The Role of Law in Libya's National Reconciliation (RoLLNaR)

Final Report | April 2021

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This report, preface and acknowledgments

This is the final report of the project the Role of Law in Libya's National Reconciliation (RoLLNaR) that the Van Vollenhoven Institute for Law, Governance and Society (VVI) at Leiden University executed over the course of three years (2018-2020) in partnership with the Centre for Law and Society Studies at Benghazi University (CLSS).

In 2017, when we submitted the proposal for this project, national reconciliation was not high on the agenda of any of the rival authorities in Libya. This year, 2021, however, a unified government has declared its commitment to national reconciliation, and, with the help of our research team, has taken steps in that direction including the formation of a commission for national reconciliation. For us, it was not an easy journey. Trying to carry out 'neutral' research in all Libya, without being hindered by political divisions, we composed research teams of, and organized interviews, focus groups discussions, workshops and conferences in, various parts of the country, e.g., Benghazi, Tripoli, Misrata, Derna, Bani Walid and Sabha. Amongst our interviewees one finds names representing both sides of the divide, e.g., prime ministers, ministers, MPs and mayors. In doing so, we helped connect Libyans during trying times. The rigour of the research conducted was key to opening doors to our researchers, thanks to the inclusion in the research team of highly regarded academics and practitioners, and the involvement in the research of Benghazi University, the oldest in Libya, and Leiden University, highly admired worldwide. Still, carrying out research in such a manner was not always straightforward; at times, we had to cancel events or activities organized in specific places to protect our researchers; for researchers based in Benghazi, for instance, it was at times politically sensitive and risky to conduct research or attend events in Tripoli. In such cases, Tunisia provided a safe haven. Thanks to the generous and unconditional support provided by the Dutch Ministry of Foreign Affairs and its Embassy in Tripoli/Tunis, such flexibility was possible.

While rather concise, this report tries to present the fruits of this long, yet interesting, journey. It is based on a more elaborate Arabic version. The members of our Benghazi-based research team prepared the Arabic version, namely, Prof. Nagib Husadi, Prof. Zahi Mogherbi, Dr. Jazeeh Shayteer and Dr. Hala Elatrash. In Leiden, this version was translated, edited and, when needed, adapted to an international audience, with the help of Prof. Jan Michiel Otto and Dr. Hagar Taha.

We would also like to express our gratitude to these colleagues. We are grateful to many others without whom we would have not brought the project to completion. The senior experts and the researchers to be thanked for their invaluable work are, besides those earlier mentioned, Prof. Al-Koni Abuda, Ms. Lujain Elaujalli, Mr. Fathi Mousay, Mr. Ali Abu Raas, Mr. Uthman al-Kaf and, in Leiden, Ms. Nienke van Heek. Thanks are also due to the many senior academic specialists, who provided invaluable input to the research by writing assigned papers, the respondents who participated in the focus group discussions and interviews, and those who took part in, and helped to organize, our conferences and workshops.

I. Introduction

A. Project Overview and Methodology

This is the final report for the study "The Role of Law in Libya's National Reconciliation" (RoLLNaR) which is based on research conducted over three years (2018-2020) by the Centre for Law and Society Studies of Benghazi University, in collaboration with the Van Vollenhoven Institute of Leiden University. The study has focused, over a period of three years, on five main areas of concern: national identity, national governance, decentralization, transitional justice, and security forces, and looks at how politico-legal positions on them could contribute to, or hinder, national reconciliation. The five themes were researched during five thematic research phases, each running for a period of six months.

The study has assessed the role of law in addressing disagreements over these concerns, in the context of Libya's state-building problems. These disagreements, about specified issues within each concern, have hindered reaching a comprehensive and sustainable national reconciliation, and legal analysis is crucial for both detecting differences and establishing common ground between Libya's legislative heritages, before and after 2011. The project has followed a socio-legal approach, i.e. it studied not only Libyan legislation but also how the law was enacted, by who, why, whether it was implemented, how it was received, and what effect it had. In doing so, the research employed, besides desk research, in-depth interviews and focus groups discussions with well informed persons representing various backgrounds.[1]

The research team included researchers from different disciplines, such as law, political science and philosophy.[2] Besides academics, it included practitioners,[3] and solicited experts in various fields to write specialized papers.[4] So, the project's conclusions incorporate the views

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1 The in-depth interviews and focus group discussions included, for example: chairperson and members of the House of Representatives; chairperson and members of the High Council of State, President, Deputy Presidents and ministers of the Government of National Accord; Prime Minister and Ministers of the Interim Government; chairperson of the Supreme Council for the Judiciary and judges in the Supreme Court and other courts; members of the Constitution Drafting Assembly; chairperson and members of the Fact Finding and Reconciliation Commission; mayors of municipalities in the West, East and South; academics, lawyers, representatives of ethnic minorities and civil society activists.

2 The project leader, Suliman Ibrahim (law), the project senior advisors: Zahi Mogherbi (political science-Benghazi University), Nagib Al-Husadi (philosophy-Benghazi university), Al-Koni Abuda (law-Tripoli University), Jan Michiel Otto (law and governance -Leiden University); the principal researchers, Jazeeh Shayteer (criminal law-Benghazi University), Hala Elatrash (public international law-Benghazi University), Lujain Elaujalli, Fathi Mousay (private law-Benghazi University) and research assistant Nienke van Heek (international development studies).

3 Ali Abu Raas and Otman Elkaf are judges in the Tripoli Court of Appeal.

4 For example, Omar Ibrahim Al-Affas (public administration); Yousef Sawani (political science); Umm Al-Azz Farisy (political science); Issa Ali (economy); Abdallaa Ali Ibrahim (history); Mansour M. Al-Babour (geography); Dhu Al-Mabrouk (Sharia); Ahmed Yousif (Libyan folklore); Salem Aokli (writer and poet); Mohamed A.M. Abusnina (economy); Mahmoud Abossawa (history); Amal Obeidi (political science); Hamdi Herwis (public

of a broad cross-section of Libya's governance actors, and therefore should contribute to national reconciliation, as a basis for effective state building. The research conducted resulted in the development of five thematic reports in addition to a final report, both in Arabic and in English[5] (see [annex 1](#) for executive summaries).

B. Law in the RoLLNaR Project

The RoLLNaR project assessed the role of law in Libya's national reconciliation. Implied in this approach is an assumption that the state, via law, plays an important role, actual or potential, in reconciliation. Yet, the project saw this law as a result of interactions involving more than the state institutions and envisaged that other norms can also be applied to compensate for the absence, or ineffectiveness, of the law.

While both state driven approaches - sometimes called *top down* – and community driven approaches– sometimes called *bottom up* - are envisaged in reconciliation processes, our project assumed a major role for the state to play. The desired reconciliation is national and not just regional or local. While it is true that bottom-up approaches are considered to play a major role in addressing transitional justice related conflicts, the role of the state remains essential. On the one hand, the enforcement of reconciliation initiatives of local communities depends to a large extent on the parties' goodwill, which can be hard to have or sustain. On the other hand, some of the local initiatives assign a significant role to the state in sponsoring and honouring reconciliatory agreements (for example, payment of compensation), such as those concluded to end the conflict between Misrata and Tawergha. Besides, local reconciliation initiatives may fall short of achieving all the above-mentioned forms of reconciliation (individual, interpersonal, socio-political and institutional), or of realizing them as intended.

However, the focus of the project on the role of the state and its legislation did not ignore the role of other actors, as the project has employed a concept where governance is seen as "the formation and stewardship of the rules that regulate the public realm – the space where state as well as economic and societal actors interact to make decisions."[6] Researching transitional justice, its related challenges and issues, and the role of law is thus not limited to examining the role of the state and the interaction between its legislative, executive and judicial institutions, at the national and subnational levels, it also includes the interaction of these institutions with other actors: other political community components such as political parties and currents, civil

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administration); Anas Buera (public administration); Fathi Ali (economy); Abir Imneina (public administration); Tarek Elgamli (criminal law); Ibtesam Beheh (private law); Azza Boghandora (anthropology) and Ashour Shwail (public law).

[5] The report on Security Forces was an exception because it was affected by the Corona Crisis both in the Netherlands and in Libya. Thus, it was produced only in English. A similar situation occurred with the Final Report. However, it was produced in both English and Arabic but the versions different – to an extent – in content and length because of different requirements of Libyan readership as compared to international readership.

[6] Hyden, Goran. 2004. *Making Sense of Governance: Empirical Evidence from Sixteen Developing Countries.* Boulder and London: Lynne Rienner Publishers.

society, and the economic community. For example, in determining positions relating to a particular issue, the research was not limited to identifying the views of representatives of state institutions, it has also sought to identify those of representatives of civil society, political parties and the economic community. The project, thus, while focusing on law, and on the state, being the formal producer of this law, also investigated the opinions of actors other than the state, because law, according to the governance approach, is formed and implemented as a result of the interaction of all those actors, even though the state is the one that officially enacts and promulgates it. Furthermore, the project addressed also grassroots norms (religious or customary) when state law fails to effectively resolve the relevant contentious issue.

While this research focused on the role of law in national reconciliation, we have been acutely aware of the fact that Libya's legislative culture has been plagued by excessive polarization, and prioritization of group interests and personal ambitions over national interests. This is true not only for new legislation, which should serve as a tool in the reconciliation process, but also for pre-existing legislation. Both were influenced by the ideologies and viewpoints of those in power. As such they are set in a specific context. Law should therefore not only be seen as a helpful tool for reconciliation, but as something to be critically analyzed, in order to understand its impact on society, and if needed to be reformulated or revised.[7] Thus, in looking at the role of law in resolving issues concerning national identity, we have not only studied the 2015 Political Agreement,[8] the 2011 Constitutional Declaration[9] and the drafts of the Constitution Drafting Assembly notably that of 2017,[10] as well as other new legislation, but also assessed certain pre-existing legislation of the Gaddafi era regarding these issues, and systematically analyzed their content and impact to understand their potential for reconciliation.

The following are the main legislative initiatives that have been central to our analysis:

The Constitution Declaration (CD) issued in 2011 by the National Transitional Council (NTC) has been serving as an actual constitution during the current 'transitional period'. It calls for a Constitutional Drafting Assembly (CDA) to be elected to draft a permeant constitution that would then be put to a general referendum. No permeant constitution has yet been put in place: Instead, the CD has been amended.

In 2012, under pressure from federalists in the East, the NTC amended the CD twice. The first was to create the CDA with 60 members, 20 from each of the three historical regions, similar to the assembly that drafted the 1951 Constitution and the federal system. This amendment did not satisfy the federalists because it meant the CDA would still be composed and controlled

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[7] This observation is based on a piece by Lorna McGregor (2011: 115). She describes how "discourses of reconciliation attempt to depoliticize the law, thereby simplifying their own task by holding law captive as an applicable tool, rather than attempting simultaneously to understand, revise, and reformulate the legal system as a participant of the previous regime."

[8] See for an English version: UNSMIL 2015.

[9] See for an English version: NTC 2011.

[10] See for an English version: DCAF 2017.

by the GNC, a legislative assembly controlled by a Western majority, who supposedly rejected federalism. With the risk that a federal system would be eliminated in the new constitution, the federalists again pressured the NTC and threatened to boycott the GNC election. The NTC then amended the CD a second time to make the CDA an elected assembly largely independent of the GNC, whose role was limited to issuing the referendum law.

The House of Representatives (HoR) also amended the CD on 28 November 2018 with regard to the referendum to be held on the draft constitution. While Article 30 of the CD required a two-thirds majority of the voters for ratification, the amendment splits Libya into three voting regions (Cyrenaica, Tripolitania and Fezzan) and requires a 50 + 1 per cent majority in each of them– in addition to the country-wide two-thirds majority.[11] The amendment thus increases the regions' influence over the ratification of the constitution.

Since most Libyans live in the West (Tripolitania), if regional majorities were not needed, Tripolitanians would have greater say than people in the East (Cyrenaica) and the South (Fezzan). Both the HoR amendment of 2018 and Referendum Law No. 6 of 2018 (Law 6/2018) were highly contested, and the latter was brought before the Supreme Court in Tripoli. The amendment was criticized for being passed although there was no voting quorum (120 members present). Beyond flaunting legal procedure, the amendment does not recognize the rights of minorities such as the Amazigh[12] and includes legal irregularities.[13] It is also said to violate the Libyan Political Agreement (LPA).[14]

We have also examined the LPA, which was concluded in 2015 to overcome the bifurcation of 2014. The LPA provides a framework for the main national bodies – the GNA, the HoR, the High State Council (HSC) and the CDA – and was supposed to be incorporated into the CD. The LPA contains a preamble, 32 governing principles, 67 articles, 15 additional provisions and 6 annexes. In 2014, the CDA started working on a Draft Constitution (DC),[15] which has now appeared in several versions. The latest, issued in July 2017, consists of 12 chapters and 197 articles.

C.   RoLLNaR's Areas of Concern

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[11] See for example Abdulkader Assad, "Libya's parliament passes referendum law, amends constitutional declaration," *Libya Observer*, September 24, 2018.] Accessed online: https://www.libyaobserver.ly/news/libyas-parliament-passes-referendum-law-amends-constitutional-declaration [last accessed 29 April 2021].

[12] "HoR, CDA challenge referendum law before Supreme Court," *218 News*, 27 December 2018. Accessed online: https://en.218tv.net/2018/12/27/946/ [last accessed 29 April 2021].

[13] Safa Alharathy, "HCS rejects HoR's amendments on referendum law," Libya Observer, December 13, 2018. Accessed online: https://www.libyaobserver.ly/news/hcs-rejects-hors-amendments-referendum-law [last accessed 29 April 2021].

[14] "Challenge referendum law."

[15] English version online: https://security-legislation.ly/node/35174 [last accessed 29 April 2021]

The project examines the role of law in Libya vis-à-vis major challenges of national reconciliation, i.e. key issues regarding national identity, national governance, decentralization, security forces and transitional justice, as shown below:

	Concern	Issue
	National identity	
1.		The role of Sharia
2.		Freedom of following (religious) madhabs
3.		Languages of minorities
4.		Discrimination against minorities
5.		Political isolation
6.		State symbols (flag and anthem)
	National governance	
7.		The system of government: federal or unitary
8.		The system of government: monarchical or republican
9.		The system of government: parliamentary or presidential
10.		The relationship of the legislative and executive branches
11.		Independence of the judiciary
12.		Suitability of democracy to Libya
13.		The role of political parties
14.		Political participation of Islamists
15.		Empowerment policies
16.		Financial, administrative and political corruption
17.		Revenue distribution
	Decentralization	
18.		Levels of subnational governance and number of units
19.		Composition of subnational units
20.		Powers of subnational governance units
	Transitional justice	
21.		Legitimacy of the concept of transitional justice
22.		Feasibility of transitional justice
23.		Temporal and thematic framework
24.		Fact-finding or forgetting?
25.		Amnesty: justice or peace?
26.		Reparation
27.		Institutional reform
28.		Cultural specificity
29.		Mandate of the national judiciary, shared or exclusive?

30.		Existing transitional justice law - is it worth implementing?
	Security Forces	
31.		Dealing with the inherited security institutions
32.		Dealing with armed groups
33.		The relationship between the civilian and military authorities

II.   Targeted National Reconciliation

A.   Role of law and national reconciliation as end-state and process

The project has been concerned with an evaluation of the role of law in national reconciliation in Libya. This raised the question of the plausibility of focusing on law in a country that is facing real crises threatening its very existence, and whether the focus should not instead be on other ways and means of reconciliation. The answer to this question is related to how the project has conceptualized national reconciliation, as we have assumed a fundamental role for the state and its legal system, without, of course, negating the role of other actors, both domestic and international, in the formation and (non-)implementation of such legislation.

Reconciliation in this project had two meanings: it is both an end-state and a process. As an end-state, reconciliation "…consists of mutual recognition and acceptance, invested interests and goals in developing peaceful relations, mutual trust, positive attitudes, as well as sensitivity and consideration for the other party's needs and interests."[16] In the second meaning, reconciliation is the process of overcoming major disagreements, such as those concerning national identity, national governance, subnational governance, security forces, and transitional justice, which are the five main 'concerns' addressed by this research, which focuses on the role of law as a major instrument in overcoming and settling those disagreements.

B.   Vertical vs. Horizontal Reconciliation

The project adopts an understanding of national reconciliation that includes the establishment – or the reestablishment – of societal relations following a state of social and political divisions resulting in serious human rights violations, deep rupture to the social fabric, and crises between citizens and the state. In that sense, reconciliation is multifaceted: social, economic, political, cultural and religious.

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[16] Bar-Tal, Daniel and Gemma H. Bennink. 2004. "The Nature of Reconciliation as an Outcome and a Process." In: Bar-Simon-Tov, Yaacov (ed.): From Conflict Resolution to Reconciliation, edited by Yaacov Bar-Simon-Tov, 1-35, p. 15. Oxford: Oxford University Press. As cited by Bloomfield, David. 2006. "On good terms: Clarifying reconciliation." Berghof Report 14: 1–35, p. 6.

Reconciliation occurs also on various levels: first, self-reconciliation represented in the victim's reconciliation with her/his past; secondly, between individuals: the victim, the perpetrator and the benefactor; the third level is socio-political and occurs between groups (political, ethnic, linguistic, religious) in a divided society; and the fourth is institutional between the state agencies, entrusted with protecting rights, freedoms and basic laws, and citizens affected by violations, and aiming to restore their confidence in these institutions.

These levels can be reclassified into a *vertical* reconciliation: between state institutions and citizens, and a *horizontal* reconciliation: among citizens, individuals and groups. It is also possible to talk about a reconciliation that is fragile (thin) that suffices with peaceful coexistence, even if it is weak and lacks trust, respect and shared values, and another (thick) that aspires to build, or rebuild, relations on the basis of trust, respect and shared values.

C.   Nation/state building and the reconciliation

Nation/state building plays a key role in the reconciliation considered in this project. First, the major disagreements are largely related to who controls the state and to the division of power and resources within it. Second, the state's monopoly of power is a precondition for its sustainability. Third, since the desired reconciliation is not just regional but national in character, this assumes that the nation/state has a central role. Thus, even those disagreements and disputes that have a regional or social character can often not be resolved by just traditional leaders and notables, even though they do play major roles, as sooner or later the role of the state is essential. Local reconciliation initiatives must often be fortified by the state, by sponsoring the agreement and fulfilling the obligations arising from it, as, for example, payment of compensation in the reconciliation between Tawergha and Misrata.

In addition, since law, understood as legislation or draft legislation, has been, as our research has shown, the Libyan state's primary tool for change since 2011, the project focuses on evaluating its role in dealing with disagreements. Furthermore, the formation and effectiveness of law is known to be dependent on the stability and effectiveness of the state. That, in turn, entails a degree of success in establishing a nation/state's identity, legitimacy, penetration, distribution, participation, and integration. Our research therefore has paid explicit attention to the problems – which are actually crises – that Libya faces in the process of nation/state building.

D.   Six crises in the nation/state building and the role of law

In the spring of 2019, both the Libyan state and the Libyan nation continued to be in deep crisis. The state, as a political system with its institutions, is divided into two main parts, one of which has launched a violent attack on the other. Under the banner of the 'Eastern' government, Hafter's Libyan National Army (LNA) is at war with Serraj's Presidential Council/Government of National Accord's (PC/GNA) 'Western' government. Even without the war, post-2011 Libya would be divided along more than a few fault lines. At the time of Gaddafi's fall in 2011, the

challenges of rebuilding the nation/state were already daunting. Still, it is worth noting that most developing countries have experienced such problems and, in the mid-1950s, when the Libyan state was in just its first decade, the international Committee on Comparative Politics (CCP) of the Social Science Research Council observed that, in their efforts to build nations/states, developing countries experienced several 'crises'. Charles Tilly[17] notes that in this the CCP reflected a broad consensus among its members that all developing countries had to go through a sequence of such crises. The CCP distinguished crises of identity, legitimacy, penetration, distribution, participation and integration. Ever since, these crises of nation/state building have been regarded as established theory[18], highlighting a political system's structures inability to perform its key functions, and forming a starting point for thinking about how to solve them. In the Libya case they are particularly relevant and serious because they all occur simultaneously.

1.   Identity

Identity refers to the citizens' common sense of belonging to their nation/state. A stable nation/state requires that individuals feel that their own personal identities are, to a considerable extent, defined by their identification with that nation/state. This is hindered by competing ethnic, religious, cultural, regional and other identities, and is particularly true, when, as is the case in Libya, the nation/state is divided and does not perform well, leading to other strong socio-political actors filling the vacuum, and a consequent crisis of national identity.[19]

2.   Legitimacy

Legitimacy refers to the support that a state – or a regime, a government, a policy, a law – derives from being generally perceived as just. While the legitimacy of Gaddafi's regime had decreased over the years, the post-2011 governments have also suffered a lack of legitimacy. Since the state's bifurcation of 2014, the legitimacy crisis is out in the open. Overcoming such a crisis requires rebuilding public confidence in the state, its institutions, policies, and laws.

3.   Penetration

Penetration[20] refers to how the political centre extends its control over the periphery. It calls for establishing a rational administration in order to mobilize the state's resources, to create public order, and to coordinate collective efforts. The capacity of the Libyan state to actually

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[17] Goodin, Robert E. and Charles Tilly (eds.). 2006. The Oxford Handbook of Contextual Political Analysis. New York: Oxford University Press Inc., p. 418.
[18] See for example: Rokkan Stein. 1969. "Models and Methods in the Comparative Study of Nation-Building." Acta Sociologica 12 (2); Goodin and Tilly 2006. Goodin, Robert Edward, and Charles Tilly, eds. The Oxford handbook of contextual political analysis. Vol. 5. Oxford Handbooks of Political, 2006.
[19] See this project's 2018 report on National Identity.
[20] The description of these crises is loosely based on Rokkan 1969: 63-68.

reach inside society, effectuate basic policies, gain the confidence of its subjects, and implement and enforce its laws, is severely limited. There is, thus, a penetration crisis in state-building.

4. Distribution

Distribution refers to redistribution of incomes, goods, services among citizens by the state. It requires effective collection of taxes and other revenues, and fair and efficient mechanisms to provide citizens with education, health and other services and social security. While Libya's oil revenues are high, and many citizens are on the state's payroll, investment in public infrastructure has been low and public service delivery weak. In the East, in particular, there has been a prevailing public perception that the center (Tripoli) has neglected and marginalized the region, keeping much for itself.

5. Participation

Participation of all citizens in the political process involves their rights to vote, and to form political parties, as well as implying protection of an organized opposition. As the state's political process is opened to those who did not participate previously, new interest groups emerge, which also leads to rising expectations. If the existing political institutions cannot meet these expectations, there is a participation crisis.

6. Integration

Integration refers to national inclusion by sharing the offices, benefits, and resources equally among all culturally and politically distinct sectors of the national community. This involves the sharing of power across elites, segments, strata, and calls for allocation rules equalizing the shares. Unfortunately, many of those who aspire to, or have held, political power in the Libyan state have reverted to exclusionary ways. In recent years the division and war have aggravated this approach. In short, there is an integration crisis in Libya's nation/state-building.

E. Contexts for reconciliation: Challenges and Opportunities

National reconciliation efforts in Libya do not take place in a vacuum, but rather within specific general contexts (cultural, social, economic, historical and geographical) and within a political environment facing the crises of nation and state building (the context of governance) that govern this process and contribute to determining its course. This part of the report is concerned with the challenges these contexts create that may affect the law's chances of achieving national reconciliation. The report focuses, first, on investigating these challenges and their impact on the prospects for national reconciliation, and then, it addresses the opportunities that these contexts provide for promoting national reconciliation and the role of law in this reconciliation (see annex 2 for a detailed account).

1. Challenges

Although Libya shares many challenges with the rest of the Arab Spring countries in building a civil democratic state, the way events in the Libyan case during the last four decades and during the uprising have brought to light different and more difficult challenges. Unlike its neighbours Egypt and Tunisia, the Libyan uprising was marked by a high degree of violence, and the Libyans paid a high price for their freedom that had a profound impact on their society, socially, economically, politically, and psychologically.

a) General Context

The following is an overview of the most important challenges within the general contexts in which the processes of nation-building and state-building and achieving national reconciliation in Libya takes place in cultural, social, economic, historical, and geographic contexts.

First challenge is the need for building democratic, political culture. The educational system in Libya during the last seven decades has played a decisive role in instilling a political culture that reflects the so-called parish culture, a culture that does not help in building the trends of tolerance, moderation, inclusiveness, participation and consensus, which constitutes the essence of democratic civil culture. Therefore, there is an urgent need to make intensive efforts to change the Libyan political culture by employing social and political upbringing channels - the family, the educational system, the media, etc. - to inculcate the values, standards, attitudes and patterns of behaviour necessary to build a civil and democratic culture, and to educate citizens and urge them to play an active role in the political process and to endure greater responsibility in their individual affairs. Transforming a deep-rooted political culture turns out to be a difficult, slow and long-term process.

Second is the value system in place. The local value system mainly, but not exclusively, includes tools for controlling and enforcing religion, custom and law, most notably, and all of them are generally favour values and principles of national reconciliation. However, the most important question arises about the extent to which the behaviour of all Libyans adheres to these values and principles that bind them to the teachings of their true religion and are coerced by the legislation of their legal system and imposed on them by the norms of their society, which calls for disclosure, apology, forgiveness, tolerance and reparation, and rejects treachery, healing, revenge, stalking and begging violence in imposing trends.

Third is the weakness of civil society. While many of the literature on modernization, political development and democratic transformation agree that the presence of a strong and active civil society is one of the factors supporting the democratic system, and despite the formation of huge numbers of civil society organizations in Libya after February 2011, civil society in Libya

has suffered from many imbalances. Resulting from the experience of previous decades, the most important of these imbalances is the hegemony of the state and financial dependence. The state completely dominated civil society, such as trade unions, federations, professional associations, and civil voluntary associations were established, organized, reorganized, and dissolved by decisions from the state, regulations and laws, and civil society organizations were not an independent and separate entity from the state, but were included in the official organizational structure and considered part of the mechanisms of the Libyan political system.

Fourth challenge is the impact of ethnic, tribal and regional allegiances. Among the merits of consolidating democratic political processes that promote national reconciliation are the limitation of the influence of ethnic, tribal, and regional loyalties to the private sphere, and a commitment to common and equal citizenship values. The inability of state institutions to impose adherence to these values opens the way to the emergence of tribal, regional, ethnic, and other local affiliations. This has become clear in Libya over the past few years, as political fragmentation, division of state institutions and ongoing conflicts have led to the growing influence of tribal and regional factors on most political processes and decisions at the local and national levels. At the local level, the administrative divisions (municipalities as a model) were subject to local pressures and demands were not defined according to objective considerations. At the national level, sufficiency and need standards are no longer the basis for occupying most jobs, and tribal and regional considerations have become the governing criterion.

Finally, the fifth challenge is the need to face extremist Islamism. Despite the dominance of moderate Islamic trends in Libyan society, the nature of the conflict provided the opportunity for many violent extremist groups to influence events and become a major actor in the Libyan political and social scene, with the negative repercussions that this had on the establishment of a civil democratic state in Libya, as was demonstrated during the last few years. The confrontation of this challenge must be based on the policies of inclusiveness and dealing with the social, economic and political roots of this violent extremism, and not by only adopting policies of exclusion and armed confrontation.

b) *Governance Context*

We consider the centrality of the role that the state is supposed to play in achieving the pillars of national reconciliation, building and strengthening community peace, achieving political stability, and consolidating the rules of equal citizenship that does not exclude any individual or group on sectarian, ethnic, regional, tribal or political grounds. Any defect in the performance of the state's basic functions, or any group or social component doubts the state's ability to protect its rights and favour other groups and formations, this will negatively affect the possibilities for achieving this. This justifies the adoption of this report of an approach to the challenges of state building and democratization in analysing the current reality in Libya, and in investigating and evaluating the role of law in confronting them, and the impact of this

on achieving national reconciliation. The following are some of the main challenges in the governance context:

First, the coincidence of crises of nation and state building. Perhaps the coincidence of nation-building crises represents the main challenge facing the Libyan state. The current situation in Libya reveals an almost complete absence of state institutions and a clear lack of security and law, and consequently of societal peace and political stability, and that the Libyan society is now facing all the challenges of nation-building and state-building simultaneously, which exacerbates its impact and consequences. Thus, we notice that there are urgent problems about legitimacy resulting from many questions about identity, a clear lack of penetration of state institutions, a large deficit in the state's distributive capabilities, and prevailing doubts about the viability of political participation and its impact on political decision and trends. This affected the performance of the institutions and authorities of the transitional phase and imposed a set of other challenges.

The second challenge is institutional vacuum. Institutionalization processes during the previous regime were greatly reduced, and governmental and political structures underwent continuous changes that negatively affected the performance of these structures and undermined their legitimacy. This institutional vacuum represents one of the most important challenges facing the new system. Libya had to face the challenges of conducting elections, drafting a constitution, and building democratic institutions without any close and meaningful experience. On the other hand, this could have given Libya an opportunity to design and build its own democratic system without the burdens represented by the presence of solid institutions that might resist and impede the democratic process. However, as revealed by the developments of events in Libya over the past five years, this was a missed opportunity.

Third is the poor performance of the transitional legislative and executive institutions. The success of the democratization process depends on the existence of efficient political leaders who embrace democracy as a strategic choice and a national commitment and commitment. However, an investigation of the role played by the Libyan political leaders after February 2011 shows that they did not do enough in this regard. At the legislative level, there was a clear lack of definition of responsibilities, which led to an overlap in terms of reference and an ongoing debate with the executive authority. Despite the huge budgets allocated, successive governments have failed to develop effective solutions to move the wheel of the national economy, address the problems of centralization, confront the proliferation of arms and armed formations, and build the national army, and this has had a negative impact on citizens' confidence in the institutions of the transitional phase and their political leaders. In sum, the performance of the transitional legislative and executive institutions in Libya has not responded to the requirements of the stage. The poor performance of these institutions is among the reasons for questioning their legitimacy.

Fourth challenge is questioning the legitimacy of the institutions of the transitional period. No democratic society can last long unless it enjoys some form of legitimacy. Legitimacy is a

difficult concept to define and quantify, especially in authoritarian societies. However, it can be better understood if it is divided into three components: geographical, constitutional, and political. The report of the occupant of national governance revealed that the legitimacy crisis, with its three manifestations, is strongly present in the Libyan scene, whether through the existence of claims that reject the national state either from a supra-national or sub-national perspective or through the existence of clear polarizations about the form of the state and its system of government? Or through the refusal to recognize the legitimacy of the elected authorities and the formation of alternative powers.

Fifth challeng is the split of political elites. The state-building process requires a political leadership that believes in the mission and is able to meet the challenge in a historic mission in which there is no room for factional disputes. It is clear that the dominant elite on the political scene in Libya now lacks the required ability and qualities, and perhaps even the desire, to build a civil democratic state and achieve national reconciliation. Evidence of inability to reach any consensus, whether through the House of Representatives, the General National Congress, the Presidency Council of the Government of National Accord, or the constituent body for drafting the draft constitution, is abundant and clear. Tolerance, acceptance of others, moderation, and lack of clinging to opinion are important democratic values that are necessary for the success of any democratic model, and it is a lost culture among most of the Libyan political elites at the forefront of the political and social scene due to the distorted political upbringing they were exposed to during the past decades that created an exclusionary culture among these elites.

Sixth challenge is the novelty of the party-system experience in Libya. The importance of this challenge in the context of enhancing the chances of national reconciliation or obstructing it lies in the fact that political parties are supposed to be based on a civil / political reference that contributes to fusing society horizontally, unlike tribal, ethnic, sectarian and regional references and affiliations established vertically, given that the existence of civil and political organizations reduces the influence of the primary references. And it contributes to increasing the chances of state building and political and societal coexistence. Emerging parties have been affected by past periods of prevention and repression and lack of experience in overt party and political work. The public good is severed with tribe, spoils, and creed. Also, the newly established parties reflected a culture of conflict that complicated the scene and made reaching compromises and settlements difficult. And because of the poor performance of the parties, which was mainly due to the newness of their experience, a trend grew that the fault in political performance was the idea of multi-partyism itself, and lawsuits against this idea emerged.

Seventh is the influence of the rentier policies of the Libyan state. During the past five decades, the 'rentier mentality' has become entrenched among the various elites and groups that view controlling the state with the logic of victory and spoils, and as the only way to achieve its goals and desires at the expense of individuals and other groups. Because of this, the relationships between the various elites and groups became zero-sum and conflictual, and the state became the center of the conflict and its focus, instead of being an organizer of competition between the various political, economic and social elites and groups and controlling its borders and

tools. The distributive policies of the state have contributed to the formation of a rentier mentality among various individuals and societal groups, to the dominance of the culture of spoils, and to the almost complete dependence of the state and its institutions. All this worsened after 2011, as the new authorities continued to follow the same previous rentier distributional pattern and worked to buy the loyalty of individuals and groups through a set of decisions and policies. A rentier mentality, in light of weak government institutions and lack of accountability, helped create a fertile environment for corruption and looting.

Eighth is the weakness of the military establishment and the inability of the state to control security. The concept of national security for Libya during the period of the previous regime was based on the security of the regime, as it was based on preserving the political system and ways to strengthen and strengthen it. There are many aspects that confirmed the supremacy of this concept, including the neutralization and dissolution of the military establishment, the formation of alternative forces that protect the regime, and the reliance of recruitment for the military and other security institutions on traditional sources, such as kinship and ideological loyalty. When security is undermined, the citizen's confidence in everything falters. In the absence of security, there is no way for the establishment of the state of institutions, nor for the implementation of the provisions of the constitution that establishes them. As for the values, their memorization in the absence of security is not abundant. When a person is obsessed with preserving his life, there will be no room in his conscience for compassion, tolerance, solidarity, altruism or fairness. And this negatively affects the chances of national reconciliation.

Finally, is the challenge from the international factor. The internal situation in Libya was negatively affected by the conflict of interests of international and regional powers, and Libya turned into an arena for conflict between these interests through the use of local parties and fuelling conflicts between them, ideologically, regionally or tribally. The intervention of international parties led to a further crisis due to the conflict of interests of these parties and their different priorities from those of the Libyans. The political settlements sponsored by the United Nations Support Mission in Libya (UNSMIL) also failed. According to all of this, the transformation of Libya into an arena for conflicts by foreign parties had a negative impact on national reconciliation and on the state-building process.

2. Opportunities

It is no secret that facing the aforementioned challenges is a difficult task even for countries that enjoy social peace, political stability and societal consensus. The task is becoming more and more difficult in a country like Libya, where these challenges must be met within an environment characterized by political mistrust, low social harmony, and the spread of armed civil conflicts. However, hope remains tenuous. All the previous challenges include in their folds what can turn them into opportunities if they are addressed with the right methods and appropriate solutions. There are specific opportunities that can be seized in a way that enhances

the democratic transition process and supports the chances of national reconciliation, including:

First is the existing societal support for national dialogue. The culture of dialogue is the incubating environment for every democratic experiment, and when the culture of dialogue is absent, the opportunities for democratic transformation diminish in its absence. Dialogue is a path to elite and societal consensus, and consensus is a central principle in any democratic system. The culture of dialogue means the initial readiness of large sectors of the people to exchange opinions, ideas and visions, to reach some kind of consensus around them, and to refrain from invoking violence or any means of material or psychological coercion in imposing these opinions, ideas and visions. And the prevalence of the culture of dialogue in any society indicates that the majority of its children have sufficient maturity and moral awareness so that one of them understands that the opinion he defends is nothing but his preferred hypothesis.

Second is the growing need for a reconciliatory constitution. Consensus is a process of bridging and bridging viewpoints, demands and projects in order to reach a situation acceptable to all parties, and it is an elaborate weaving of a combination of opinions that takes into account the rights, duties, concerns, concerns and interests of all. Consensus is one of the principles that should govern the constitution-making process. There are other principles that should govern this process, such as representation, community participation and transparency, but consensus is the most important of them. This is because a constitution that does not meet the requirements for consensus will be flawed, regardless of the amount of transparency and participation that was taken into account in its making, and it will fail to express the aspirations and aspirations of society even if the party that drafted it is elected and is then supposed to represent the various segments of society. This means that the completion of the constitution and defining the rules for the political process and state institutions should be based on the basis of consensus.

Third is the existing social coherence. The social and economic modernization processes over the past decades have ensured the fusion of Libyan society with its various components into a largely homogeneous social melting pot. The problem in Libya is not a problem of deep societal divisions, but rather a political problem par excellence caused by a ruling elite and opposition whose inability to do anything but provoke separatist, regional and tribal tendencies, and its inability to assume the responsibilities of building the state and maintaining peaceful coexistence and political stability in Libya. Its erroneous practices and its pursuit of its narrow private interests at the expense of the general interest of society, and even the interest of groups and parties that claim to represent them, have led society to internal strife and destabilized its political stability and put it on the brink of a civil war that directly threatens its united entity and its common coexistence.

Fourth is the unification of state institutions and continuation of social communication. Despite the negative impact of the political and institutional divide on the chances of national reconciliation, there are signs of hope that many political and social institutions have resisted

tendencies of fragmentation and division. There is an evidence for this, the most prominent of which is the lack of division of the judicial institution and its continuation to work within a unified national framework. In addition, communications between the lower administrative levels in the executive institutions did not stop and they maintained a minimum level of coordination and cooperation. On the social level, the Scout Movement, the Red Crescent and some civil society organizations provide models for this cooperation and communication at the national level. Likewise, the division did not extend to academic institutions and academics, as scientific and cultural relations and activities continued between these institutions throughout the country. And all of these contributed to the healing of some of the fabric of the social fabric.

Fifth is the historical experience of Libya. The experience of building the independence state in the late 1940's and early 1950's presents a positive historical legacy around building confidence, achieving national reconciliation and reaching consensus, whether at the horizontal societal level (the Al-Harabi Charter, for example), or the vertical political level (the establishment of the state). An enlightened cultural, social and political elite emerged, distinguished by political wisdom and a future vision that enabled them to look at the conditions of their homeland within its internal and external contexts, and helped them to overcome differences, reduce tensions, make mutual concessions, and reach compromise solutions that led to the achievement of unity and the achievement of independence. This positive experience reflects the importance of the presence of enlightened elites and leaders to build the nation and the state and enhance the chances of societal and political coexistence.

Finally, the geographic factor provides Libya with an opportunity for reconciliation. The geographical factor was not a major obstacle to the communication and assimilation of the Libyans, especially in the modern era. Despite the vast territory of the country and the low population density, the cities and villages of the country have always been connected to each other socially, culturally and functionally, not only as an economic means of living, but in that it is a source of identity for a mobile society, whose members move freely and continuously from one place to another, in search of About job opportunity and civilian life. Of course, the traditional urban centers, and those that have grown and expanded greatly since the economic renaissance provided by the oil sector at the beginning of the sixties of the last century, played the role of a hub for economic activities interacting in the length and breadth of the country. These cities also represented the melting pot of the inhabitants who lived the life of the desert and immigrated to it from the small and agricultural communities.

In conclusion, the treatment of imbalances does not necessarily require long decades, because the deterrence processes that are supposed to be practiced by the state founded on justice and law, which, as mentioned above, constitutes one of the goals of national reconciliation, may be capable of returning matters to normal within a few years, as long as this state was established on the realization that the application of the law serves the interests of those who implement it, as well as the interests of his society and his country, so that the impulses that drive corruption, criminality and oppression are the same motives for integrity, justice and charity. It is true that

the state of justice and law has not yet been established in our country. However, there are changes that have taken place in the last five decades that have contributed to our appreciation in creating an opportunity for its establishment and paving the way for the success of national reconciliation efforts.

III.   The Role of Law

A.   Law's position – well-established, seriously limited

Reports of international media on Libya project the image of a lawless place. Yet, as this study shows, there is a large-scale, ongoing production of legislation in Libya. The country's many faculties of law, public and private, have produced thousands of law graduates. Those who aspire a professional career as judges, prosecutor, public lawyer, state attorney, or in the Ministry of Justice's Directorate of Law apply for a one-year traineeship at the prestigious Higher Institute for the Judiciary. Successful completion of this professional legal training leads to a career in the legal services, which may entail rotation between the abovementioned legal professions.

The foundation of Libya's legal system was laid in the early 1950s with foreign support, notably from Egypt. It mainly follows the private, criminal and administrative laws of continental legal systems, notably the French. Many senior law professors took their doctorate from French law schools. As in most Muslim majority-countries, the domains of family law and inheritance law were heavily influenced by sharia-based rules. After 1969 Gaddafi followed Egypt's example by introducing legal concepts and norms based on socialist law, but he added a radical populist twist to it. Introducing socialist policies implied a major shift from private law to administrative law. In most other countries in the MENA region the pendulum of ideology and law has already swung back, but Libya's legal system still carries these main features of Gaddafi's era.

In spite of constant references to people's power, Gaddafi's introduced a highly authoritarian system. Political oppression of critics became the rule, leading to many gross injustices and human right violations. Yet, even under Gaddafi professional judges and lawyers continued to do their work with a certain degree of autonomy. Significantly, the February 2011 revolution started in Benghazi as a protest against the imprisonment of a human rights lawyer, and got off the ground from the city's northern court house. The chairman of the NTC was a former minister of Justice. In August 2011 the future course of the revolution was spelled out in a Constitutional Declaration which, until today, is still the central reference point for Libya's constitutional problems, law and politics. Judges drafted local regulations for municipal elections in early 2012.

So, law in Libya has been, and still is, Janus-faced: one aspect is that of a well-established legal system, staffed with well-trained legal professionals, operating with a certain degree of

autonomy, and capable of functioning an a civil, democratic state; the other aspect is its vulnerability and limited effectiveness. Law has proved to be vulnerable, to political oppression, to widespread corrupt practices, to internal weaknesses, and, since 2011 'to the power of the guns' held by any armed group.

B.   Law-making in a context of divisions and ruptures

Since the fall of Gaddafi, Libya's divisions have come out into the open – between revolutionaries and Gaddafi loyalists, between islamists and nationalists, and between the county's three main regions, major tribes, and cities. Libya's post-2011 political history is one of serious ruptures. Law-making has been heavily affected by this context of divisions and ruptures.

While law is supposed to have the capacity to bridge cleavages by balanced legal formulations, our research showed that the law rather reinforced the cleavages. Libya's 2011-2021 legal history shows a great amount of legislative initiatives, but what is lacking is a common vision, a coherent set of leading ideas, underpinning them.

Since 2011 the political atmosphere in Libya at large – and in many localities - has changed several times. Obviously, this has affected law-making processes and their legislative products. Whereas legal drafters followed the political moods of their time, they have overlooked the need, of any legal system, for a steady, reasoned, and nuanced accumulation.
It must be noted that the laws of Gaddafi's era also have praiseworthy features, despite serious drawbacks. For instance, they empowered women to serve in the judiciary including the Supreme Court, and enabled them to have more rights in marital relationships. Law under Gaddafi also attempted to address certain past human rights violations through, for instance, compensating political prisoners and persons deprived of their property. Even legislation aimed at incorporating Sharia in the 70s was based on moderate understandings and recognized the country's predominant *madhabs.*

Such legislation should, one would only expect, be maintained and enhanced. Yet, motivated by revolutionary fervor to sever ties with the former regime, the transitional institutions in more than one instance basically repealed such legislation. They also enacted legislation to prevent those presumed as loyal to the former regime from holding a wide array of posts. This presumption was based on the mere fact of having served in specific posts regardless of one's conduct. This resulted in depriving the country of the service of a large number of experts and experienced persons at the time when it needed them the most. When later, the revolutionary fervor declined and gave way to a reconciliatory attitude towards the former regime, the HoR enacted legislation to not only repeal the infamous 2013 Political Isolation law, but also to pardon persons widely thought to have commited grave human rights violations under the former regime. Hence, such persons could, and some actually did, hold leadership positions.

Such lack of a reasoned and nuanced accumulation of law was not always there. The NTC, for instance, distinguished in the 2011 Constitutional Declaration (CD) between legislation of constitutional character and other legislation. It abolished only the former for its tied link with the former regime's ideology. Later, however, the GNC enacted Law Number 29/2013 on Translational Justice that declared "The laws issued by the previous regime to express its wishes and without any *shari* or constitutional basis … unjust legislation and shall be deemed void and unconstitutional from the time when they were drafted …". One cannot help but wonder how a law can be abolished from the time it was a draft, that is, before it even became a law?

C.   Problems of legality and legitimacy

Amongst the features of lawmaking in a context of divisions and ruptures are the problems of both legality and legitimacy of legislation. Questions about the legality of legislation have been levelled at both the legislating institution and the process of making law. For example, the HoR, since it was declared unconstitutional by the Supreme Court in November 2014, has widely, notably in the West, been seen as lacking legality, and so is its legislation. In the same way the GNC, and its legislation, were seen by many in the East of the country. Both enacted legislation which addresses issues which are crucially important for national reconciliation. The CDA had also its share of doubt for overstepping its term as stated in the Constitutional Declaration. The 2015 Political Agreement (PA) aimed to address this issue by extending the mandate of the bodies it (re)established. Yet, the PA was not included in the Constitutional Declaration as planned, hence, the desired effect did not happen. This also resulted in questioning the legality of the GNA, which had been established by the PA.

Besides questioning the legality of the law maker, the legality of the process of lawmaking was also questioned. It was frequently claimed that the prescribed process was not followed. Examples include the GNC introducing the Seventh Amendment of the Constitutional Declaration, which paved the way to electing the HoR, without observing the quorum required. As a result, the Supreme Court declared the amendment unconstitutional. Similarly, the CDA amending its internal regulation to lower the quorum needed to approve the draft constitution without achieving the quorum required for such amendment. This formed the basis for the 2016 ruling of the Baida Appellate Court that invalidated the approval of the 2016 draft constitution.

In addition to these cases where the legality of legislation was challenged before courts, there are many others awaiting legal action. For instance, when the HoR announced Law Number 2/2015 that repealed Law Number 13/2013 on Administrative and Political Isolation; several MPs,however, claimed that what they actually agreed to was to only amend the law. Also, a considerable number of the Presidency Council (PC)'s resolutions were issued by the President solely or with some, but not all, members of the PC while the PA required unanimity by all members. The PC not unfrequently also introduced legislation in violation of higher legislation, e.g., reviving committees for compensating victims of Law Number 4/1978 on Real Property while such committees had been repealed by Law Number 29/2013 on Transitional Justice.

The role of the judiciary, which could be expected to have regained its full autonomy in the aftermath of Gaddafi's rule, has been rather disappointing in this regard. Admittedly, some post-2011 legislation enhanced the independence of the judiciary through recomposing the Supreme Council for Judiciary (SCJ), so as to exclude the minister and deputy minister of justice. In 2014, the SCJ also succeeded in maintaining its unity despite attempts to drag the judiciary into the political bifurcation. Yet, the performance of courts did not always reflect this independence. The Supreme Court in its ruling on the Seventh Amendment is often cited as an example of strictly applying the letter of law at the expense of its spirit. Based on procedural grounds, the Court declared the GNC act invalid, and hence denied the legality of the HoR. This way it rewarded the GNC, which was then revived, for its mistake. The influence of powerful armed groups allied with the GNC was quoted as the reason behind this ruling. Perhaps to avoid similar situations, the Supreme Court decided to put on hold all constitutionality claims, which resulted, as some critics plausibly said, in denial of justice. Lower courts were too influenced by the said context of divisions and ruptures. For example, the Baida Primary Court declared as non-existent the ruling of the Supreme Court on the Seventh Amendment. Being based in the East, the Primary Court acted under influence from armed forces loyal to the HoR.

Much of the researched legislation suffers also from lack of legitimacy. Legitimacy refers to whether, and to what extent, legislation is seen as just. Legitimacy as societal support for law is particularly important when it comes to national reconciliation. Our research, in identifying societal acceptance, or rejection, of a particular position, found nationwide surveys sometimes helpful. Interviews and FGDs can complement surveys. However, in a context of divisions, ruptures, and polarization, sometimes large segments of society may opt for a position unconducive to sustainable national reconciliation. For example, due to perceived poor performance of democratically elected institutions, surveys revealed a wide tendency to prefer a strong leader, not necessarily elected, and a ban on political parties. Yet, the 2011 revolution had been all about putting an end to authoritarianism and embracing democracy.

In such cases, the legislature should be guided by reason and make use of experts' opinions. This recourse can have its problems too. Experts can also be biased towards positions that better serve their political or ideological preferences. Experts' disagreement is also always possible. In such cases, our research team, being composed of experts from various disciplines and backgrounds, guided by its vision of sustainable national reconciliation, has tried to determine what position legislation should take or should have taken.

Accordingly, the research team in assessing the legitimacy of legislation concluded that it is not unfrequently lacking. For example, the response of the draft constitution of 2017 on the issue of the role of Sharia lacks both society's and experts' support; unlike what surveys showed and experts opined, the draft declared Sharia the only source of legislation. Another example is Law Number 13/2013 on Administrative and Political Isolation. While addressing past violations

and holding perpetrators accountable was widely demanded, excluding persons for merely holding posts under the former regime, regardless of their actual conduct, was not.

Still, there are also cases when (proposed) legislation actually took society and experts opinions into account. The Constitutional Declaration, for instance, deemed, in conformity with majority opinion, Sharia the main, but not the only, source of legislation and conferred the status of national languages on the minorities' languages. The draft constitution too provided for democracy, political participation to all and political parties despite pressure to limit these. Still, the case of the draft constitution shows that a sound response might not always have broad societal support. While our research reveals that the draft is largely sound, it acknowledges its lack of broad popularity. This lack appears to be caused by negative media coverage rather than actual knowledge of the draft.

D. Problems of implementation and enforcement

Much of the legislation reviewed in our research, suffers also from a lack of implementation and enforcement. Out of many explanatory factors, three stand out, i.e., the political bifurcation, the absence of required measures, and the 'power of the gun'. First, the post-2014 political divide, and the corresponding non-recognition of the rival legislature, is one reason. The mutual nonrecognition of the HoR and the GNC resulted in only partial enforcement of each one's legislation. Unlike the West of the country, the East did not recognize the legislation that the GNC enacted in 2015-2016, hence, it continued to deem Sharia the main source of legislation rather than the only one, age of marriage 20 rather than 18 and apostasy as non-crime. Likewise, in the West, the HoR's legislation such as Law Number 6/2015 on Amnesty was not recognized. The PA envisaged a solution to this problem. Article 62 entrusted the GNA with forming a committee to review all legislation enacted between 4 August 2014 and 17 December 2015 and propose suitable solutions. The GNA, however, never enforced such a provision. Instead, the GNA replaced the GNC in this battle of nonrecognition. The presence of two official gazettes, one issued by the Interim Government in the East and another by the GNA in the West, is only one indication of this legislative battle.

The second, and related, reason for the lack of implementation is the absence of required legal measures such as issuing an executive regulation, forming a committee or allocating a budget. This absence may reflect a lack of political will to implement the legislation concerned. Law Number 29/2019 on Transitional Justice is a case in point. It refers to an executive regulation and a fact finding and reconciliation commission. The HoR is to issue the regulation and construct the commission, but it declined to do any despite receiving proposals to this effect. That some influential persons or groups were worried that the law would apply to them was cited as a reason for not taking these measures. Another example is Law Number 18/2013 on the Rights of Cultural and Linguistic Components (minorities). The Ministry of Education did not supply the books needed to teach these languages, while the Audit Bureau refused to give permission to employ the teachers. The Ministry of Culture also did not, as the law required, sponsor the cultural heritage of these groups, apart from one cultural festival in Nalout.

Thirdly, to be effectively enforced, law needs to be backed by the state, and the state simply needs a monopoly on violence. Since 2011, the state has lost such monopoly to a fragmented landscape of armed groups, and formal and semi-formal security institutions. In numerous cases, armed groups have 'taken the law in their own hands', i.e., served their own objectives and interests rather than complying with enacted legislation. From the three causes mentioned above, which are all interrelated, the latter is undoubtedly the most difficult and most urgent one to solve.

IV.   Areas of Concern

Libya's national reconciliation, to be sustainable, needs to be accompanied by continuous efforts to forge a basic national consensus about the main issues of reconciliation and state-building. Our research has situated such issues in five areas of concern. Each of these concerns has been subject of law-making by Libya's transitional governments. Still, since 2011 the main disagreements on most of these issues have not yet been solved.

Our research has identified the issues at stake, looked at the positions of stakeholders regarding those issues, collected and analyzed the legislative responses at various levels, and, finally, tried to assess which legislative response would stand a good chance to be legally sound, legitimate in the eyes of most relevant stakeholders, and contribute to national reconciliation and state-building. To do so, such legislative responses should reflect a common vision. Based on many discussions with governance actors and academic experts, we have concluded that the need for such vision is broadly shared.

For a full understanding of each issue, the positions, responses, their assessment, and the underlying vision, it is strongly recommended to refer to the project's five thematic reports. In this section we only provide a concise selection of important elements. In fact, this selection was first made in November 2020 as a contribution of our project to the deliberations of the Libyan Political Dialogue Forum. As the issues in every phase were of different nature, and the state of the debate differs from issue to issue, the approaches in various phases have also differed. Hence, the following five sections do not follow a strictly unified style. Their common denominator is their importance as contributions to the process of national reconciliation. In the section on national identity (4.2) an explicit vision is presented, followed by specific recommendations on constitutional issues. The section on national governance (4.3) also presents a vision, then sketches our conclusions on what should constitute the basic conditions for Libya's national governance, including a restored balance between legislature and executive branches, and its democratic content. In the section on decentralization (4.4) particular attention is paid to the prevailing conceptual confusion regarding terms such as decentralization and federalism, their potential for polarization, and the need to concretize their content. In addition, this section makes recommendation about the prerequisites of a system of sound and fair central-local relations in Libya. Section 4.5 recommends a rapid adoption and implementation of a system of transitional justice and outlines the preconditions

for an adequate law on transitional justice. Finally, section 4.6, addresses some of the thorniest issues of Libya's security sector, and recommends how to build an effective security sector out of two seemingly conflicting elements, i.e., the pre-existing armed forces and police on the one hand, and the armed groups that have emerged since the 2011 revolution on the other. In addition, it sets basic requirements for the command structure of the armed forces.

A. National Identity

The vision of national identity, which is based on our research and reflected in our assessments and recommendations is as follows. Libyan national identity is an inclusive identity that recognizes and respects ethnic, religious, ideological, cultural, political, and social diversity, and is based on the principles of equal citizenship, peace, social solidarity, and equal opportunities.

The project concluded that such national identity would be served by the following.

- Phrasing the provision in the constitution on Sharia such that while giving it an important position, it welcomes other sources of inspiration for legislation.
- Stressing in the constitution the freedom to practice religious rituals, and the resort to Libya's religious heritage, the Maliki and Ibadi schools, when interpreting Islam.
- Stating in the constitution that Arabic is the official language of the state, and that all local languages spoken by Libyans are common cultural heritage, acknowledged as 'national languages' meaning that the state is responsible for their protection and promotion.
- Abstaining from enacting any legislation conveying any ethnic connotation in the name of the state or its institutions.
- Adopting the flag and national anthem of 1951 while establishing for a national referendum to be held in the future on the issue.
- Stating in the constitution that political participation is a right guaranteed to all citizens, except those who are denied this right by a court of law.

B. National Governance

Our vision of national governance is as follows. National governance is based on a social contract that guarantees human rights and freedoms and equal opportunities to all citizens, and that is governed by a constitution that defines the powers of the state branches in a way that ensures a balance between them, without one power encroaching upon the other.
- The project does not recommend any specific system of governance: parliamentary, or presidential or semi—presidential as this should be decided by the Libyan people in a referendum on a constitution. Still, it emphasizes the need for: (1) providing for a sufficiently strong executive with its own specified powers and clear responsibilities; (2) regulating a balanced relationship between this executive and the legislature so that the

latter can make laws and exercise broad control over the former based on clearly delineated powers and responsibilities as to prevent any overstepping; (3) ensuring the independence of the judiciary.

- The legitimacy of the state is to be based on (1) increasing its ability to perform its basic functions of extraction, (2) optimal utilization of the material and human resources in society, (3) effective organization of society and its institutions, (4) fair and efficient distribution of wealth, (5) unambiguous delineation of the citizens' civil and political rights and duties, (6) enabling various societal groups to participate in the social, economic and political life effectively and democratically, based on the idea of equal citizenship, including the formation of political parties and civil society organizations, regardless of ethnic, tribal and regional affiliations, without discrimination on the basis of political beliefs and tendencies.

- The poor performance of the elected bodies at various levels as well as the conflicts and division of ruling political elites have had a significant negative impact on the concept of election itself in Libya. As a result, calls have been made for strong leadership to run the country at this stage, and restricting, or even outright banning, political parties for being, widely perceived as, responsible for the said poor performance. Yet, the prevailing trend in post 2011 legislation is still to preserve the democratic features of the state, which is praiseworthy. The democratic option is the choice of the Libyans, and this should not be sacrificed, even temporarily, on the pretext of taking into account security considerations or the weakness of the political culture and awareness of the people. Besides, political and party pluralism is a cornerstone of democracy, and should be strengthened. Thus, parties should be allowed provided that the principles of national unity, transparent funding, and abandoning of violence and hate speech are observed.

- The project noted that legislation has, gradualy but constantly, reduced quotas for women in elected councils. This means limiting their political participation in a country where they are still in need of positive discrimination to compensate for past subordination. It also noted that there is fear that women may even lose rights already gained. It concluded that there is continued need to support and enhance their rights based on the idea of equal citizenship.

- The project concluded that any adopted system should aim at dismantling the rentier economy, diversifying the economy, managing resources efficiently and fairly allocating their returns.

C.   Decentralization

- The project noted that while 'decentralization' and associated terms are deceptively complex, in Libya terms like 'centralization' and 'decentralization' – as well as

'federalism' for that matter – are heavily loaded with emotions, both positively and negatively. Discussions about decentralization have often been oversimplifying and overlooking real needs, capacities and contexts.

- Compared with other countries, Libya has not had the chance to gain significant administrative experience with a balanced system of central-local relations. Experience in other countries shows that achievement of development goals requires a nuanced combination of 'deconcentration' and 'devolution'. National dialogue on decentralization should first aim at creating a balanced and detailed repartition of sectoral responsibilities, legal competences and financial resources, instead of focusing on broad terms and slogans, which can be deceptive.

- Ensuring well-informed dialogue about decentralization necessitates awareness-raising campaigns involving formal and informal actors. Libyans must understand in advance that decentralization has mutable, interrelated forms, is practiced in different variations worldwide, and decentralization does not rule out a strong and capable central authority; in contrast, it even requires one.

- The project recommends a decentralized system:
    - that is governed by a constitution that defines the political and administrative structures and functions, and clearly and accurately defines the political and administrative levels of the state and the powers of national and subnational public institutions.
    - that lays the groundwork for dismantling 'the hated centralization' (almarkazia almaqiata) with its authoritarianism, oppression and arbitrariness – and all its political, administrative and economic aspects – so as to ensure responsive, effective and fair local governance.
    - whose national and subnational institutions clearly link responsibility, authority and accountability, that is, a system in which responsibility always has authority and authority is always accountable.
    - deliberately oriented towards developing Libya's human potential.
    - that dismantles the rentier economy and manages resources fairly at both national and local levels.

D.   Security Forces

- The project recommends that Libyan society adopts transitional justice in pursuit of national reconciliation, combating the causes of conflict so as to attain a lasting societal peace.
- Existing political, social and security circumstances might require adopting a transitional justice process very soon rather than delaying it as the delay will only allow more human rights violations and increased difficulty in addressing them.

- The adopted transitional justice process should be designed so that national reconciliation and justice are its twin ultimate goals.
- The implementation of transitional justice should rise above political, ideological and regional rivalries.
- The constitution should lay foundations for transitional justice to be subsequently translated into a law overcoming the drawbacks of the transitional justice legislation of 2012 and 2013.
- In drafting a new law on transitional justice, it is important to draw guidance from both Libya's own experience and other international experiences. In assessing which aspects of these experiences are worthy of upholding, guidelines developed by international organizations, especially the UN's, can provide a reference. For example, our report highlighted that revealing the truth is a right of victims, and that domestic claims for amnesty should not lead to ignoring this right, nor to impunity for gross and grave human rights violations. Such guiding principles can also provide a framework for reparations: what types, to what extent, how to strike a balance between various interests, private as well as public. The prospective law should build, when addressing institutional reform, not only on the guidelines and comparative experiences, but also on Libya's painful experience of excluding (in Libyan jargon 'isolating') political and administrative office-bearers. Accordingly, it should not limit institutional reform to such exclusion (isolation), and it should only exclude people based on their individual actions rather than their belonging to a certain political or administrative category.
- The project suggests developing societal awareness of transitional justice so that its importance is more appreciated, hence, its chances of implementation.

E.   Transitional Justice

- The political system in Libya is civilian democratic in which the elected civilian authority has a monopoly over the formation of armed and security forces and oversight over them. These forces, in turn, are to abstain from interfering in peaceful transfer of power and political life without jeopardizing the right of their members to vote.
- The president of the republic, rather than the legislative assembly or its head, should be the supreme commander of the armed forces, as the 2014 February Committee and the 2017 Draft Constitution proposed.
- National security, rather than political regime security – as in the past -, should be the objective and basis for the formation of armed and police forces and the performance of their duties. National security is based on the concept of human security, meaning that people are safe from persecution, tyranny, domination, violence, terrorism, intimidation, arbitrariness and violation of their privacy. It ensures a decent life for all, regardless of sex, color, language, religion or social and ethnic status or political orientation. It protects and maintains the entity of the state, territory, people,

government, and national interests, thus ensuring political and social stability, on the basis of law.

- Accordingly, military and police institutions should undergo a systematic review aiming at their structural reform, so they do not involve (again) in human rights violations, and so that those of their members found implicated in such violations are held accountable.
- Armed and police forces are loyal to the homeland, and joining them is in principle open to all Libyans without discrimination.
- Thus, members of armed groups should be allowed to join military and police institutions, as individuals, provided that their loyalty is to the homeland, and that they undergo the required assessment, training and meet conditions set in the law for joining these institutions.

The above is a brief account of the main conclusions and recommendations of the research project. While the resort to law to address the major disagreements presented has had limited, and sometimes even counterproductive, effects, especially when lawmaking was used as a weapon in ideological and primordial struggles, hence aggravating disagreements, there are 'elements that can work', that is, that have the potential to conducively contribute to national reconciliation. The work of the Constitution Drafting Assembly (CDA) is a case in point. Despite huge challenges, and largely unjustified negative publicity, the CDA managed in 2017 to produce a noticeably balanced draft. There were indeed limitations in the way the CDA produced such a draft, e.g., lack of public participation, but that should form no justification for overthrowing the draft altogether. Enabling a public referendum so Libyans can have their say on the draft, preferably preceded by campaigns to raise awareness of the draft's actual content, should be considered in any arrangement to end Libya's crisis.

Annex (1)
The Role of Law in Libya's National Reconciliation: Executive Summaries

1. National Identity

Main findings

Our main findings concern the disagreements surrounding national identity, the responses given to these disagreements and then our assessment of those response.

Disagreement over national identity occurred in all three themes: religion, politics and ethnicity. When it comes to religion, two dominant stances are taken. On the one hand there are those who see a dominant role for Sharia in legislation, seeing it as the sole source of reference, while on the other hand there are those that allow for other sources of inspiration. Moreover, whereas the *Maliki* and *Ibadi* Schools can be considered to be the traditional schools of Libya, they are now being threatened by *Salafist* groups, who condemn other strands of thought, and whose influence has become quite visible in recent years.

Within the theme of politics, disagreements occur over the symbols of the state and political in/exclusion. Disagreements over the former evolve around the choice for the Independence flag and anthem, which are seen as symbols of the February 2011 revolution. Pro-Gaddafi forces therefore want a different flag and anthem. Disagreements also evolve around the exclusion of Gaddafi loyalists from the political process.

Lastly, disagreements over ethnicity amount in the final analysis to two issues, i.e., the status of minorities' languages – should they be state languages, official, or only national? – and discrimination – should Libya affiliate itself with the Arab world, thus ignoring the wishes of non-Arab ethnic minorities, or should it not?

Assessing the responses led to several conclusions. First, assigning an exclusive and dominant role to Sharia in legislation creates a risk of polarizing society, while seeing Sharia as a source of inspiration, would be more supportive of national reconciliation. In this, the *Maliki* and *Ibadi* Schools should be the preferred schools.

Secondly, regarding symbols of the state, preference should be given to the Monarchy flag and anthem, while at the same time allowing for reassessment at a later stage. Gaddafi loyalists, moreover, should be allowed to participate in the political process, provided that they were not convicted of committing crimes under the regime or in the aftermath of the revolution.

Finally, making the languages of minorities national languages is a feasible option, which is in line with the wishes of a large group of Libyans. Also, while Libyans should not disqualify their

Arab past, omitting the Arab affiliation from the official name of the Libyan state and other institutions is a praiseworthy endeavour.

Towards an inclusive Libyan identity

If the Libyan people are to enjoy a shared national identity – a sense of belonging to the Libya nation-state – this state must be inclusive in terms of religion, politics and ethnicity. Therefore, the research has developed a new vision for the Libyan national identity. This vision represents Libyan national identity as it should be, one believed to help achieve national reconciliation and sustain it. To realize it, law is instrumental, but is by no means the only medium. Existing law, as previously explained, has already addressed the issues of national identity, with varying levels of success. Thus, we conclude that, in addition to resorting to other means to realize the vision, specific legislative responses need to be considered.

In our vision, the Libyan national identity recognizes and respects ethnic, religious, ideological, cultural, political, and social diversity, and is based on the principles of equal citizenship, peace, social solidarity, and equal opportunities.

As for the religious component of this identity, Sharia should enjoy a special role in the legal system, but this should not exclude the possibility of learning from others' experiences. Thus, considering Sharia a source, a main source, the main source of legislation is preferable to considering it the only one. Of course, all depends on the meaning given to Sharia, and here it is preferable to adopt one emphasizing its objectives and values rather than its detailed rulings. When such detailed rulings are needed, as in the case of issuing fatwas and practicing rituals, the reference within Sharia should be to the schools predominant in Libya, i.e., the *Maliki* and *Ibadi* Schools.

Regarding the ethnic component, the Arabic language should be deemed an essential pillar of the Libyan identity. It is the language all Libyans speak, and their means of connecting with Arabic-Islamic heritage. Deeming it official ensures that it continues fulfilling this role. The languages of the minorities ought to be considered essential parts of the Libyan national tradition, and a cultural asset all Libyans appreciate. Hence, they should be protected and promoted.

In terms of the politics, the Libyan national identity should be based on equal citizenship allowing political participation for all shades of the Libyan society, without exclusion, except for those convicted in court.

The Libyan identity should also include a value system prioritizing public interests over private ones, appreciating the values of science and work, adopting efficiency as a criterion for performance, emphasizing the values of tolerance, plurality, fairness, and acceptance of others, respecting law, solidifying the pride of belonging to the nation, with its history, heritage, and symbols, and being receptive of other cultures.

The national identity, thus understood, should be embodied in a social contract constituting the basis of a consensual constitution.

This vision acknowledges sub-national identities, e.g., tribal, regional, as well as transnational identities, e.g., ethnic, ideological, as long as they are not detrimental to the loyalty to the national identity and are not promoted by violence.

Finally, this vision of the Libyan national identity stresses positive coexistence with the different Other, regardless of the type and source of such difference.

Suggestions for legislation, policy, and practical measures

Legislative suggestions

a) Phrasing the provision in the constitution on Sharia such that while providing it an important position, it welcomes other sources of inspiration for legislation. It should also emphasize its understanding as values and objectives rather than detailed rulings.
b) Stressing in the constitution the freedom to practice religious rituals, and the resort to Libya's religious heritage, the *Maliki* and *Ibadi* schools, when interpreting Islam.
c) Stating in the constitution that Arabic is the official language of the state, and that all local languages spoken by Libyans are common cultural heritage, acknowledged as 'national languages' meaning that the state is responsible for their protection and promotion.
d) Abstaining from enacting any legislation conveying any ethnic connotation in the name of the state or its institutions.
e) Adopting the flag and national anthem of 1951 while establishing for a national referendum to be held in the future on the issue.
f) Stating in the constitution that political isolation is prohibited, and that political participation is a right guaranteed to all citizens, except those who are denied this right by a court of law.
g) Enacting laws and adopting policies conducive to national reconciliation and transitional justice.

Policy suggestions

Realizing this vision requires, amongst others, the following major steps:

a. Prioritizing the stability of Libya and its security so the unity of the country and the sovereignty of the state are maintained.
b. Stressing the values of equal citizenship and spreading the principles of civic culture.
c. Repairing the social fabric.
d. Combating destructive cultures (specifically the culture of corruption and rentier culture).
e. Implementing transitional justice.
f. Developing a free and professional media.

g.   Improving the communication and transportation networks in order to strengthen the ties between Libyans.

h.   Concentrating on integrated and comprehensive national economic projects.

i.   Designing and implementing psychological and social programmes geared to help Libyans restore their self-confidence.

Suggested programmes and practical measures, notably in the areas of education, research and culture

a.   Teaching civic education with an emphasis on national values at the primary education level.

b.   Modernizing the methods of teaching the Arabic language.

c.   Disseminating an enlightened religious consciousness and teaching.

d.   Developing the cultural heritage and studying it critically.

e.   Teaching critical thinking at the secondary level so students can learn how to think objectively and address disagreements via dialogue.

f.   Awarding scholarships to study Social Sciences and Humanities abroad; thus, allowing Libyan researchers to approach the social and political history of Libya from different perspectives using the most advanced scientific methods.

g.   Directing graduate students in different Social Sciences and Humanities to conduct their research on issues vital to Libya.

h.   Reconsidering the horizontal spread of higher education institutions, in order to encourage students to seek education in institutions located outside their regions, so they get to know their homeland and fellow citizens.

i.   Celebrating notable scientists, intellectuals and thinkers as well as historical and religious symbols, and considering them national symbols.

j.   Examining Libyan history, events and figures, objectively and fairly.

k.   Improving the artistic taste and disseminating the appreciation of aesthetic attitudes.

l.   Celebrating the popular heritage through seasonal festivals and exhibitions.

m.   Organizing seasonal cultural festivals bringing together academics, intellectuals, artists, athletes, and scouts from various parts of the country, hosted by different Libyan cities.

n.   Celebrating Libyans' international achievements in all fields.

Writing a canon for Libya in which notable historical events and figures showing Libyan unity and national identity are presented.

2. National Governance

Conclusions

1. Six crises in nation/state building

The process of nation/state building suffers from six major crises; crises of national identity, of legitimacy, of penetration, of distribution, of participation, and of integration (see 1.3). These crises are mutually dependent, and the prospects for nation/state building, necessary for reconciliation and societal and political coexistence without solving them are gloomy. The crises are prolonged by disagreements about ways to solve them. These disagreements are manifested most saliently in seven issues concerning national governance.

2. Seven controversial issues of national governance

These issues are: (1) the form of the state: unitary or federal; (2) the system of government: republic or monarchy, presidential or parliamentary; (3) the relationship between the executive and legislative powers: balance or dominance; (4) the independence of the judiciary, (5) the suitability of democracy for today's Libya; (6) the role of political parties: permitted or restricted (or even banned); and (7) the participation of Islamists: allowed or banned. Below, conclusions are drawn on six of these seven issues. For (1) the form of the state, see 6.14.

3. The role of law

The research has demonstrated that Libya's political institutions have made extensive use of legislation to address these six issues since 2011. This occurred mostly in constitutional legislation, but also in ordinary legislation. In spite of many disagreements, the 2011 Constitutional Declaration has remained the undisputed, solid foundation to which other constitutional legislation, constitutional drafts, as well as the 2015 Political Agreement, continue to refer. Two legislatures have emerged from the 2014 political divide, leading to considerable legal confusion and legal uncertainty. Even so, the 2017 Draft Constitution has demonstrated the ability of Libya's elected representatives to achieve consensus about fundamental issues (see 6.6). Although violent struggle seems to dominate the scene at the time of writing, this research appreciates the 2017 draft constitution as a crucial point of departure. It should also be noted that Libya's judiciary has not only escaped the political divide, but has also, by and large, maintained its professional attitude. Similarly, in the mid-level bureaucracy, many civil servants try to follow the laws and thus contribute to some unity and continuity. However, ultimately, the overall effectiveness of the legislative responses studied has been very limited.

4. Opposite ways to deal with Gaddafi's controversial legacy as an explanatory factor

Many proponents of the 2011 Revolution, understandably, wanted to break with all of Gaddafi's legal and institutional legacy. This led not only to constitutional and legal progress,

but at times also to hasty, declaratory and unbalanced legislative responses that themselves have become obstacles to reconciliation and state-building. In response, with the waning of revolutionary fervor and the return of those who had been Gaddafi's supporters and beneficiaries, some legislative responses reflect reactionary tendencies condemning revolutionary forces, notably religious ones. Meanwhile, some legislative responses studied indicate that it has become politically feasible to make more balanced laws. This suggests that it has become possible to discuss not only negative but also some possibly positive aspects of Gaddafi's legacy, such as pro-poor and emancipatory policies and laws. These dynamics are indicative of Libya's post-2011 politico-legal learning process, and are hopeful signs for the future.

5. Poor performance of the transitional political institutions as an explanatory factor

Another factor is the failure of transitional political institutions not only to deliver on the revolution's promises of a better life but also to maintain a unified and secure state. This failure has led not only to rethinking the demands for breaking with Gaddafi's legacy, but also to taking exclusionary positions condemning revolutionary forces, especially the religious ones amongst these, because of their presumed role in such failure.

In retrospect, it appears that Libya's politicians who had positions in the transitional political institutions have failed collectively. Not only were they unable to deliver on the expectations raised by the 2011 revolution's promises, they also failed to maintain a unified and secure state. Admittedly, they had to face deep crises of state-building and huge *challenges* (see section 3), including a rentier economy and mentality; corruption; weakness of civil society; ethnic, tribal and regional loyalties and conflicts; religious extremism and the divided international community. While any state needs politicians, Libya's post 2011 experience suggests that to adopt legislative responses which actually overcome disagreements, it would be wise to consider how to also involve other governance actors.

6. Role of semi-political and non-political players: February Committee, CDA, a.o.

In some cases, following the failure of the transitional political institutions, other governance actors provided more balanced legislative responses. The prime example is the 2014 February Committee that proposed a stronger executive authority than that enshrined in the 2011 Constitutional Declaration. This could be seen as learning from the transitional experience and demonstrating the ability of legislators to assess Gaddafi's legacy more objectively. The fact that the Committee consisted not only of representatives of political factions of the GNC but also of highly respected academics and lawyers contributed to its success. The Committee decided to be guided by established rules and practices in government systems and perform its tasks in a professional manner. To this end, it adopted regulations organizing its work, ensuring separation from the GNC by, for example, not receiving any payment and not holding any sessions in the GNC's headquarters. It communicated with the public via an online platform

where it published daily updates on its work and received feedback and suggestions. In the end, it managed to perform the required task within the time frame set.

The CDA is another example. Despite having to work in a very challenging environment, it succeeded in producing a Draft Constitution that is largely balanced. It managed to address most of the issues, including key ones, in a sufficiently plausible way. Nevertheless, some important issues on which the CDA's position may not be the most appropriate remain, as this report and our report on national identity has noted in several places. Yet, all in all, the fact that the CDA is an elected body where various components of Libyan society are represented is a good reason to see its draft as an important point of departure, and to allow it to be put to a referendum. If it is rejected, the CDA will have an opportunity to reconsider its position on key controversial issues, and reach out more to groups unrepresented, i.e. Amazigh and Gaddafi loyalists.

Libyan bureaucracy, the research shows, has managed, in the midst of the institutional divide, to remain united or limit the effect of the divide. The Authority for State Property and the Authority for Real Property Registration are examples of such still unified institutions. Examples of initiatives to limit the effect of the political divide include the coordination of exams between the two ministries of Education and the initiative to coordinate between the Security Directorates of Tripoli and Benghazi. While the success of the bureaucracy is perhaps due to abstaining from politics, it is interesting to note that their efforts are endorsed by the relevant political leaders. Both Fawaz Al-Serraj, President of the Presidential Council, and Abd Al-Salaam Al-Badri, Deputy Prime Minister of the Interim Government confirmed this.

We now turn to the conclusions regarding the controversial issues.

7. System of government: monarchical or republican

Empirical data show that the general public expects and supports a republican system. Consequently, opting for a monarchical system was initially out of the question. At some point, as a result, apparently out of the frustration with the long-drawn-out transitional period and constitution making process, the issue resurfaced. This increased support for the restoration of the 1951 Independence Constitution, which established a monarchical system. While the CDA discussed the option, it eventually voted in favor of a republican one. In fact, all legislative responses reviewed in this research opted for the latter.

8. System of government: parliamentary, or presidential or semi—presidential

Empirical data show broad support for a presidential system. The analysis of legislative responses showed that what has actually been adopted cannot be classified as a presidential, quasi-presidential system, or parliamentary system. The Constitutional Declaration clearly reflected the dominance of the "revolutionary" legislature over the "dreaded" executive, and was thus similar to the so-called National Assembly system, also called the system of "unity of power". The Political Agreement adopted the system designing a Presidency Council with

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broad powers, balanced by powers of the HoR-legislature, yet both complicated by powers attributed to a senate-like HCS. In its 2017 draft, the CDA opted for a strong, directly elected president, empowered to the extent that he/she can dominate parliament by dissolving it (see 6.9) Both systems are difficult to classify within any of the three conventional systems. While this research also does not recommend any of these systems, it emphasizes two requirements that will need to be met:

1) providing for a sufficiently strong executive with its own specified powers and clear responsibilities.
2) regulating a balanced relationship between this executive and the legislature so that the latter can make laws and exercise broad control over the former based on clearly delineated powers and responsibilities as to prevent any overstepping.

The next section shows how we assessed the options adopted/proposed in the Constitutional Declaration, the Political Agreement and the Draft Constitution with regard to these two requirements.

9. Legislative-executive relationship

Motivated by a desire to break with the Gaddafi legacy (see 6.4), the NTC as a legislature became dominant, too dominant as experience showed. As such, neither of the two requirements was met. The February Committee (see 6.6) proposed a more balanced system of government by calling for a directly elected president with important powers. However, apparently seeing such a proposal as a threat to their position, the GNC did not adopt it, although the HoR did, but then failed to have it implemented.

The Political Agreement contains provisions that, in a sense, frustrate the powers of the executive branch. For example, the requirement of consensus among the PC's President and his deputies, who actually came from conflicting backgrounds, made it virtually impossible to take decisions. This led the President to take decisions without observing this requirement, risking not only the validity of his decisions if judicially challenged but the entire Political Agreement. The Agreement also obligated the PC to seek a binding opinion of the High State Council (HSC) in important matters. In addition, the relationship between the PC, HSC and the HoR, as regulated by the Political Agreement, has, in reality, been characterized by ambiguity and dispute.

Finally, the 2017 Draft Constitution proposed a system of government with a stronger and more independent executive authority. It proposed electing the President of the Republic in direct popular elections, and assigning him/her broad and varied powers, including the right to submit a dissolution of the HoR or Senate through a court decision to a public referendum. On the other hand, the draft provided for a procedure for both chambers to call for impeachment of the president, which then needs decisions by the Prosecutor-General and a

special court. While this could be argued to be sufficiently balancing the two powers, our research regards the President's powers as somewhat broader and easier to implement.

10. The independence of the judiciary

A judiciary that is independent from the executive and legislative branches so that it can monitor the legality of their decisions and actions is crucial for national governance. All legislative responses since February 2011 have emphasized this. Our empirical research demonstrates that in some crucial cases such independence has been lacking. Explicit emphasis on judicial independence and its safeguards in the constitution therefore remains vital. In this regard, the 2017 Draft Constitution should be praised for devoting two chapters to the judiciary and the Constitutional Court. However, the real challenge is to realize such independence in a country plagued by deeply polarization and lack of security.

11. Suitability of democracy

Our empirical research shows that governance actors are generally in favor of a democratic system for Libya. Most surveys also show a clear preference for elections and democracy, even though confidence in elected bodies is low. Understandably, the public at large appears rather disappointed with the performance of democratically elected institutions. Hence, among ordinary people the question of its benefit, and whether today's Libya is ripe for democracy, often arises. In the East, undemocratic practices, such as the appointment of a military leader and replacement of elected municipal councils with appointed mayors, were accepted, willingly or not. However, the prevailing trend of legislation, from the 2011 Constitutional Declaration to the 2017 Draft Constitution, is consistent about preserving the democratic features of the state. Given that empirical data actually confirm this project's vision (see 2.1), democracy is an appropriate choice of political system for Libya.

12. Political parties

For decades Libya had a ban on political parties, until 2011-2012 when they were permitted in view of national elections. Since then political parties have been valued as an expression of political freedom and democratization, and many parties have been established. However, in practice, their performance has led to criticisms, disappointments and accusations. In October 2015, the CDA presented a draft which even proposed a four-year ban on all political parties. After extensive deliberations, the CDA found that party formation and pluralism are cornerstones of democracy, so it stipulated, in the 2017 draft, that the election of the HoR be based on lists of political parties. For the Senate elections, however, it has provided that candidates shall represent their regions, and there is to be no candidacy on party basis.

13. Participation of Islamist parties

Islamist parties and political groups are among the major currents in Libyan politics. They gained a strong position in the GNC through the first national elections, and in Zidan's

coalition cabinet. Their adversaries have blamed them for the failure of the GNC, for the fall of Zidan's cabinet, and for the refusal to transfer power to the elected HoR in 2014 when they won only a few seats. The present political divide is also often attributed to them, even though reality is far more complex. Still, calls have been made to exclude them from political participation. One recent legislative response to such calls is the HoR's law, reportedly issued on 13 May 2019, banning Muslim Brothers and, possibly, their political arm, the Justice and Construction party. Such a measure runs counter to the concepts of party formation and inclusive political participation. This research concludes that exclusion should only be resorted to when a party fails to respect the principles of national unity, transparency of funding, and renunciation of violence and hate speech. Therefore, the legislative responses establishing inclusive participation, such as the 2017 Draft Constitution, are completely appropriate.

14. Form of the state: to be included in next phase on subnational governance

The first issue of disagreement, mentioned in this report (see 4.1) concerns the form of state: unitary or federal. While this is, of course, an issue of national governance, it is closely connected to subnational governance, on which in depth research is being undertaken in this project's third thematic research phase, which runs until October 2019. This will deal with controversial issues related to subnational governance, in which problems of regionalism and federalism take center stage. The following issues of disagreement have been distinguished: the politico-administrative division or levels of subnational governance, the composition of governing institutions at these levels, the devolution and deconcentration of powers to subnational governance units, the regional distribution of economic and financial resources, and the capacity of subnational government institutions.

3. Decentralization

Conclusions

Purpose

It is our belief that, in general, no position regarding decentralization or any other constitutional issue is *per se* right or wrong. Any standpoint in any country on these matters reflects and responds to the political, economic, geographic, historical and social conditions facing that society – and its citizens' personal preferences. Also, when it comes to Libya, it has not been our intention to list conclusive evidence of the validity of any particular centralized or *de*centralized system when discussing and assessing positions and attitudes regarding decentralization. We instead present informed views of the various options as the basis for finally starting a national dialogue about decentralization and major associated issues such as national wealth distribution.

This is not to say that we have no ideals or hopes for what Libya's system would look like and what it would bring the Libyan people. Hence, we begin by briefly presenting our vision of a decentralized system. We then highlight the main findings of our socio-legal research and present our suggestions for policies and laws.

We envision

- A decentralized system governed by a *constitution* that defines the political and administrative structures and functions, and clearly and accurately defines the political and administrative *levels* of the state and the powers of national and subnational public institutions.
- A decentralized system that lays the groundwork for *dismantling 'the hated centralization'* (*almarkazia almaqiata)* with its authoritarianism, oppression and arbitrariness – and all its political, administrative and economic aspects – so as to ensure responsive, effective and fair local governance.
- A decentralized system whose national and subnational institution clearly links *responsibility, authority and accountability*, that is, a system in which responsibility always has authority and authority is always accountable.
- A decentralized system deliberately oriented towards *developing Libya's human potential.*
- A decentralized system that *dismantles the rentier economy*, diversifies the Libyan economy, manages resources efficiently and fairly allocates their returns.

We conclude

1. That there is no controversy about whether Libya should opt for decentralization: Disagreement concerns what exactly that means. Disputes rage about the nature and number of subnational governance levels and the number of entities at each level. Should federal

provinces (*wilayat*) be the highest subnational governance level, or should the state be unitary, with governorates (*muhafazat*)? Should the provinces be the three historical regions, Cyrenaica (East), Tripolitania (West) and Fezzan (South), or should others be added? If the state has governorates, should there be 10, like during the monarchy's late years (1963-1969) and Gaddafi's early years (1969-1975), or should more be added in light of the changes that have occurred since the 1970s?

No one is arguing about whether or not Libya should have municipalities: Municipalities exist all over the country – headed by mayors and directed by councils. However, there is a lot of debate about which next-higher entity should exercise oversight over municipalities. The absence of a functioning next-higher level means that the national state currently has to oversee some 126 municipalities, which is inefficient.

There is, however, great controversy about how to staff the subnational-level councils (for municipalities and governorates) and select their leaders. Would elections be a good method? Democratic elections link councils and their heads to the constituencies. What about appointing council members in order to ensure an effective chain of command and reduce the risk of being stuck with unqualified and incapable local political leadership? Or perhaps a combination of elections and appointments should be used to staff councils.

The extent of the national authority's political, administrative and financial powers compared with those granted to subnational governance entities is a big bone of contention. While no one questions the need for capable and effective central government, repugnance towards 'the hated centralism' (*almarkazia almaqiata)* leads federalists to insist that, like during Libya's federal constitutional monarchy (1951-1963), powers should be transferred to provinces that would have their own legislative councils. Others claim that not only transferring responsibilities, powers and resources to create effective regional autonomy is needed – but also that it is entirely possible in the unitary state that Libya has been since 1963.

2. Disagreement regarding how to share power between the centre and the constituent parts of the Libyan state is not just fundamental to the present, and to the events of February 2011, but were also of major significance during the lead-up to Libya's independence from 1949 to 1951.

The present debate on decentralization and possible legislative responses is partly inspired by history: Adopting a federal system in the first Constitution of 1951 was key to Libyan statehood. Cyrenaica ('the East') and Fezzan ('the South') insisted on federalism, fearing that otherwise Tripolitania, the most populous region, would dominate them. Tripolitania reluctantly agreed to a federal system, hoping it would lead to a unitary system, which it did in 1963. By then, Libyans had developed a national consciousness, which was one justification for adopting a unitary system in 1963. Other reasons were the high cost and cumbersomeness of a federal structure for a country with just a few million citizens, and the powerful oil companies' wish to have just one party with which to negotiate, rather than having to deal with a federal government *and* provinces.

3. When Gaddafi seized power in 1969, he preached decentralization, an even more so after he turned Libya into a *jamahiriya* ('state of the masses') in which 'Basic People's Congresses' were accorded state powers. As one slogan in Gaddafi's Green Book put it, 'Power, wealth and weapons are in the hands of the people.' In reality, however, Gaddafi's regime was highly centralized and oppressive, with all real power concentrated in his person and informal 'revolutionary' paramilitary institutions that enjoyed greater authority than the people's congresses and were not legally regulated. The government structure Gaddafi inherited from the monarchy was also continuously changed, for example, the 10 governorates (the highest subnational level) in 1970 were transformed into 46 municipalities in 1975, before being reduced to only 7 in 1990, and from 1,455 Basic People's Congresses in 1992 to a mere 22 *sha'abiyat* in 2007. No wonder many Libyans associate centralization with authoritarianism and dictatorship. The popular expression *almarkazia almaqiata* – in which 'hated' modifies 'centralization' – is very revealing.

4. Under Gaddafi, certain privileged groups advanced while many others were marginalized. The latter also included groups and areas near Tripoli, the capital and perceived centre of power. Yet, it was feelings of marginalization in the East that fuelled the uprising in 2011. Unsurprisingly, even before Gaddafi's regime was defeated, demands for decentralization were already heard – most loudly from federalists in the East. Since 2011, Libya's transitional political institutions have attempted to respond to these demands, but Eastern federalists consider their responses insufficient. Moreover, recently, some key individuals from the West have begun to acknowledge the role that 'eastern' feelings of marginalization have played in the fight for Tripoli. Now they insist that these feelings must be assuaged, even if that means adopting a federal system.

5. Decentralization has been on the legislative agenda since Libya's National Transitional Council (NTC) issued a Constitutional Declaration (CD) in 2011 to begin reconstructing the state. Other significant initiatives include the Draft Constitution of 2017 (DC 2017), Law No. 59 of 2012 'Concerning the Local Administration System' (Law 59/2012) along with its amendments and executive regulations, and the Libyan Political Agreement (LPA) of 2015. How have they sought to resolve the issue of decentralization, and with what results?

6. While the CD only mentions decentralization briefly – perhaps because it is 'interim' – subsequent amendments have profoundly impacted the issue. In 2012, two amendments were introduced that shaped the Constitution Drafting Assembly (CDA) in such a way that it could not be dominated by the West, which was assumed to oppose federalism - while the East was believed to broadly support it. Clearly inspired by the assembly that wrote the 1951 federal Constitution, the CDA was made into a 60-member assembly with equal numbers of representatives from the country's three historical regions. The CDA was also made independent of the General National Congress (GNC), which had initially been entrusted, according to the CD, to appoint the CDA and ratify its draft constitution. This change increased the chances that the CDA would be sympathetic to federalist ideas.

However, after the CDA produced a draft that federalists considered flawed, the CD was amended yet another time to require that the proposed constitution be approved in a referendum by a majority of voters *in each of the three historical regions*. Previously, only the approval of two-thirds of voters nationwide had been required. The amendment thus ensured that no draft constitution would be imposed on the East. Now that the already high threshold of approval had been raised, approval of a draft constitution became unlikely, especially given the largely unjustified negative publicity about its position on decentralization.

7. The Draft Constitution of 2017 (DC 2017) deserves greater recognition. It attempts to strike a balance between adopting a unitary system and providing for broad decentralization, and also includes features of a federal system. DC 2017 includes governorates and municipalities with elected councils whose powers are determined by the principles of subsidiarity and free governance and allocates them both central and locally generated resources. However, critical details of these principles were delegated to a future law on local governance.

DC 2017 wisely provides for a bi-cameral parliament with a House of Representatives and a Senate, which are tasked with jointly legislating decentralization. Intended to prevent Westerners from dominating parliament, the Senate will have balanced, but not equal, representation from the three historical provinces – with Tripolitania getting 32, Cyrenaica 26 and Fezzan 20 of the 78 seats. The two chambers are charged with enacting a law on local governance. DC 2017 allows for asymmetric decentralization so that, for example, the future parliament could accord major cities like Tripoli, Benghazi and Sabha, special governorate status. DC 2017 also requires all three regions to agree with any new law on local governance – which is positive. But in light of the numerous controversial issues, extreme political care is needed to avoid a situation of protracted disagreement and stagnation.

8. If fully implemented, Law 59/2012 could answer the immediate need for decentralization. A law on local governance would likely be based on principles of expanded decentralization (*markazia muwasa'*) enshrined in the (future) constitution. Law 59/2012 provides for governorates and municipalities run by elected councils that receive percentages of locally generated revenues as well as subsidies from the centre. Governorates control the public utilities (*marafiq 'aama*) within their boundaries. They are also supposed to have, within their boundaries, the powers held by ministries save those powers characterised as special or national. Municipalities similarly enjoy broad powers with respect to public services.

However, Law 59/2012 left the embellishment of key details to 'subsequent' legislation that was supposed to have long since been passed. It referred to establishing governorates but left the future law free to determine their number, boundaries, seats and so forth. Instead, Law 9/2013 indefinitely postponed the establishment of governorates and transferred most powers to municipalities. This delay is viewed as an attempt to placate various local groups, especially tribes, who resist being included under certain local governance entities: 99 municipalities were established in 2013 before subsequently increasing, partly due to the 2014 political divide, to around 126.

According to Law 59/2012 the Council of Ministers determines the powers which are to be transferred from ministries to subnational entities and those that cannot be transferred because they are 'special' or 'national'. However, how powers are to be transferred to municipalities awaits determination in future legislation. Resource allocation also must wait for legislation that defines 'local revenues'.

Law 59/2012 requires all decisions by *governorate* councils – which, due to Law 9/2013, are now *municipal* councils, to be approved by the Minister of Local Governance. This seriously limits their autonomy.

Meanwhile, ministries and other central institutions charged with providing basic services through their local directorates and offices are under-performing. This seriously challenges municipal councils, whose constituencies expect them to provide services – because they have neither the mandates nor resources. They do their best to coordinate with municipal directorates and sectoral offices.

Such a dilemma has forced municipalities to develop alternative solutions, not all of which are legal: from keeping local revenues and imposing 'service fees' on purchases of goods such as cement, to charging for national border crossings and even smuggling! Municipal councils use these 'revenues' to provide basic services, including those supposed to be provided by the central state. For his part, the military governor of Eastern Libya appointed mayors to replace the elected councils and empowered them to supervise the directorates and sectoral offices within their boundaries.

In 2019, the central government in the West, the GNA, decided to transfer powers from the Ministries of Economy and Industry, Communication and Health to municipalities in the area it controls. That may prove to have been a smart move – *if* the municipalities receive enough funding, human and other resources to exercise their new powers. However, it is likely that the huge number of municipalities makes such power transfers impractical. One should note that Law 59/2012 stipulated that such powers were supposed to be transferred to a much smaller number of *governorates*.

In sum, while Law 59/2012 has established a first start for decentralization, its scope remains limited and sometimes unclear, whereas the lack of implementation - combined with the under performance of the national government institutions - has created hardships for municipalities.

9. Concluded in 2015 to end the political divide and build a new national governance structure, the Libya Political Agreement (LPA) says little about decentralization. It attempts to remedy municipal councils' difficulties with the centre's sectoral directorates and offices by establishing a 'Supreme Council for Local Administration' to promote their cooperation and coordination in accordance with Law 59/2012. The three historical provinces are acknowledged through representation on a Presidential Council but that is hardly enough. Although decentralization is key to resolving Libya's chaos, it apparently was not part of the LPA negotiations.

10. Our research repeatedly came across 'decentralization' and associated terms in interviews and written materials. But this terminology is deceptively complex. Especially in Libya, terms like 'centralization' and 'decentralization' – as well as 'federalism' for that matter – are heavily loaded with emotions, both positively and negatively. Discussions about decentralization can easily be oversimplified and overlook real needs, capacities and contexts. Compared with other countries, Libya has not had the chance to gain significant administrative experience with a balanced system of central-local relations. Experience in other countries shows that achievement of development goals requires a nuanced combination of 'deconcentration' and 'devolution'. National dialogue on decentralization should first aim at creating a balanced and detailed repartition of sectoral responsibilities, legal competences and financial resources, instead of focussing on broad terms and slogans, which can be deceptive.

The way forward

As we noted regarding what we envision, decentralization must pay heed to both the national and subnational levels. The former calls for measures to share the power now concentrated in the centre, and the latter requires a system to deliver development throughout the country.

Credible attempts to satisfy these needs already exist, namely the Draft Constitution, along with Law 59/2012, a reasonable initiative that needs to be fully implemented. There are also plans to revise a power-sharing deal at a national conference or similar event.

We have found, however, that these initiatives are not appreciated, often not only due to a lack of awareness, but sometimes also because they are distorted. Our research has revealed cultural problems related to decentralization, including unrealistic views and expectations.

Therefore, since we do not aim to propose a specific system for Libyans, we neither advocate the Draft Constitution nor full implementation of Law 59/2012. However, we do consider it crucial for Libyans to be aware of all the options so they can take informed decisions – approving the Draft Constitution or demanding that Law 59/2012 finally be implemented and/or amended.

A well-informed national dialogue on decentralization and key issues such as national wealth distribution is urgently needed. The national conference once planned by the UN, or a similar event, could create the right opportunity to talk.

Ensuring well-informed dialogue about decentralization necessitates awareness-raising campaigns involving formal and informal actors. Libyans must understand in advance that decentralization has mutable, interrelated forms, is practiced in different variations worldwide, and decentralization does *not* rule out a strong and capable central authority; in contrast, it even requires one.

Initiatives to revise or replace the LPA also should pay heed to the need for decentralization. The preferences that Libyans express in the national dialogue should be the basis for any future initiative, including possibly ratifying the Draft Constitution.

4. Transitional Justice

Transitional justice's challenges and opportunities: concluding remarks

The report highlights major challenges facing the implementation of transitional justice in Libya some of which can turn into opportunities if dealt with appropriately.

1.The first challenge is the absence of effective state institutions. The state has a key role in any effort to unveil the truth of human rights violations, holding perpetrators accountable, repairing victims' damage and reforming institutions. Hence, for the success of the transitional justice process it is necessary to have effective state institutions, and therefore to end their current divide. But this does not mean that, until then, everything is to be put on hold.

2.The existing transitional justice laws and regulations constitute another challenge. While there are many, they do not depart from a unified vision, lack societal support, and are used as a tool to antagonize political opponents. As a result, there exists a problematic distinction between them regarding perpetrators (e.g., Gaddafi loyalists or 2011 revolutionaries), victims (e.g., political prisoners and other victims on both sides) and institutions (the FFRC and special committees).

Yet, these laws and regulations can also constitute a reliable asset, and herein lies the opportunity. It is true that Law 29/2013 is marred by several faults, the most prominent of which is its focus on certain categories of perpetrators and its overthrow of the institutional reform mechanism. Still, the law contains provisions that can be of great help when conducting the transitional justice process. It provides a basis for transitional justice, creates a Fact-Finding and Reconciliation Commission (FFRC), diversifies reparations, and removes the statute of limitations obstacle in order to hold perpetrators of serious human rights violations accountable. Although important provisions, notably those concerning the formation of the FFRC and the issuance of an executive regulation, still await implementation, steps have already been taken in this regard. Although it suspended its activities, the Fact-Finding Commission formed in accordance with Law 17/2012 is still in place, and proposals have been made to reconfigure it. Also, a draft of an executive regulation has already been prepared, as mentioned above. It might be preferable to build on these efforts to implement Law 29/2013.

Admittedly, implementing Law 29/2013 will not be the ideal solution, given its faults, and the fact that it is not, currently, the sole law regulating transitional justice. Thus, it is necessary to also amend it so that its drawbacks are addressed. Moreover, other parallel transitional justice legislation should be abolished. In the present political context, either course of action might not yet be feasible or even currently preferable. Still, implementing the law remains a worthwhile step as it will help address urgent disputes; for example, those related to real property. It will also help to begin uncovering the truth and provide reparations for other violations provided that this has not been made impossible by the amnesty laws. Moreover, such a step might result in reviving the debate on transitional justice amongst both

policymakers, lawmakers, and the general public, and lead to other steps towards enacting a new, better, transitional justice law.

3.On a relevant note, establishing a mixed special court to try those responsible for grave human rights violations may provide a substitute for a purely national judiciary. Some court rulings, such as those issued against Saif al-Islam Gaddafi and those accused in the Abu Salim massacre, have put into question the national judiciary's ability to address such violations. While there is increased acceptance within the legal community in Libya of this option, such a step still requires more scrutiny and a careful assessment of pros and cons.

4.Ideally, addressing the problems surrounding the current framework of transitional justice should start from the prospective constitution. For Libya, getting its constitution up and running, however, has proved to be a huge political challenge. Having said that, the 2014-2017 constitution making process, despite its drawbacks, has resulted in several drafts, the latest of which, announced in July 2017, is quite credible in its approach to transitional justice. As such, continuation of this process would create an opportunity for transitional justice. The 2017 draft enshrines the principle of transitional justice and obliges the state to enact a transitional justice law that regulates fact-finding, reparation, criminal accountability and institutional reform. Adopting these constitutional provisions would thus provide the needed transitional justice legal base, overcome legal obstacles such as the non-retroactivity of laws, especially criminal ones, the statute of limitations, and problematic amnesty laws. Also, given that a constitution needs to be approved in a public referendum, the constitution making process can provide an opportunity for societal participation in setting the foundations of transitional justice. If people reject the draft, it may be modified to satisfy them. But for voting to be prudent, there is need to address another challenge, i.e., poor social awareness, which, as explained below, is a key challenge.

5.If indeed the draft constitution is adopted as the constitution, there will be a need to translate its principles into detailed provisions. A new, or thoroughly revised, transitional justice law will thus be needed. It will be important, then, to draw guidance from both Libya's own experience and other international experiences. In assessing which aspects of these experiences are worthy of upholding, guidelines developed by international organizations, especially the UN's, can provide a reference. For example, our report highlighted that revealing the truth is a right of victims, and that domestic claims for amnesty should not lead to ignoring this right, nor to impunity for grave human rights violations. Such guiding principles can also provide a framework for reparations: what types, to what extent, how to strike a balance between various interests, private as well as public. The prospective law should build, when addressing institutional reform, not only on the guidelines and comparative experiences, but also on Libya's painful experience of excluding (in Libyan jargon 'isolating') political and administrative office-bearers. Accordingly, it should not limit institutional reform to such exclusion (isolation), and it should exclude people based only on their individual behaviour rather than their belonging to a certain political or administrative category.

6.While securing a better legal framework for transitional justice in the constitution and ordinary legislation is essential, it is not enough. It is important also to address the challenge of poor social awareness of transitional justice. The report shows that the general public and many of the leaders in the political and media landscape know too little about transitional justice's goals, mechanisms and measures.

Perhaps the response to the challenge of social awareness is an appropriate approach to addressing transitional justice issues and other transitional justice challenges in Libya. In this regard, it would be useful to start awareness campaigns led by civil society organizations and research centres, presenting transitional justice's global experiences and lessons, and national transitional justice issues in an accessible manner to the general public. The campaigns should aim at clarifying the underlying values, and the legal and socio-political dimensions of transitional justice, notably its importance for building the nation. It should also uncover transitional justice issues, positions taken on them and the rationale employed to enact such positions in legislation. As such, these campaigns will facilitate an informed national dialogue and enable taking positions informed by solid knowledge instead of raw emotions or polarizing ideology. This report can be considered a step in this endeavour and should be presented and discussed via various media to assist various segments and groups of society in forming informed views and positions on transitional justice issues. Such views should then feed into the debate on whether to reform the existing transitional justice legislation, and how, or enact new legislation, and how. This will help to develop a sense of ownership of the transitional justice project and give Libyans an incentive to actively participate in its implementation.

7.Emphasizing the uniqueness of the Libyan transitional justice experience may present an opportunity for the actualization of the transitional justice process. To achieve this, it is necessary to highlight the specificity granted by local heritage: religion and custom, and concordances and charters, ancient and present, built thereon. It is also necessary to hold dialogues between various experts and actors to identify which transitional justice mechanisms suits Libya's experience the best. This can help create a sense of national ownership of the transitional justice process and encourage different segments of society to participate in its success.

8. Any success in addressing the challenge of poor social awareness will help address other challenges too. For instance, media often play a destructive role in Libya's crisis, e.g., inciting violence and promoting hate speech. If citizens are more aware of its detrimental nature, such destructive roles can be countered. This in turn can heighten the chances for a successful transitional justice process. It is perhaps fortunate that many Libyans have now become more aware of the fact that certain satellite channels have divisive agendas that only serve the entities/countries sponsoring them. Therefore, besides adopting a transitional justice process, attention should be given to an upbringing based on values supportive of transitional justice as a real, fundamental, and lasting solution, albeit a long term one.

9. Related to the development of social awareness is the revival of the national memory, which some consider one of the goals of transitional justice, while others consider it one of its mechanisms. It is true that there is polarization in society about the identity of the people most worthy of being commemorated, but it may be possible to honour the victims thought to be worthy of commemoration in each region, for example, by planting trees named after them, in the city or village in which the person was born or lost, or in the prison where they passed away. This will serve to satisfy justice, psychological, environmental, and even aesthetic needs. It is imperative that the various segments of society contribute to financing such projects, either by making payments, allocating agricultural land, securing shrubs, or erecting monuments, so that they can tell the stories of these victims for generations to come, and give them another life that perpetuates their memory and perpetuates the gratitude of their fellow citizens for their sacrifices.

10. Lastly, it is important to emphasize that, while adopting measures to address the aforementioned challenges, attention should also be paid to the reasons that compelled us to apply transitional justice in the first place. After the issuance of fatwas legitimizing terrorism and exhuming shrines and graves, and after the failure of political elites and social leaders to reach permanent settlements, and after the outbreak of wars in which internationally prohibited weapons were used, and after nearly a decade of grave human rights violations resulting in hundreds of thousands of widows, orphans, IDPs and refugees, it is of paramount importance to address the prevailing values that allowed all that to happen. In the end, it is undoubtedly the society's value system that constitutes the real test of any envisaged transitional justice process: its legitimacy, suitability, chances of success.

5- Security Forces

This report deals with Libya's security sector, a controversial concern that hinders reconciliation. Whereas most other studies and observers of post-2011 Libya focused on the political and military developments, this report also looks at how especially national governance actors have laid down their positions on the sector's most crucial issues in law, and how the differences between these positions might be reconciled.

Libya's security sector was historically kept divided, as the country's leaders feared for coup attempts. Gaddafi during his 42-year rule neglected the regular armed forces and police, while privileging other elements (e.g., special brigades, internal and external security agencies) which he tasked with maintaining regime security. The 2011 cascading collapse of the Gaddafi regime and its security sector revealed how differently his reign had been experienced both within the security sector and in society at large. In the ensuing political and military vacuum, the security sector fell apart while competing group identities offered support, meaning and direction, even as they kept Libyans divided.

We identify three key divisions. First, that between supporters of the old order, so-called 'Gaddafi loyalists', and those of the new post-2011 order, notably the 'revolutionaries.' Second,

between Islamists of various kinds, and the 'nationalist', 'civil' or 'secularist' current. Third, between the various regions, towns, tribes and ethnic minority groups. While history teaches us that too much nationalism can have disastrous consequences, the Libyan case demonstrates that too little (or competing) nationalism is equally problematic.[21] With time, these various divisions became weaponized and entrenched, also economically with armed groups 'diversifying' their income through informal and illegal means (e.g., smuggling, looting, protection money).

Efforts to develop the security sector in post-2011 Libya have faced three key issues. The first concerns the position of security institutions inherited from Gaddafi's era, and the second concerns that of the numerous armed groups formed since 2011. Should they all be maintained, all discarded or rather some maintained while others discarded? And through what process can Gaddafi-era or revolutionary elements legitimately integrate into the security sector? The third issue relates to the supreme command of the armed forces: Should it be held by a civilian institution or office-holder (and if so which one?), or with military institutions (and if so, for how long?)?

Libya's governments and legislatures (NTC, GNC, HoR, GNA) have responded variously to these problems. Especially since the 2014 bifurcation, Libyan legislative bodies have issued laws, decrees, and resolutions on security issues that were not intended to overcome divisions, but rather to deprive 'the other side' of legitimacy. At other times, legislatures made ambitious attempts to establish civil control over the scattered security sector (to rule over the gun with the pen) or to establish a monopoly on violence. Those attempts have not achieved their goals so far. All governments have depended on pragmatic constellations of armed groups, who often refused to submit to civil control (some out of principle, some as they contest the legitimacy of civil authorities). Often, battlefield developments influenced legislative proposals and vice-versa. In this regard, the present military stalemate might offer more fertile ground for reconciliation and sound legislative responses to Libya's divided security sector. This report offers several suggestions to this end.

Attempts towards achieving a unified security sector will likely involve forms of (re)integration, which ought to respond to armed groups' diverse motivations (e.g., ideology, employment, greed, historical grievances, patriotism, a combination). At the same time, Libya's future security sector has to be legitimate in the eyes of Libyan society. To this end, eligibility criteria and measures of accountability are in order. In the past, armed groups have been affiliated to formal security sector institutions as *groups*, but it would be better if their members would be recruited and trained as *individuals*, and take an oath to be loyal to the homeland and people, rather than any particular ideology or sub-national group interest. If a body like the National

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[21] Many Libyan leaders and combatants engaged with the state and its (security) institutions as members of particular groups, rather than as national 'citizens': Trying to get things from government to serve their groups' interests, rather than submitting to an overarching Libyan agenda and identity. In the security sector, this has been especially problematic as primary loyalties were not to the Libyan homeland and its people, but to sub-national (e.g. 'Cyrenaica') or international areas or groups (e.g. Madkhali, Amazigh, Tebu).

Guard would be composed in such a way, it could form a useful stop on the road to a unified, apolitical and accountable security sector.

Annex (2)
Context for National Reconciliation in Libya: A Detailed Account

Contexts for reconciliation: Challenges and Opportunities

National reconciliation efforts in Libya do not take place in a vacuum, but rather within specific general contexts (cultural, social, economic, historical and geographical) and within a political environment facing the crises of nation and state building (the context of governance) that govern this process and contribute to determining its course. This part of the report is concerned with the challenges these contexts create that may affect the law's chances of achieving national reconciliation. The report focuses, first, on investigating these challenges and their impact on the prospects for national reconciliation, and then, it addresses the opportunities that these contexts provide for promoting national reconciliation and the role of law in this reconciliation (see annex 2 for a detailed account).

1.1.   Challenges

Although Libya shares many challenges with the rest of the Arab Spring countries in building a civil democratic state, the way events in the Libyan case during the last four decades and during the uprising have brought to light different and more difficult challenges. Unlike its neighbours Egypt and Tunisia, the Libyan uprising was marked by a high degree of violence, and the Libyans paid a high price for their freedom that had a profound impact on their society, socially, economically, politically, and psychologically. The following is an overview of the most important challenges created by the general contexts in which the processes of nation-building and state-building and achieving national reconciliation in Libya takes place:

1.1.1.   General Context

This part of the report examines the challenges that have emerged within the cultural, social, economic, historical, and geographic contexts. Among the most important of these challenges have been:

1.1.1.1.   The need for building democratic, political culture

The educational system in Libya during the last seven decades has played a decisive role in instilling a political culture that reflects the so-called parish culture, a culture that does not help in building the trends of tolerance, moderation, inclusiveness, participation and consensus, which constitutes the essence of democratic civil culture. The absence of civil culture participating in Libya is demonstrated by the dominance of zero-sum relations between competing political groups, in its unwillingness to reach understandings and compromises on critical issues facing the country, in the prevalence of violence in the

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interactions between them, and in its increasing attachment to its ideological, familial, tribal and regional identities. All of this does not paint an optimistic picture about the country's civilian fortunes. Therefore, there is an urgent need to make intensive efforts to change the Libyan political culture by employing social and political upbringing channels - the family, the educational system, the media, etc. - to inculcate the values, standards, attitudes and patterns of behaviour necessary to build a civil and democratic culture, and to educate citizens and urge them to play an active role in the political process and to endure greater responsibility in their individual affairs. Transforming a deep-rooted political culture turns out to be a difficult, slow and long-term process.

1.1.1.2.   The value system in place

The local value system mainly, but not exclusively, includes tools for controlling and enforcing religion, custom and law, most notably, and all of them are generally favour values and principles of national reconciliation. However, the most important question arises about the extent to which the behaviour of all Libyans adheres to these values and principles that bind them to the teachings of their true religion and are coerced by the legislation of their legal system and imposed on them by the norms of their society, which calls for disclosure, apology, forgiveness, tolerance and reparation, and rejects treachery, healing, revenge, stalking and begging violence in imposing trends. And because monitoring existing behaviours and tendencies can only be answered by comprehensive surveys and statistics, and because circumstances do not allow them at the present time because of the pandemic, we had no choice but to rely on previous surveys and statistics, and to abstract the positions of the various segments that were interviewed by representatives regarding the extent of the Libyans' compliance with the obligations of their value system.

The "comprehensive value survey" conducted by the Research and Consulting Center at the University of Benghazi in 2014 on the lack of preference for a Libyan to be a foreign neighbour who differs from him by race, religion, country, or language; however, this does not tell us much about the Libyan's willingness to respond to the efforts of national reconciliation with those with whom he shares Islam as a religion, speaks Arabic as a language and holds Libyan nationality. However, he may tell us something important about the Libyan's position on the Libyan 'other', who is different by ethnicity; Arabs and Berbers, for example, and who differ in religious doctrines; Malikis, Ibadis and Salafists, for example. Ideally the desired Libyan national reconciliation includes the reconciliation of all of them. Moreover, there is no doubt that the fact that only one in ten Libyans believes that most people are trustworthy, as revealed by the "comprehensive value survey", tells us a lot about the opportunities for national reconciliation, because the talk here is about apprehension about the other, regardless of his race or his religion or language.

Perhaps the two most important values that suffer from misjudgement and misunderstanding are work and education. Libyans suffer from a fatal misunderstanding

of these two values, and they translate their flawed understanding of them into behaviours that harm their own interests as well as the public good. For many of them, work means obtaining an income, and it has nothing to do with mental or muscular effort, nor with what this effort may result in in terms of production. Education, according to the understanding of a wide sector of Libyans, basically means obtaining a certificate that provides an income, preferably not in return for work. This has been reinforced by the dominance of the rentier culture, which will be discussed later.

Although awareness of the most important stations of national history, and of the most important national symbols, is one of the catalysts for a sense of belonging to the homeland, knowledge of these stations is almost in the younger generation, the eldest of whom was born in 1990, remains in our estimation, based on personal impressions, the monopoly of a narrow sector. For this reason, in the context of strengthening national identity, there is an urgent need to introduce young people to the most important covenants, facts and personalities that have negatively or positively influenced the course of history in Libya, the cultural peculiarities that shaped the Libyan sentiment, and the national symbols that had a clear imprint on the political, social or cultural scenes.

It is true that every generation has its own symbols of pride, but the symbols of the new generation do not seem patriotic enough. Likewise, the subscribers and affiliations based on liking were formed with identity affiliations that make them feel a sense of belonging to supranational groups, most notably international sports teams, and international artistic groups, particularly musical. Perhaps the fact that many young Libyans rejoice at the victory of a European football team more than they rejoiced at the victory of the national team tells us a lot about the concerns of the younger generation. Likewise, the fact that they are familiar with rap symbols in the world, their lack of knowledge of the symbols of local musical art, and the fact that Libyan youths communicate with young people from around the world, forming friendships even stronger than with their real, local counterparts.

Of course, this does not mean that the younger generation does not have any patriotic feelings, but rather that it may not be strong enough to build the nation and build the state, which this project considers national reconciliation as a means to achieve it, and it also means that there are huge tasks awaiting us in the process of developing political and societal awareness of the components of our national identity and its most prominent symbols.

The performance of the Ministry of Culture in the last decade, except perhaps the first, was very bad, and perhaps the weakness of the budget allocated to it, as well as the institutional division, is partly responsible for that, but there is no doubt that it did not do anything that contributes to strengthening the efforts of national reconciliation, and it did not accomplish something at the level of preparing forward-looking visions, and it did not provide any support to cultural associations and did not extend them when they were exposed to smear

campaigns, and also kept from carrying out awareness campaigns for all citizens with the aim of spreading a culture favourable to the values of the new state.

In talking about the Ministry of Information, one must acknowledge that its role has been undermining reconciliation efforts. Official visual channels are directive, and private visual channels incite, to varying degrees, violence and adopt hate speech, and the issue of developing community awareness is not among its priorities. As for the press, it is almost absent, which provided an opportunity for news, opinions and analysis through social media, which lacks the necessary tools to make societal progress in such difficult times that the country is going through.

The performance of knowledge institutions, which includes universities, higher institutes and research centres, is also poor. The fact is that it was bad for nearly five decades, as universities sat in their academy and distanced themselves from engaging in any political and regulatory movement, and more than that, their connection to society is almost born, and scientific research in it does not adequately address the social and political problems and crises that plague the homeland. Specifically at the research level, we find that master's and doctoral theses on the one hand, and research projects implemented by research centres on the other hand, avoid diving into the depths of problems and crises and are often satisfied with superficial treatments, if they are ever concerned with such problems and crises.

1.1.1.3. Weak civil society

While many of the literature on modernization, political development and democratic transformation agree that the presence of a strong and active civil society is one of the factors supporting the democratic system, and despite the formation of huge numbers of civil society organizations in Libya after February 2011, civil society in Libya has suffered from many imbalances. Resulting from the experience of previous decades, the most important of these imbalances is the hegemony of the state and financial dependence. The state completely dominated civil society, such as trade unions, federations, professional associations, and civil voluntary associations were established, organized, reorganized, and dissolved by decisions from the state, regulations and laws, and civil society organizations were not an independent and separate entity from the state, but were included in the official organizational structure and considered part of the mechanisms of the Libyan political system.

On the other hand, civil society organizations did not suffer organizationally and politically from the hegemony of the state, but were subject to its financial control, which eliminated their independence, effectiveness and ability to play a positive role in the political process. In spite of the opportunities now available to civil society to assert its organizational and financing independence, the dilemma is that the long decades of these organizations being subjected to state hegemony and their almost complete dependence on financing the public

treasury, making it difficult for them to secure funding for their activities from independent sources. In addition, the mentality of relying on the state, that is, the 'rentier mentality' prevalent in Libyan society helps the civil society continue to strive to secure state funding for its activities, ignoring or being oblivious to the restrictions that this approach imposes on the independence of civil society. Moreover, the hegemony of the authority has not disappeared, and if its tools differ and its sides change, for example we note the hostile tendencies of the Salafi movement and its attempts to restrict the activity of civil society and even prohibit it through the employment of official state agencies, which was recently evident in the position of the General Authority for Endowments dominated by the Salafi trend From the Tanarout Cultural Organization.

1.1.1.4.   Impact of ethnic, tribal and regional allegiances

Among the merits of consolidating democratic political processes that promote national reconciliation are the limitation of the influence of ethnic, tribal, and regional loyalties to the private sphere, and a commitment to common and equal citizenship values. The inability of state institutions to impose adherence to these values opens the way to the emergence of tribal, regional, ethnic, and other local affiliations. This has become clear in Libya over the past few years, as political fragmentation, division of state institutions and ongoing conflicts have led to the growing influence of tribal and regional factors on most political processes and decisions at the local and national levels. At the local level, the administrative divisions (municipalities as a model) were subject to local pressures and demands were not defined according to objective considerations.

At the national level, sufficiency and need standards are no longer the basis for occupying most jobs, and tribal and regional considerations have become the governing criterion. The political agreement did not escape this problem, as the composition of the Presidency Council reflected regional influences, and was not based on competency and capacity considerations, which negatively affected the Council's ability to make decisions and reach consensus. This was also evident in the political and community dialogue process led by the United Nations Support Mission in Libya. It is likely that the influence of the local dimension (tribal and regional) on social and political interactions, and on the orientations of individuals and groups in Libyan society will continue unless the political division ends and the state regains its ability to perform its functions and impose a commitment to equal citizenship, and the adoption of adequacy as a criterion for assuming jobs, and unless citizens feel that the alternative organizations (political parties and civil society organizations) enjoy independence and effectiveness, and express their orientations and demands.

1.1.1.5.   The need to face extremist Islamism

Despite the dominance of moderate Islamic trends in Libyan society, the nature of the conflict provided the opportunity for many violent extremist groups to influence events

and become a major actor in the Libyan political and social scene, with the negative repercussions that this had on the establishment of a civil democratic state in Libya, as was demonstrated during the last few years. The confrontation of this challenge must be based on the policies of inclusiveness and dealing with the social, economic and political roots of this violent extremism, and not by only adopting policies of exclusion and armed confrontation.

1.1.2. Governance Context

We consider the centrality of the role that the state is supposed to play in achieving the pillars of national reconciliation, building and strengthening community peace, achieving political stability, and consolidating the rules of equal citizenship that does not exclude any individual or group on sectarian, ethnic, regional, tribal or political grounds. Any defect in the performance of the state's basic functions, or any group or social component doubts the state's ability to protect its rights and favour other groups and formations, this will negatively affect the possibilities for achieving this. This justifies the adoption of this report of an approach to the challenges of state building and democratization in analysing the current reality in Libya, and in investigating and evaluating the role of law in confronting them, and the impact of this on achieving national reconciliation.

According to this approach, the chances of national reconciliation in Libya and the role of law in achieving it can be explored through the way in which nations and societies face the challenges of nation-building and nation-building, which need specifically in crises of identity, legitimacy, penetration, distribution and participation. The success of the political system in achieving political and societal stability depends on its ability to create a high degree of horizontal integration (nation building), that is, to face the identity crisis and form a common national identity out of the set of sectarian, ethnic, regional and tribal identities. And to create a similar degree of vertical integration (state building), that is, facing crises, penetration, distribution and participation. Likewise, the specificity of the Libyan case, and the decisive role of the external factor in the course of events since February 2011, necessitate investigating the extent of the influence of global and regional powers on facing the challenges of state-building in Libya, and on strengthening or impeding national reconciliation efforts in it. Here are some of the most important challenges in the governance context:

1.1.2.1. The crises of nation and state building coincide

Perhaps the coincidence of nation-building crises represents the main challenge facing the Libyan state. The current situation in Libya reveals an almost complete absence of state institutions and a clear lack of security and law, and consequently of societal peace and political stability, and that the Libyan society is now facing all the challenges of nation-building and state-building simultaneously, which exacerbates its impact and consequences. Thus, we notice that there are urgent problems about legitimacy resulting

from many questions about identity, a clear lack of penetration of state institutions, a large deficit in the state's distributive capabilities, and prevailing doubts about the viability of political participation and its impact on political decision and trends. This affected the performance of the institutions and authorities of the transitional phase and imposed a set of other challenges.

1.1.2.2. Institutional Vacuum

Institutionalization processes during the previous regime were greatly reduced, and governmental and political structures underwent continuous changes that negatively affected the performance of these structures and undermined their legitimacy. This institutional vacuum represents one of the most important challenges facing the new system. Libya had to face the challenges of conducting elections, drafting a constitution, and building democratic institutions without any close and meaningful experience. On the other hand, this could have given Libya an opportunity to design and build its own democratic system without the burdens represented by the presence of solid institutions that might resist and impede the democratic process. However, as revealed by the developments of events in Libya over the past five years, this was a missed opportunity.
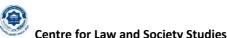
1.1.2.3. Poor performance of transitional legislative and executive institutions

The success of the democratization process depends on the existence of efficient political leaders who embrace democracy as a strategic choice and a national commitment and commitment. However, an investigation of the role played by the Libyan political leaders after February 2011 shows that they did not do enough in this regard. At the legislative level, there was a clear lack of definition of responsibilities, which led to an overlap in terms of reference and an ongoing debate with the executive authority. Despite the huge budgets allocated, successive governments have failed to develop effective solutions to move the wheel of the national economy, address the problems of centralization, confront the proliferation of arms and armed formations, and build the national army, and this has had a negative impact on citizens' confidence in the institutions of the transitional phase and their political leaders. In sum, the performance of the transitional legislative and executive institutions in Libya has not responded to the requirements of the stage. The poor performance of these institutions is among the reasons for questioning their legitimacy.

1.1.2.4. Questioning the legitimacy of the institutions of the transitional period

No democratic society can last long unless it enjoys some form of legitimacy. Legitimacy is a difficult concept to define and quantify, especially in authoritarian societies. However, it can be better understood if it is divided into three components: geographical, constitutional, and political. The report of the occupant of national governance revealed that the legitimacy crisis, with its three manifestations, is strongly present in the Libyan scene, whether through the existence of claims that reject the national state either from a

supra-national or sub-national perspective or through the existence of clear polarizations about the form of the state and its system of government? Or through the refusal to recognize the legitimacy of the elected authorities and the formation of alternative powers.

1.1.2.5.   The split of political elites

The state-building process requires a political leadership that believes in the mission and is able to meet the challenge in a historic mission in which there is no room for factional disputes. It is clear that the dominant elite on the political scene in Libya now lacks the required ability and qualities, and perhaps even the desire, to build a civil democratic state and achieve national reconciliation. Evidence of inability to reach any consensus, whether through the House of Representatives, the General National Congress, the Presidency Council of the Government of National Accord, or the constituent body for drafting the draft constitution, is abundant and clear. Tolerance, acceptance of others, moderation, and lack of clinging to opinion are important democratic values that are necessary for the success of any democratic model, and it is a lost culture among most of the Libyan political elites at the forefront of the political and social scene due to the distorted political upbringing they were exposed to during the past decades that created an exclusionary culture among these elites. Thus, instead of the Libyan political elites being the locomotive that leads society towards greater social homogeneity, societal harmony, and political coexistence, they were more exclusionary and extremist than groups that claim to defend their interests. The divisions at the elite level that spread after the February Revolution sparked sedition and embarrassment that continued to tear apart the social fabric, revive the traditional conflict between urban dwellers and rural Bedouins, the emergence of separatist lawsuits, the prevalence of the phenomenon of territorial treachery, military confrontations between cities, and the spread of what is known as the phenomenon of murder based on the identity. Consequently, these elites have become a tool for fuelling the conflicts and disputes of the past, and for harming civil security and political and community coexistence.

1.1.2.6. The novelty of the party-system experience

The importance of this challenge in the context of enhancing the chances of national reconciliation or obstructing it lies in the fact that political parties are supposed to be based on a civil / political reference that contributes to fusing society horizontally, unlike tribal, ethnic, sectarian and regional references and affiliations established vertically, given that the existence of civil and political organizations reduces the influence of the primary references. And it contributes to increasing the chances of state building and political and societal coexistence. Emerging parties have been affected by past periods of prevention and repression and lack of experience in overt party and political work. The public good is severed with tribe, spoils, and creed. Also, the newly established parties reflected a culture of conflict that complicated the scene and made reaching compromises and settlements difficult. And because of the poor performance of the parties, which was mainly due to the

newness of their experience, a trend grew that the fault in political performance was the idea of multi-partyism itself, and lawsuits against this idea emerged. It goes without saying that such a negative view of the concept of party pluralism and the performance of parties, in turn, contributes to obstructing democratic transformation and preventing elite consensus on public policies.

1.1.2.7.   Influence of the rentier policies of the Libyan state

During the past five decades, the 'rentier mentality' has become entrenched among the various elites and groups that view controlling the state with the logic of victory and spoils, and as the only way to achieve its goals and desires at the expense of individuals and other groups. Because of this, the relationships between the various elites and groups became zero-sum and conflictual, and the state became the center of the conflict and its focus, instead of being an organizer of competition between the various political, economic and social elites and groups and controlling its borders and tools. The distributive policies of the state have contributed to the formation of a rentier mentality among various individuals and societal groups, to the dominance of the culture of spoils, and to the almost complete dependence of the state and its institutions. All this worsened after 2011, as the new authorities continued to follow the same previous rentier distributional pattern and worked to buy the loyalty of individuals and groups through a set of decisions and policies. A rentier mentality, in light of weak government institutions and lack of accountability, helped create a fertile environment for corruption and looting.

1.1.2.8.   Weakness of military establishment and inability of state control of security

The concept of national security for Libya during the period of the previous regime was based on the security of the regime, as it was based on preserving the political system and ways to strengthen and strengthen it. There are many aspects that confirmed the supremacy of this concept, including the neutralization and dissolution of the military establishment, the formation of alternative forces that protect the regime, and the reliance of recruitment for the military and other security institutions on traditional sources, such as kinship and ideological loyalty. After the revolution, things did not improve in any way, but worsened in many ways, and the Libyans express their concern about the security situation in more than one way. Public opinion polls indicated that more than two-thirds of Libyans are demanding the prevention of joining the armed forces in the form of organized groups, the prohibition of military formations outside the framework of the armed forces, and the prevention of the armed forces 'interference in political life.

Four out of ten Libyans believe that the country needs a strong leader, and nine out of ten consider activating the army and police a way to achieve security. In short, the security situation in the country is not stable enough for the democratization process to proceed. When security is undermined, the citizen's confidence in everything falters. In the absence

of security, there is no way for the establishment of the state of institutions, nor for the implementation of the provisions of the constitution that establishes them. As for the values, their memorization in the absence of security is not abundant. When a person is obsessed with preserving his life, there will be no room in his conscience for compassion, tolerance, solidarity, altruism or fairness. And all this negatively affects the chances of national reconciliation. The prospects for democracy and national reconciliation in Libya will be bleak as long as armed militias continue to exist independently of the state's official military and security institutions, and as long as they continue to live on the state and not for the state.

1.1.2.9.   The international factor

The internal situation in Libya was negatively affected by the conflict of interests of international and regional powers, and Libya turned into an arena for conflict between these interests through the use of local parties and fuelling conflicts between them, ideologically, regionally or tribally. The intervention of international parties led to a further crisis due to the conflict of interests of these parties and their different priorities from those of the Libyans. The political settlements sponsored by the United Nations Support Mission in Libya (UNSMIL) also failed. According to all of this, the transformation of Libya into an arena for conflicts by foreign parties had a negative impact on national reconciliation and on the state-building process. While the Libyans hoped that the international community, especially the Western powers, would help them face the challenges of this process and address the economic bottlenecks, these countries' priorities focused on fighting ISIS and other terrorist groups, controlling illegal immigration to Europe, and ensuring the continued flow of oil exports and gas. The United Nations, NATO and the rest of the international powers that participated in the military operations did not make real efforts to help rebuild the armed forces, collect weapons, and lay down plans to integrate the militants into civilian and military life.

1.2.   Opportunities

It is no secret that facing the aforementioned challenges is a difficult task even for countries that enjoy social peace, political stability and societal consensus. The task is becoming more and more difficult in a country like Libya, where these challenges must be met within an environment characterized by political mistrust, low social harmony, and the spread of armed civil conflicts. However, hope remains tenuous. All the previous challenges include in their folds what can turn them into opportunities if they are addressed with the right methods and appropriate solutions. There are specific opportunities that can be seized in a way that enhances the democratic transition process and supports the chances of national reconciliation, including:

1.2.1.   Societal support for national dialogue

The culture of dialogue is the incubating environment for every democratic experiment, and when the culture of dialogue is absent, the opportunities for democratic transformation diminish in its absence. Dialogue is a path to elite and societal consensus, and consensus is a central principle in any democratic system. The culture of dialogue means the initial readiness of large sectors of the people to exchange opinions, ideas and visions, to reach some kind of consensus around them, and to refrain from invoking violence or any means of material or psychological coercion in imposing these opinions, ideas and visions. And the prevalence of the culture of dialogue in any society indicates that the majority of its children have sufficient maturity and moral awareness so that one of them understands that the opinion he defends is nothing but his preferred hypothesis.

According to a poll related to Libyans' views of the national dialogue conducted by the Research Center at the University of Benghazi, in June 2014, the National Dialogue enjoys the support of Libyans. The files most worthy of discussion for them are security and national reconciliation, and there is an overwhelming majority that believes that the national dialogue is the appropriate tool for consensus around national identity, rules of political action and common political values, while a majority of more than 95% approves that the principles of the National Charter should include the unity of Libyan soil, the rule of law and the sanctity of Libyan blood. Social justice, the application of the principle of tolerance, consensus, equal citizenship, the peaceful transfer of power, non-exclusion, the moderate Islamic identity and the rejection of violence. There is no way to correct the hernias that afflict the social fabric except through dialogue. Dialogue, not armed stampede, alone can stop the civil war, the series of assassinations, kidnappings, human rights violations, and the situations of division and fragmentation that have afflicted the Libyan political scene. In short, dialogue is the last opportunity for Libyans, and the only guarantor for their continuation in the democratic transition process.

1.2.2. The growing need for a reconciliatory constitution

Consensus is a process of bridging and bridging viewpoints, demands and projects in order to reach a situation acceptable to all parties, and it is an elaborate weaving of a combination of opinions that takes into account the rights, duties, concerns, concerns and interests of all. Consensus is one of the principles that should govern the constitution-making process. There are other principles that should govern this process, such as representation, community participation and transparency, but consensus is the most important of them. This is because a constitution that does not meet the requirements for consensus will be flawed, regardless of the amount of transparency and participation that was taken into account in its making, and it will fail to express the aspirations and aspirations of society even if the party that drafted it is elected and is then supposed to represent the various segments of society. This means that the completion of the constitution and defining the rules for the political process and state institutions should be based on the basis of consensus.

Considering that there is an urgent need for a new social contract and a common vision about what Libya means to all Libyans and what a civil democratic state means, and considering that the constitution establishes new relationships, rules and institutions, this must be done according to the basis of consensus and not according to the rule of victory and victory. A constitution-making process based on consensus and viewpoints is one in which decision-making is made through discussion, negotiation, and persuasion, not through the inflexible application of majority rules. Achieving consensus may take a long time to build relationships and gain mutual understanding. However, this will lead to the drafting of a constitution that all or most of the parties feel legitimate, satisfied and respected. We note that there is an increase in demands for reviewing the constitution and reformulating it on consensual grounds instead of relying on the principle of numerical majority and voting criteria.

1.2.3.   Social coherence

With regard to deep, dangerous and destabilizing societal divisions and conflicts and peaceful societal coexistence, this report adopts the viewpoint that says that societal divisions and conflicts in Libya, whether ethnic, regional or tribal, are not of the depth, intensity, or rootedness that some researchers envision or market. Some members of the Libyan political and social "elite". This is because a society sharply divided in social values and political orientations necessarily means the existence of distinct groups and cultures within that society, and members of these community groups are usually associated with different political parties and civil organizations, attend separate social and sports forums, and often live in separate residential neighbourhoods, and do not mix Socialize with members of other groups, and usually go to differentiated schools.

As for Libya, the situation, as this report claims, is significantly different from this picture. The social and economic modernization processes over the past decades have ensured the fusion of Libyan society with its various components into a largely homogeneous social melting pot. Libyans, with all their backgrounds, tribes and regions, especially in urban areas inhabited by more than 80% of Libyans, live in mixed neighbourhoods and attend common forums. And they go to unified schools, and most importantly, tribal and regional backgrounds do not stand in the way of their mixing and intermarriage, which has led to the creation of a more homogeneous society than some would like to admit. Moreover, ordinary citizens have not stopped communicating with each other in all parts of the country, and economic activities, trade exchange and movement continued despite their difficulties, and perhaps the clear evidence of that is the increase in the process of domestic travel after the opening of flights in the recent period.

The problem in Libya is not a problem of deep societal divisions, but rather a political problem par excellence caused by a ruling elite and opposition whose inability to do anything but provoke separatist, regional and tribal tendencies, and its inability to assume the responsibilities of building the state and maintaining peaceful coexistence and political

stability in Libya. Its erroneous practices and its pursuit of its narrow private interests at the expense of the general interest of society, and even the interest of groups and parties that claim to represent them, have led society to internal strife and destabilized its political stability and put it on the brink of a civil war that directly threatens its united entity and its common coexistence.

1.2.4. Unification of state institutions and continuation of social communication

Despite the negative impact of the political and institutional divide on the chances of national reconciliation, there are signs of hope that many political and social institutions have resisted tendencies of fragmentation and division. There is an evidence for this, the most prominent of which is the lack of division of the judicial institution and its continuation to work within a unified national framework. In addition, communications between the lower administrative levels in the executive institutions did not stop and they maintained a minimum level of coordination and cooperation. On the social level, the Scout Movement, the Red Crescent and some civil society organizations provide models for this cooperation and communication at the national level. Likewise, the division did not extend to academic institutions and academics, as scientific and cultural relations and activities continued between these institutions throughout the country. In addition to this, theatre and plastic artists, musicians, athletes, academics, and a wide range of intellectuals and civil society activists, in addition to the fact that the youth group, if we exclude those who were involved in the armed conflict, remained in contact and was the furthest from division and antagonism. And all of these contributed to the healing of some of the fabric of the social fabric.

1.2.5. Historical experience

The experience of building the independence state in the late 1940's and early 1950's presents a positive historical legacy around building confidence, achieving national reconciliation and reaching consensus, whether at the horizontal societal level (the Al-Harabi Charter, for example), or the vertical political level (the establishment of the state). An enlightened cultural, social and political elite emerged, distinguished by political wisdom and a future vision that enabled them to look at the conditions of their homeland within its internal and external contexts, and helped them to overcome differences, reduce tensions, make mutual concessions, and reach compromise solutions that led to the achievement of unity and the achievement of independence. This positive experience reflects the importance of the presence of enlightened elites and leaders to build the nation and the state and enhance the chances of societal and political coexistence.

1.2.6. Geographic factor

The geographical factor was not a major obstacle to the communication and assimilation of the Libyans, especially in the modern era. Despite the vast territory of the country and

the low population density, the cities and villages of the country have always been connected to each other socially, culturally and functionally, not only as an economic means of living, but in that it is a source of identity for a mobile society, whose members move freely and continuously from one place to another, in search of About job opportunity and civilian life. Of course, the traditional urban centers, and those that have grown and expanded greatly since the economic renaissance provided by the oil sector at the beginning of the sixties of the last century, played the role of a hub for economic activities interacting in the length and breadth of the country. These cities also represented the melting pot of the inhabitants who lived the life of the desert and immigrated to it from the small and agricultural communities.

In conclusion, the treatment of imbalances does not necessarily require long decades, because the deterrence processes that are supposed to be practiced by the state founded on justice and law, which, as mentioned above, constitutes one of the goals of national reconciliation, may be capable of returning matters to normal within a few years, as long as this state was established on the realization that the application of the law serves the interests of those who implement it, as well as the interests of his society and his country, so that the impulses that drive corruption, criminality and oppression are the same motives for integrity, justice and charity. It is true that the state of justice and law has not yet been established in our country. However, there are changes that have taken place in the last five decades that have contributed to our appreciation in creating an opportunity for its establishment and paving the way for the success of national reconciliation efforts.

The most prominent change in our assessment is the war that has claimed the lives of tens of hundreds and displaced tens of thousands, and convinced the general public that murder, revenge, hate speech and all other obstacles to reconciliation will only result in more losses for all parties. There are also consensual initiatives at the political, military, economic and social levels that have recently achieved tangible success, especially because of the relative international support they have received.

Perhaps Libya is most in need at this difficult stage of its history because the sciences of psychology, sociology, history, politics, law and philosophy should pay attention to their importance in building the nation and building the human being. As the American researcher Martha Nussbaum emphasizes, we do not need to object to a good education in natural sciences and technology, nor to propose to stop progress in this field. But there are other, equally important capabilities that are in danger of being lost in the competition. Capabilities critical to the health of any democratic system, to confront the most pressing problems, and to create a culture fit for the world; These abilities are related to the humanities and the arts, to a profuse willingness to think critically, to transcend the narrow loyalties, and to sympathize with the dilemmas in which others stumble. In the words of Adnan al-Amir, "If science and technology provide technical progress for human beings, then the humanities provide them with the wisdom necessary to manage their affairs."

A quick look at higher education systems in developed countries is sufficient to show that various and many courses in social sciences are university requirements that no student graduates in any major without studying them, and that these systems require high rates of enrolment in humanities colleges, and that the research centers in them pay special attention to this type from science.

The fact is that the values of democracy, governance and citizenship, the values of justice, equality and fairness, the values of independence, objectivity and impartiality, the values of nobility, honour and dignity, the values of truth, goodness and beauty, the values of altruism, sacrifice and redemption, and even the value of the nation, do not find their way to the souls of the new youth whose identity concerns us. Except through studying the humanities and spreading a civil culture that consolidates the rule of the rule of law that safeguards a person's rights and deepens his sense of duties towards his society, and even towards humanity as a whole.