's resources shall consist of:

1. Resources allocated to it in the state's general budget.
2. Unconditional donations and grants.
3. Reconciliation funds in accordance with the provisions of this Law.
4. Any other resources allocated to it by the Council of Ministers.

Article (42)

Compensations by the Fund and the Right to Recourse against Perpetrators

The Fund shall pay compensation and reparations related to urgent care and temporary financial support as stipulated by this Law, based on decisions issued by the Commission. It shall also have the right to recourse against the perpetrators of violations.

Article (43)

Administrative Seizure

The Fund may apply administrative seizure on the debtor's funds in accordance with the provisions of Law No. 152/1970 regarding administrative seizure.

Chapter (6)

Institutional Reform

Article (44)

Scope and Objectives of Institutional Reform

Public institutions, especially judicial, security, military, educational, and media institutions, and the companies identified by a decision issued by the Council of Ministers, shall be inspected, with the aim of reforming them and excluding the elements that are found to be corrupt or invalid, in order to restore confidence in them, avoid the reoccurrence of corruption or violations and disrupt the structures favoring them.

Article (45)

Institutional Reform Committee

The institutional inspection shall be undertaken by the "Institutional Reform Committee," consisting of a chairperson and four members, selected by the Board of Directors among those reputed for their free opinion, integrity, transparency, and expertise.

The Committee may seek the assistance of any entity it deems fit to help, including supervisory bodies, national and foreign experts, and consultants. It shall also form task forces based on the entities or topics that require special attention.

Article (46)

Entities Subject to Institutional Inspection

With regard to the entities specified in Article (44) of this Law, the inspection shall cover the following:

1. Supervisory staff.
2. Signed contracts.
3. Legislations and regulations.
4. Performance.

Judicial bodies shall be inspected by a special committee consisting of five retired judges who are reputed for their integrity, impartiality and free opinion, chosen by the legislature.

Article (47)

Supervisory Staff Inspection Criteria

Supervisory staff shall be inspected according to the following criteria:

1. Their ability to perform their professional duties as indicated by their educational qualifications, professional experience, and physical and mental fitness.
2. Their integrity as revealed by their human rights record, professional conduct, and financial integrity.
3. Their compliance with the requirements of the inspection process, such as completion of forms and questionnaires, submission of documents, and presence at the specified dates and times.

Article (48)

Institutional Reform Committee Report

The Institutional Reform Committee shall submit a report to the Commission's Board of Directors on its work. The report shall include:

1. A full statement supported by evidence of the institutions that were inspected.
2. Practical proposals to reform the institutions involved in corruption and violations.
3. Reasoned recommendations regarding the supervisory staff who have been inspected. These may include one or more of the following measures: archiving the case, relieve the person in question of their duties, dismissal, retirement, discipline or investigation.

Article (49)

Adoption and Implementation of the Institutional Reform Committee Recommendations

The Commission's Board of Directors shall adopt the recommendations of the Institutional Reform Committee and shall take any necessary measures to implement them, including referring those charged with sufficient evidence to the Disciplinary Committee, the Public Prosecution, or both, and submitting the Institutional Reform Committee recommendations to the House of Representatives or the Council of Ministers, depending on the case.

Chapter (7)

Final and Transitional Provisions

Article (50)

Criminalizing Refusal to Assist the Commission

Any person or entity that refuses to grant the Commission access to any evidence or documents in their possession, refuses to appear before it to give their testimony, or deliberately obstructs the Commission's work shall be punished by imprisonment for a period not exceeding six months or a fine not exceeding five thousand dinars.

Article (51)

Repealing a Previous Law and Transfer of Assets

Law No. 29 of 2013 on Transitional Justice shall be repealed, and the assets of the Fact-finding and Reconciliation Commission (FFRC) and its employees shall be transferred to the Commission created under the provisions of this Law.

Article (52)

Encouragement to Return Illegally Acquired Funds

If the illegally acquired funds are returned voluntarily, the criminal case shall be discontinued. If it is proven at any time that the accused has funds that they did not return, the Public Prosecution shall initiate a criminal case.

The Convention against Corruption and its preventive measures shall constitute an integral part of this Law with regard to the crimes subject to its provisions.

Article (53)

Publication of the Law and Repealing Conflicting Provisions

This Law shall come into force from the date of its publication in the Official Gazette, and all provisions conflicting therewith shall be repealed.

House of Representatives

Issued in

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