

# National Dialogue in Libya:

The National Dialogue Preparatory Commission

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## Abstract

This paper examines the unsuccessful efforts to instigate a National Dialogue in Libya over 2011-14. It uses the Libyan case to hypothesise that for National Dialogues to be successful, the context and conditions under which they are inaugurated must be favourable, and seeks to identify what conditions in Libya combined to cause its early efforts to falter. The paper first analyses what conditions existed in Libya 2011-14 and why they led to the view that a National Dialogue was necessary. It then addresses the conditions under which the National Dialogue was established, and also analyses the various alternatives to National Dialogue mooted during this time. In its conclusion, the paper attempts to extract what lessons or principles can be drawn from the Libyan case that are of relevance to future National Dialogue design processes, and to the case literature on this mechanism.

## About this Publication

This publication was produced in the framework of a two-year project (March 2015 – April 2017) to develop a Handbook on National Dialogues funded by the German Federal Foreign Office in cooperation with the Swiss Federal Department of Foreign Affairs. The purpose of the Handbook is to offer a practice-oriented guide for comprehensively designing and implementing National Dialogues. It rests on participatory methods including 1) strategic dialogue and exchange between local

stakeholders, international development and peacebuilding practitioners, and policymakers, 2) a comprehensive mapping exercise of National Dialogues across the world, and 3) in-depth case studies on National Dialogues produced by local researchers. The project is implemented by the Berghof Foundation, in cooperation with swisspeace. This publication is one of seven case studies; others include Guatemala, Lebanon, Mali, Nepal, Sudan, and Tunisia. The case studies provide recommendations for on-going processes in the specific country and inform the Handbook's findings. The overall aim of the project is to improve National Dialogues and enhance the capacities and contributions of conflict parties, local stakeholders and external actors towards their successful implementation.

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# 1 Introduction

After the 2011 revolution in Libya, Libyan efforts to govern via transitional legislature, and to devise the architecture for a new state, were derailed. Disagreements on how to address and reform the legacy state left by Qadhafi, and the wide variety of transitional justice issues that had accumulated over 42 years, were too large to be contained by the country's fragile institutions. Political, regional and armed factions emerged to intimidate and disrupt the process, and in 2014 the government itself split amid an armed civil conflict that has yet to be fully resolved.

At various points during this process, both Libyan actors and the United Nations advocated the formation of a 'National Dialogue' to address the issues that were disrupting the transitional government. In 2013, a Preparatory Commission for the National Dialogue (NDPC) was created by the UN and the country's then-Prime Minister, Ali Zaidan. Yet these efforts ultimately faltered. As the civil conflict worsened during 2014, the National Dialogue initiative fell by the wayside. Competing factions instead entered into a political negotiation brokered by the United Nations, and long-standing social and transitional justice legacy issues lost priority to urgent efforts to seek consensus around a unity government.

This paper examines the unsuccessful efforts to instigate a National Dialogue in Libya over 2011-14. It uses the Libyan case to hypothesise that for National Dialogues to be successful, the context and conditions under which they are inaugurated must be favourable, and seeks to identify what conditions in Libya combined to cause its early efforts to falter. The paper first analyses what conditions existed in Libya 2011-14 and why they led to the view that a National Dialogue was necessary. It then addresses the conditions under which the National Dialogue was established, and also analyses the various alternatives to National Dialogue mooted during this time. In its conclusion, the paper attempts to extract what lessons or principles can be drawn from the Libyan case that are of relevance to future National Dialogue design processes and to the case literature on this mechanism.

## 2 Context and Conditions: The Need for National Dialogue

Libya's transition to a post-Qadhafi state was burdened by the fragmentation of the revolutionary coalition. Divisions ran along multiple and overlapping lines, such as pro-revolution versus ex-regime, progressive versus conservative political forces, in addition to existing local ethnic and regional tensions. Heavily armed and without a unifying structure or ideology, the towns and brigades which claimed ownership over the revolution often found themselves in competition with their former allies over access to natural resources or political influence.

The interim government, the National Transitional Council (NTC), attempted to channel the various voices through a 'Roadmap', hastily agreed in August 2011. However after the election of the new parliament and the establishment of a government, power struggles between various actors paralysed political institutions and fatally derailed the timetable agreed in the 'Roadmap.' The transitional government became susceptible to political infighting, and therefore had neither the executive capacity or the legal authority, nor political will to address broader transitional justice issues emerging both from Qadhafi's legacy and the uprising. By the end of 2013, the country was steering towards a governance crisis with no solution apparent on the horizon. Citizens felt largely disenfranchised and disillusioned and the transitional political structures had lost their legitimacy in the eyes of the public.

Meanwhile, important questions of transitional justice and reconciliation remained unaddressed or mismanaged, due to a mix of the limited legitimacy and weak authority of Libya's interim institutions, a lack of capacity of the judiciary and policing structures, and the influence of local armed groups.

As the transitional authorities struggled to act as national convener and unifier, alternative solutions had to be found. There was a need for a national vision, security for civilians and justice sector actors, dialogue to build trust and engagement around formal institutions. Against the background of a faltering transitional process, political leaders and the international community called for the convening of a national dialogue that would gather Libya's formal and informal political institutions and actors and move the country forward.

### **2.1 The Disrupted Transition to a New Constitutional State**

#### **2.1.1 The NTC and the Establishment of a Roadmap for Transition**

The NTC was established very soon after the first protests erupted in Benghazi in February 2011 by a group of lawyers, academics, former government officials, and defected diplomats. Early on, this self-appointed opposition government served as the political face of the revolution after several states followed France's example in declaring the NTC to be the legitimate representative of the Libyan

people (Cowell & Erlanger, 2011).<sup>1</sup> On 5 March 2011, the National Transitional Council (NTC) declared itself the 'sole representative of all Libya' (National Transitional Council, 5 March 2011), seeking to steer Libya into a post-Qadhafi era.

In fact, however, the NTC had only a very loose grip over the plethora of local councils and revolutionary armed groups which had formed erratically during the revolution, and its plans for the transference of power quickly sparked strong differences of opinion. Confronted with internal challenges to their legitimacy, NTC leaders felt the need to 'show that they had not seized or assumed power' (Bartu, 2015, p. 39).<sup>2</sup> In the summer of 2011, they started work on a Constitutional Declaration containing a 'Roadmap' for the establishment of new institutions on the basis of a new constitution. Debates about how to approach the transitional phase divided the NTC into two camps: some NTC politicians, such as Mahmoud Jibril, felt that Libyans had too little democratic experience to rush into elections and preferred the NTC to oversee the transitional process until a new constitution was drafted. Islamist-leaning members opposed the idea of prolonging the NTC's tenure, arguing that the self-appointed NTC had no democratic legitimacy and thus pushed for the election of a legislature immediately after the end of the revolution (Bartu, December 2014, pp. 9, 10).<sup>3</sup> Behind these arguments lay more concrete political interest. Jibril may have been concerned about the fragmentation of the liberal camp and that the far better-organised Islamists could potentially secure a large number of votes during early elections.<sup>4</sup> Islamist factions, on the other hand, wanted to prevent liberal-leaning NTC leaders, such as Jibril and Abd al-Jalil, from using a prolonged NTC tenure to consolidate their political power (Bartu, 2015, p. 52).

After fierce internal debates, concessions to the 'Islamist' camp led to a 'Roadmap' that laid out a timetable for swift elections for a new parliament and constitutional drafting authority. On 3 August 2011, the NTC issued an Interim Constitutional Declaration which contained the roadmap for the election of a parliament, the establishment of a government, and for the launch of a constitution-making process (National Transitional Council, 2011, Art. 30). Originally, the Constitutional Declaration tasked the newly-elected parliament, the General National Congress (GNC), with directly selecting the members for a Constitution-Drafting Assembly (CDA), so as to meet an ambitious deadline of December 2013 for adopting a constitution.

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<sup>1</sup> Similar recognition was accorded by Qatar, the Maldives, Gambia, Senegal, Turkey, Jordan, Spain, and Germany, see for an analysis (Talmon, 2011).

<sup>2</sup> While the NTC extended its membership several times to represent most of Libya's regions, the composition of its leadership still largely reflected its origins in Benghazi. This led to suspicion of other regional factions. Furthermore, there were complaints about the lack of transparency of decision-making, which peaked in early 2012 (Stack, 2012).

<sup>3</sup> Note that the categorisation of 'liberal' and 'Islamist' actors is a reductive account of a much more complex political landscape. The term 'liberal' in the egalitarian, individualist, and market-oriented sense of the word, only applies to a limited number of political actors. Equally, 'Islamist groups' are not a monolithic bloc. Different strands of Islamists exist in Libya, ranging from moderate factions, such as the Muslim Brotherhood, to more radical Salafist and jihadist ideologies, such as Isis. Here the term refers to the moderate strand of Islamist factions.

<sup>4</sup> Cohesion among Islamist factions was strong partly due to the bonds created during their common experience as opposition to the regime. Many leading members of the Justice and Construction Party had spent years together in prison under Qadhafi.

However, in the weeks leading up to the parliamentary elections in July 2012, the NTC came under further pressure from armed protestors in the east. These protestors, given the east's lower population and history of marginalisation under Qadhafi, were mistrustful of a proportionally elected national body selecting the members of the CDA. They demanded to elect their CDA representatives directly by popular vote (Al Jazeera Center for Studies, 2013). Fearing a boycott of the parliamentary elections, the NTC amended the constitutional declaration twice. Amendment No. 1 of 13 March 2012 stipulated that the CDA should be composed of sixty delegates, with 20 representatives from each of the three major regions in Libya (Tripolitania, Cyrenaica and Fezzan) (National Transitional Council, 13 March 2012). Amendment No. 3, issued only two days before the GNC elections on 7 July 2013, set forth that the CDA would be elected by the people rather than selected by the parliament (National Transitional Council, 5 July 2012), which had the inevitable consequence of delaying the constitutional timetable.

### **2.1.2 Disruption of the Transitional Process and the Expiry of the 2011 'Roadmap'**

Elections for the GNC brought about a highly fragmented legislature. The manifold fault lines that ran through the parliament's parties and wings led to highly unstable and short-lived coalitions of political interests within the GNC, which often coalesced around a particular short-term policy issue and ceased to exist as soon as it had been realised (see Gaub, 2014, p. 103; Lacher, 2013). This caused prolonged and protracted debates and negotiations and severely delayed the timeframe of the 'Roadmap'. The NTC's earlier decision to elect the CDA unintentionally reinforced this dynamic as it 'deprived the GNC of its original mandate to draft a constitution and left it as a legislative body with no clear areas or limits of authority and responsibility'(Mezran, 2014).

The lack of a clear decision-making authority also led to endless struggles and disputes between the legislature and executive. Indeed, the rules for legislative and executive authority had remained vague in the Constitutional Declaration. The ambiguous legal framework soon produced power struggles between the Prime Minister and the GNC President, especially between Prime Minister Ali Zaidan and GNC President Nuri Bou Sahmain. The lack of streamlined structures largely prevented the executive from imposing clear political authority, let alone to implement effective reforms for the transition.

This lack of streamlined authority also had significant consequences for the security sector; with no one institution possessing recognised chain of command over the country's myriad armed militias, the latter were slowly able to use their military weight to exert political leverage. The remnants of the army, which Qadhafi had deliberately kept weak, and the police were in a chaotic and disunified state (International Crisis Group, 14 September 2012, p. i). With no security apparatus to fall back on, the NTC subcontracted security to the militias that had formed eclectically along tribal lines, cities and towns during the revolution. Much of the policing and military functions of the state were in the hands

of hundreds of such groups who refused to disarm until ‘they felt they trusted those representing the state’ (Vandewalle, 2015, p. 22).

Some of those militia groups – ‘both suspicious of remnants of the old regime and pleased with their new-found power’ (International Crisis Group, 14 September 2012, p. i) – started to forcefully introduce their own political agendas into the political process (see Lacher & Cole, 2014). This had serious repercussions for national reconciliation and transitional justice. In May 2013, a radical revolutionary bloc in the GNC, with close ties to such groups, pushed for a controversial Political Isolation Law to prevent members of the former regime holding public office during the country’s transition (General National Congress, 14 May 2013). The initiative prompted fierce power struggles within the parliament, and its adoption considerably reshuffled the GNC’s balance of power. The law primarily affected many popular liberal-leaning political leaders, including National Front Alliance (NFA) leader Mahmud Jibril and GNC-President Muhammed al-Magariaf, who, ironically, had both significantly contributed to the toppling of the Qadhafi regime during the 2011 upheavals. Hard-line revolutionary political forces gained in strength, prompting the weakened NFA to obstruct parliamentary decision-making, gradually bringing political progress to a halt.

The Political Isolation Law, though not the sole reason for the country’s political paralysis, was arguably a watershed moment that highlighted how far the GNC had strayed from acting as the transitional legislature, which the ‘Roadmap’ envisaged would bring about a constitutional state. In August 2013, armed groups closed down important oil ports in the east of the country (Bosalum & Payne, 2013) and Libya was veering towards a governance crisis. The CDA was not yet elected and the parliament’s mandate was due to end in early 2014 with no plan in place for the time after the end of its tenure. Meanwhile, many Libyans had become increasingly disillusioned with the political process and had lost trust in their political institutions (Mezran, 2014). As a consequence, 2013 saw a marked increase in Libyans and international observers calling for a ‘National Dialogue’ to correct the country’s ailing transition.

## **2.2 Legacy and Transitional Justice Issues**

The perceived need for National Dialogue stemmed not just from the difficulties Libyan authorities faced in sticking to a transition ‘Roadmap’, but also because many of the factional divisions and security sector fragmentation issues were felt to be caused by legacy issues that had built up over 42 years of Qadhafi’s rule. After Qadhafi’s fall, Libyan society and the government were confronted with an overwhelming list of demands to resolve these reconciliation and transitional justice issues. They resulted from Qadhafi’s legacy and from injustices committed during the uprising and its aftermath, both by Qadhafi troops and regime supporters and by revolutionaries.

## 2.2.1 Legacy and Transitional Justice Issues – The Past and the Present

### Qadhafi's Legacy

After taking power in 1969, Qadhafi gradually implemented a political system, the Jamahiriya (Republic of the Masses), guided by a fundamental version of direct participatory democracy. Revolutionary committees and councils on the local, regional and national level were supposed to ensure this vision became a reality, by overseeing the administrative and legislative functions of the state. The legislative and executive powers of the state were deprived of a constitutional basis (institutions were only defined for a short period between 1969 and 1977 by the Provisional Constitutional Declaration of 11 December 1969) and therefore fluctuated between multiple poles of formal and informal authority. Legal acts were constituted both in written and unwritten form, such as statements, decrees, laws, or in Qadhafi's 'Green Book' (Mattes, 2008).

This circumstance made it difficult for post-revolutionary governments to address transitional and legacy justice issues simply by reforming existing laws. After the revolution, most active legislation remained in place (National Transitional Council, 2011, Art. 35), and with it some of the laws regarded as being the root cause for ongoing injustice and conflict. In some cases, laws were simply repealed. For example, the NTC repealed Law No. 71 of 1972, which prohibited the formation of any political organisations, parties and associations or activities that were 'based on a political ideology that is contrary to the principles of the 1 September Revolution 1969' (The Revolutionary Command Council, 1972) and imposing drastic penalties, including the death penalty, in the case of non-compliance (The Revolutionary Command Council, 1972, Art. 3).<sup>5</sup>

In other cases, laws had created lasting social frictions, which were less easy to unravel. For example, Law No. 4 of 1978 on the reform of property and housing redistributed all rental property by transforming tenants into the owners of their homes. As there were no meaningful compensation measures for home owners, the law effectively amounted to an 'uncompensated mass confiscation of private property' (UNHCR, 2012, p. 22). Tens of thousands of former home owners were dispossessed.<sup>6</sup> As those who seized the homes resold the homes to third parties over time, questions of ownership soon became very complicated.

In addition to a complex and unjust legal legacy, Qadhafi had left a legacy of systematic and severe human rights abuses for transitional authorities to tackle. The list of human rights violations committed by the regime, documented by non-governmental organisations over the years, is long, including arbitrary detention, summary and extrajudicial executions, systematic use of torture, and widespread forced disappearances (Amnesty International, 1991, 2007; Human Rights Watch,

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<sup>5</sup> However, according to a stakeholder report issued by Lawyers for Justice in Libya for the UN Human Rights Committee's Universal Periodic Review, the law had not yet been repealed in October 2014 (Lawyers for Justice in Libya, 2014).

<sup>6</sup> An estimated one-third of the population may have been tenants in 1978. According to a Libyan lawyer, as much as three quarters of Tripoli's population are living in or using confiscated property (Fitzgerald & Megerisi, 2015, p. 15).

2009a).<sup>7</sup> One of the most serious incidents was the Abu Slim prison massacre in 1996. The prison mainly held those charged with political crimes, many of whom were often detained without trial. When prisoners rioted over the harsh living conditions, security forces assembled inmates in a prison courtyard and killed over 1,200 within two days (Obeidi, 2013). The Abu Slim massacre became a symbol of the former regime's brutal repression of the opposition and the revolution was sparked by demonstrations of the relatives of the Abu Slim victims.<sup>8</sup>

During the last decade of the regime, the country attempted to come to terms with its legacy of justice issues by creating special case-specific committees to investigate and address them. It did so as a part of broader reform efforts, including legal and institutional reform, political liberalisation, economic measures to encourage foreign investment, as well as reforms of the criminal code and the justice system. Qadhafi's son and presumptive heir Saif Qadhafi attempted to assuage lingering political resentment by addressing previous injustices such as the Abu Salim massacre, and Libyan authorities started moving from denying the massacre to 'grudging acknowledgement' (Obeidi, 2013, p. 144). In 2008, an investigation panel was established which offered compensation to victims' families in 2009 (Obeidi, 2013, p. 144). However, these efforts were not wholly conclusive. One year after the establishment of the investigation panel, then-Minister of Justice Abd al-Jalil told Human Rights Watch that only 'around 30% of the families who had so far been informed of the death of their relatives have accepted the offer of compensation, 60% have refused because they think the amount is insufficient and 10% have refused on principle' (Human Rights Watch, 2009b, p. 55). A full and final settlement remained elusive (Obeidi, 2013).

The case of dispossessed home owners reveals a similar picture. In 2006, the regime established the High Committee for the Compensation of Properties to administer the compensation of former home owners. The Committee offered 'token monetary compensation or the promise of a new flat' (Fitzgerald & Megerisi, 2015, p. 10; UNHCR, 2012, p. 27). However, many property claimants criticised the work of the committee as being prone to corruption, claiming that it underestimated the value of their property, and that restitution orders were unenforceable. While some claimants felt compelled to accept compensation awards due to their financial circumstances, many property claimants in Tripoli refused the committee's offers outright (Ibrahim & Carlisle, 2013, p. 123). Moreover, by the time of the 2011 revolution, the processing of more than 25,000 claims had 'barely started' (Fitzgerald & Megerisi, 2015). Consequently, compensation and restitution of former property owners remained one of the most persistent demands facing the new authorities.

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<sup>7</sup> Given the Libyan regime's denial to grant access to international human rights violations in the 1990s, reports on the human rights situation from this time were largely based on circumstantial evidence, such as the analysis of Qadhafi's speeches, the analysis of laws etc. Amnesty International and Human Rights Watch resumed or started field missions to Libya in 2004 and 2006 respectively (Amnesty International, 2004; Human Rights Watch, 2006). These reports are based on face-to-face interviews with prisoners, pre-trial detainees, as well as high-level officials. However, Libyan authorities were generally less forthcoming about access to Libyan citizens and the regime's security apparatus often prevented the organisations' staff from making unauthorized contact (Human Rights Watch, 2006). These limitations need to be kept in mind when consulting human rights reports from the Qadhafi era.

<sup>8</sup> First protests in Benghazi erupted when Fathi Terbil, a prominent lawyer representing families of the Abu Salim victims, was arrested. Terbil later became a member of the National Dialogue Preparatory Commission.

In conclusion, Saif Qadhafi's initiative to mend the societal rifts remained largely unsuccessful, and came too late for many. In some cases, dispossessed home owners had to wait for more than 30 years for any form of compensation. Similarly, the families of the victims of the Abu Salim massacre were only reluctantly informed about the deaths of their family members ten years after the incidents. The compensatory measures offered by the regime were often perceived as being insufficient and slow (see Obeidi, 2013). Saif Qadhafi's reconciliation attempts may have also been restrained by the need to address past injustices without risking the legitimacy of the regime. Apart from preventing the regime's public embarrassment and keeping rising political opposition in check, Qadhafi also had to balance the political sensitivities around the Abu Salim massacre against demands of the victims' families 'who continued to push for accountability and acknowledgment, not just financial compensation' (Lamont, 2016, p. 386). Similarly, dispossessed home owners were sought to be appeased through financial compensation, but without 'formal apology, disclosure of information that could shed light on the events, or concession of responsibility'(UNHCR, 2012, p. 26). The regime's reluctance to publicly admit past abuses and to enter an open dialogue with victims, e.g. via an independent truth commission, precluded a thorough dealing with the past. This sobered hopes for meaningful reforms and lasting changes to come from within the regime. Consequently, many victims refused to engage in the reform process and resentment continued to simmer. The anger and emotions that built up over the years finally erupted in the uprising in 2011.

### **Transitional Issues During and After the Revolution**

The outbreak of the revolution abruptly ended the regime's efforts to settle past injustices on its own terms; instead those injustices – Abu Slim being the most symbolic – became a rallying cry to push for the downfall of the regime itself. On 23 February 2011 Muammar Qadhafi announced that he would 'cleanse Libya inch by inch, house by house, home by home, alley by alley, individual by individual until I purify this land' (Qadhafi, 2011). Such heavy-handed language, and the deployment of armed military and police tactical response units, made it very easy for the emerging opposition to use fears over Qadhafi's legacy of justice and human rights issues to galvanise support. International rights groups worked with rebels to document alleged use of excessive force against protesters (UN Human Rights Council, 1 June 2011, paras. 85 - 99); use of internationally prohibited weapons (UN Human Rights Council, 1 June 2011, paras. 184 - 188); indiscriminate attacks on civilians (UN Human Rights Council, 1 June 2011, paras. 164 - 166); and arrest and subsequent torture of persons and suspected revolutionaries (UN Human Rights Council, 1 June 2011, paras. 123 - 126).

Libyan revolutionaries also carried out acts that would become transitional justice legacy issues. Qadhafi's heavy legacy and the regime's brutal response to the uprising fuelled revenge acts both on an individual and a communal level. Human rights organisations reported that opposition fighters were involved in the use of indiscriminate rocket attacks; abductions; unlawful killings; torture and arbitrary detentions (Amnesty International, 2011, pp. 70-78). Violations of international human rights law and humanitarian law continued after the revolution. In January 2012, Human Rights

Watch reported widespread acts of vengeance against Gaddafi officials, supporters, and suspected loyalists, many of which were killed, tortured or detained without trial (Human Rights Watch, January 2012).

In some cases, entire communities became subjects of reprisals. For example, the town of Tawergha became the target for militias from Misrata, who accused Tawerghans of acts of atrocity against Misratans while fighting with pro-Gaddafi forces during the conflict. As a result of a Misratan attack on the town of Tawergha on 14 August 2011, more than 35,000 residents were forcibly displaced (Human Rights Watch, 2013). Similar acts of revenge were committed by Zintan troops against the Mashashya in the Nafusa Mountains (International Crisis Group, 14 September 2012, p. 2). The inter-communal conflicts that erupted during the transition across the country were a result of a mix of Gaddafi's divide-and-rule tactics<sup>9</sup>, age-old conflicts fuelled by ethnically-based prejudices<sup>10</sup>, and emerging struggles over the access to resources and control of smuggling routes in Libya's border regions.<sup>11</sup> These incidents further complicated the transitional government's task to foster national reconciliation.

### **2.2.2 Responses to Transitional Justice and Legacy Challenges during the Transitional Phase**

At the outset of the transitional phase, the conditions for a thorough transitional justice and reconciliation process looked encouraging. Given the conclusive victory of the revolutionary forces, the NTC was free to tackle legacy issues 'unencumbered by compromises' with the previous regime (Wierda, 2015, p. 153). The NTC leadership publicly expressed its intention to redress legacy and persisting issues. At the ceremony formally declaring an end to the revolution in 2011, NTC Chairman Mustafa Abdel Jalil appealed for 'forgiveness, tolerance and reconciliation. We must get rid of hatred and envy from our souls. This is a necessary matter for the success of the revolution and the success of the future Libya'(BBC News, 2011).

However, turning such goodwill into national, systematic and long-term transitional justice and reconciliation mechanisms was hampered by the limited constitutional mandate of the NTC and GNC, the uncontrolled security situation, and poor capacity in Libya's institutions. Also, Libyan authorities felt that national ownership of these issues was paramount, and so there was limited international support for technical advice. These interrelated aspects allowed hard-line revolutionary interests to impose a one-sided approach to accountability. Many past and present transitional justice issues therefore remained unaddressed and new grievances were created, making the prospects for national reconciliation increasingly unrealistic.

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<sup>9</sup> In his 42-year rule, Qadhafi systematically exploited conflicts among Libya's tribes and regions, thereby deepening the country's divisions and harming national cohesion, while at the same time reverting to a favouritism of certain families, tribes, regions, and towns.

<sup>10</sup> For example, between Tebu and Zway in Kufra (see Wehrey, 2012, p. 15).

<sup>11</sup> For example, between Tebu, Tuareg and local Arab tribes in Sabha, Murzuq and Ghadames (see Lacher, February 2014).

## **Contested Legitimacy of National Institutions vs. Revolutionary Legitimacy of Local Actors**

Paradoxically, while the decisive victory of the rebels over Gaddafi was a chance to thoroughly address transitional justice issues without needing to compromise with the former regime, it simultaneously rendered the delivery of even-handed justice nearly impossible (Gaub, 2014, p. 113). The scope of the NTC's mandate was contested not only by 'internal divisions [...] and questions surrounding its effectiveness', but also externally, by local councils and militias, (International Crisis Group, 14 December 2011). The town leaders of Bani Walid, who had largely sided with the regime during the revolution, openly rejected the new order (see Lacher, 2015). Other cities and towns acknowledged the NTC's role in facilitating international support, but accepted the self-appointed body as their government only up to a point. Having taken up arms against Qadhafi and 'sacrificed blood and treasure for the cause' local leaders and militias considered themselves as national liberators (International Crisis Group, 14 December 2011, p. i). A hard-line revolutionary bloc emerged from within the revolutionaries (thuwwar), which used the heroic narrative of civilians overthrowing an oppressive regime as a leverage to influence transitional justice legislation and their implementation, thereby precluding full accountability of crimes committed by the thuwwar (Wierda, 2015, p. 159).

Burdened with these pressures and uncertainty relating to their limited mandates, NTC and GNC leaders had 'little opportunity to reflect on the merits or mechanics of transitional justice' (Wierda, 2015, p. 163), let alone to plan a thorough and comprehensive national dialogue process. Both bodies, soon incapacitated by political infighting, could only pass or amend some laws relating to transitional justice and reconciliation, and the politicised debates around those laws rendered them largely ineffective, as will be seen below. This resulted in haphazard – and often pro-revolutionary – legislative action to address Qadhafi's legacy and the grievances stemming from the revolution and its aftermath.

## **Transitional Justice and Reconciliation Legislation**

The NTC and GNC left Libya's legal system largely in place, changing only those parts of it that contradicted the interim constitution and 'Roadmap' (National Transitional Council, 2011, Art. 35). However while most of Libya's private law system was functional, Libya's criminal code was in need of updating. In particular, it presented significant gaps and shortcomings in relation to international legal standards. For example, the criminal law code did not define or cover certain acts criminalised in international law, such as acts prohibited by the Geneva Conventions, war crimes, and crimes against humanity; rules on complex forms of criminal responsibility; and the laws on torture (Human Rights Watch, 2014; Lawyers for Justice in Libya, 2014; OMCT, Libya, Redress, & DIGNITY, 2013).

The aforementioned limited mandates of the NTC and GNC led them to take a highly conservative approach to legal revision, or else simply to leave it off the agenda. For example, the NTC sought to incorporate international crimes into domestic law at an early stage of the transition, but the

implementation of the initiative was ultimately thwarted by its upcoming expiring mandate (Pre-Trial Chamber I (ICC), 2012, para. 36). The GNC issued a law criminalising torture which fell short of the protection offered under international law (OMCT et al., 2013). A long-term criminal law reform steered by the President of the Supreme Judicial Council, together with the Ministry of Justice, ultimately remained incomplete due to the rupture of the political process in 2014 (Wierda, 2017). Thus, in 2014 many areas of criminal law remained in need of reform (Human Rights Watch, 2014; see also Lawyers for Justice in Libya, 2014) and concerns about Libya's legal capacity to adequately respond to the grievances of many justice seekers persisted (Gebril & El-Tobuli, 2013).

Beyond criminal justice, Libya required broader legal and social measures to address the root causes of the conflict. The legal and institutional base for matters pertaining to national reconciliation and transitional justice was legislated anew by the NTC in Law No. 17, 'On the Rules of National Reconciliation and Transitional Justice' passed on 26 February 2012. The law created an independent 'Fact-Finding and Reconciliation Commission' tasked to investigate cases of moral, physical, or criminal abuse, dating back to 1969. By this law, the Commission had authority only to investigate cases, to order compensation payments to victims, or refer cases to prosecutors. It also offered few options for resolving cases outside the criminal justice system other than offering compensation (UNSMIL, 2012). Classic pillars of transitional justice including long-term legal and social means of transitional justice, such as accountability, truth-finding, memorialisation, reparations, institutional reform and concrete steps towards reconciliation (Boraine, 2006), were not developed in the law. Such transitional justice mechanisms are considered to be first steps towards a broader social dialogue about how society may be rebuilt by addressing atrocities from the past (TRIAL International, 2017).

The narrow and legalistic approach to transitional justice was mirrored in the make-up of the Fact-Finding and Reconciliation Commission. It was exclusively composed of former judges and held its meetings in courtrooms. Accordingly, the Commission approached their task in a judicial manner and took a largely passive approach to transitional justice, waiting for victims to raise their claims (Wierda, 2017). This set-up may have also led to confusion among Libyan citizens who may have found it difficult to distinguish the Commission's work from traditional judicial institutions. The overall distrust of the Libyans in the judiciary may have further discouraged broader engagement with the Commission (Wierda, 2017). In any case, the quasi-judicial structure did not foster any meaningful dialogue on truth and reconciliation. As Ian Martin, then-UNSMIL head, notes, '[t]he NTC had adopted the language of "transitional justice" and was in a hurry to enact a transitional justice law, but had little appetite for debate about how to best combine national reconciliation with the need for truth and justice.' (Martin, 2015, p. 145).

Following a combination of both internal Libyan and international pressure (Ibrahim & Otto, 2015, p. 27), the Ministry of Justice reviewed Law No. 17 with support from the International Centre for Transitional Justice to address some of these omissions. A draft law was referred to the GNC, which

adopted a new transitional justice law in December 2013, following another review process. Law No. 29 of 2013 now abrogates and supersedes Law No. 17 of 2012.

The new law broadens legal and social mechanisms to address transitional justice. On an individual level, it now provides for accountability and reparations mechanisms for victims of human rights and establishes an independent compensation fund through which victims would receive compensatory payments (General National Congress, 2 December 2013, Art. 25). On a broader societal level, Law No. 29 puts in place clearer procedures for achieving national reconciliation, memorialisation, compiling a historical record of past grievances, and the reform of state institutions (General National Congress, 2 December 2013, Art.4 and Art.8).

The broader ambit of the law is also reflected in the reform of the structure of the commission. The Commission's work was now supported by six additional sub-committees, each dealing with a different aspect of transitional justice (General National Congress, 2 December 2013, Art. 8). Cases could now be brought forward not only by victims, but also by the government, the parliament, the Minister of Justice as well as civil society organisations (General National Congress, 2 December 2013, Art. 18). While these were considered to be steps in the right direction, with the GNC by this stage paralysed by debating its own expiring mandate, the commission and its sub-committees never started their work (Wierda, 2017).

In parallel, the NTC and GNC also established and re-established several other commissions, which similarly had limited powers to investigate specific issues and grievances. One, the Commission on the Search and Identification of Missing Persons, was set up by the NTC during the revolution (United Nations Security Council, 2012) and staffed with prominent international scientists, including forensic experts, to investigate those who had disappeared at the time of events such as the Abu Salim massacre. At the same time, the GNC set up the Abu Salim Committee (General National Congress, 18 December 2013), though this too never began work, due to the GNC's distraction with its expiring mandate (Foreign and Commonwealth Office, 2014). In the case of Law No. 4, the commission previously established by Saif Qadhafi continued its work to compensate dispossessed home owners. Under the pressure of civil society groups and lobby organisations of aggrieved property owners,<sup>12</sup> a GNC commission deliberated over a draft law to reform the compensation scheme and restitution mechanisms previously installed by the regime. Ultimately, this draft law, too, was never enacted.

These legislative and institutional efforts remained uncoordinated, which impacted their effectiveness and led to concerns about the duplication of efforts and potentially contrary outcomes of the various institutions. Experts commented that Libyan legislators had a great appetite to solve problems through legislative action without, however, ensuring that the laws were harmonised, enforceable and

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<sup>12</sup> One example of such associations is the *Rabitat el-Mulak el-Mutadarariyn min Hukm el-Taghyat* (Association of the Owners Harmed by the Ruling of the Tyrant). According to the Association, it had 8,000 core members, and organised its lobbying activities such as large demonstrations and maintained a Facebook page to highlight individual cases (Association of the Owners Harmed by the Ruling of the Tyrant, 2011; see also Fitzgerald & Megerisi, 2015).

used. Consequently, some felt that ‘every time a new law [was] passed it [became] a mockery’ (Saudi, 2016) and that transitional justice measures were seen as ‘no more than ink on paper’ (Salah, 2016). This further derailed the people’s belief in the rule of law (Saudi, 2016).

Crucially, sensitivities to the influence of the *thuwwar* and radical revolutionary groups were also evident throughout. Many so-called ‘transitional justice measures’ discriminated between those who supported the revolution and those who did not. Such politicisation of investigations into legacy justice issues was reflected, for example, in the integration of the Commission on the Search and Identification of Missing Persons into a newly created Ministry for the Affairs of Families of Martyrs and Missing Persons (National Transitional Council, 2012a). The decision politicised the issue of missing persons by not accounting for families of missing persons, whose family members were not considered to be ‘martyrs’ (Physicians for Human Rights, March 2013; United Nations Security Council, 2012). Furthermore, the decision ‘alienated the scientific community’ and the lack of experience and technical skills of the ministry led to serious mismanagement (Wierda, 2015).

Similarly, the original draft of Law No. 29 presented by the Ministry of Justice was reworked by a GNC commission to distinguish between rights abuses by the former regime and those by revolutionaries (General National Congress, 2 December 2013, Art. 1). Revolutionaries who had carried out ‘military, security or civil acts [...] to save or protect the [2011] revolution’ had previously already been excluded from prosecution through Law No. 38 of 2 May 2012 (National Transitional Council, 2012b, Art. 4). This effectively prevented the delivery of even-handed justice and the blanket amnesty for revolutionary fighters created resentment among communities who had suffered at the hands of these forces. Transitional justice efforts were finally undercut by the Political Isolation Law. While the screening and vetting of public officials is regarded as an important aspect of post-conflict institutional reform (OHCHR, 2006), the Libyan variant of this transitional justice practice risked ‘constituting a comprehensive political purge used mostly to exclude current political rivals’ and thereby undermined national reconciliation efforts (Lamont, 2016, p. 394; Wierda, 2015, p. 162).

### **Institutional and Security Deficits**

The NTC and GNC, in introducing only limited and politically-influenced legislation to address legacy justice issues, implied that the extra burden of processing cases would be taken up by the existing criminal justice system. Regardless of the question of whether criminalising legacy cases was the best approach, the justice system in any case lacked the institutional capacity to implement even perfectly-designed transitional justice and reconciliation laws. During his rule Qadhafi systematically weakened primary forms of state security and justice, such as regular courts and prosecutors, the police and army (Mangan, Murtaugh, & Bagga, 2014, p. 3). Despite reform efforts under Saif Qadhafi, their legacy of arbitrary procedures, management styles, and culture lingered on and the public continued to perceive the judiciary as being weak and politicised (Mangan et al., 2014, p. 11). Equally, the parallel policing system both ‘sapped the morale, confidence, and capability of the

national police' and deeply affected the public's trust in the state's security institutions (Mangan et al., 2014, p. 8).

In the aftermath of the revolution, some reforms to the judicial system were made, for example by removing the judiciary from executive control (Law No. 3 of 2011; Constitutional Declaration, Arts. 32 and 33). Since then, the Supreme Court used its independence frequently and its rulings were generally respected. However, the judicial groundwork proved to be challenging. From the outset, the judiciary's inherited old structural and new logistical problems were too large to effectively review the high number of cases arising from before and after the revolution. In many parts of the country, the lack of control over the security apparatus worsened the judiciary's situation. As police forces were severely decimated and barely functioning, many police stations subcontracted powers of arrest and detention to local militias. But having to rely on such actors as the main security providers in many parts of the country meant that police stations themselves could not open cases against other militias, and courts were unable to render fair trials. The work of the judicial corps was therefore significantly compromised by threats and violence (see e.g. Gall, 2014) and while it continued to administer 'ordinary crimes', as well as matters of civil or family law, many judges and prosecutors were reluctant to hold rule over cases pertaining to the acts of militias during the revolution (International Crisis Group, 2013, p. 18; Wierda, 2015, p. 165). To date, no such case has been tried, and thousands of prisoners continue to be detained without trial. In many detention centres, torture and ill-treatment remain a concern (UNSMIL & OHCHR, 2013).

Governmental inability to reassert control over the security sector (see Lacher & Cole, 2014) led Libyans to revert to options outside the justice system to resolve legacy and post-revolutionary disputes. With militias protecting the interests of communities in some areas, some of these disputes sparked major communal violence and led to the cantonisation of communities. Elsewhere, tribal and municipal leaders were asked to mediate local conflicts through traditional conflict resolution mechanisms (Hüsken, 2013). Voluntary reporting of disputes directly to local militias or armed groups also increased. All these options continued to weaken the capacity and authority of the criminal justice system over all but the most routine and depoliticised cases. As UNSMIL reported in 2015:

*'Due to the collapse of the criminal justice system in parts of the country, victims have little avenue to seek protection and remedy amidst total impunity. Even in those rare cases where police reports had been filed, little action was taken to open prompt, thorough, effective, impartial, and independent investigations and to bring perpetrators to justice'* (UNSMIL & OHCHR, 2015, p. 30)

### **Political Trials, and the Limited Role for International Arbitration**

Finally, another key dynamic behind calls for a National Dialogue was the issue of how to deal with senior regime figures arrested and detained by revolutionary actors and held to atone for alleged abuses committed during the years of Qadhafi rule. Such crimes were often political in nature,

although for most detainees, further charges based on Libya's criminal code were brought against them to justify their continued detention. Their fate was a key cause of acrimony between pro-revolutionary camps, and those which desired a continuation of the status quo.

Libya's weakened judiciary still prosecuted some of these cases over 2011-14, including Saif Qadhafi and the former intelligence chief Abdullah Senussi. Saif Qadhafi was held in custody by Zintan militias, whereas Senussi was extradited to the Libyan authorities from Mauritania. Trials against the two, as well as 35 other ex-Qadhafi officials, began in March 2014 in the Court of Assize in Tripoli (Qadhafi participated via video link from Zintan custody, but only joined for 3 of the 24 trial sessions) and were concluded with the Court sentencing both to death in July 2015 (see also Amnesty International, 2015; Court of Assize, 28 July 2015). Both judgements were appealed, but the proceedings were postponed several times and no final verdict has been issued up until today (Nebehay, 2017).

One potential way of defusing the acrimony created by these trials would have been for Libya to pursue these cases through international arbitration, such as the International Criminal Court, to which the UN Security Council had referred the situation in Libya on 25 February 2011 (United Nations Security Council, 26 February 2011). However, Libyan authorities instead found themselves on a 'collision course' with the ICC (Wierda, 2015, p. 166). International actors had concerns about whether Libyan authorities were willing or able to deliver justice according to international standards and pressed the case for the ICC heavily upon the Libyans (Amnesty International, 2015; Human Rights Watch, 2015; Pre-Trial Chamber I (ICC), 2012).<sup>13</sup>

Nevertheless, both the Libyan government and the militias continued to insist that Qadhafi and senior regime officials be tried in a domestic court, regardless of an ICC approval. Libyan officials emphasised the symbolic importance of the trials for dealing with the past and insisted that the domestic prosecution of Qadhafi and Senussi were paramount to re-establishing the country as a sovereign member of the international community.<sup>14</sup>

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<sup>13</sup> Libya filed several 'admissibility challenges', stating that the country's 'national judicial system is actively investigating Mr. Gaddafi and Mr. Al-Senussi for their alleged criminal responsibility for multiple acts of murder and persecution' and that the authorities had 'genuine willingness and ability to bring the persons to justice' (see Pre-Trial Chamber (ICC), 2012, paras. 1 and 2). In the admissibility challenge for the case of Abdullah Senussi, the Libyan government emphasised the 'importance of national "ownership" of the trial of Abdullah Al-Senussi as a foundation for reconciliation and rule of law.' (Pre-Trial Chamber (ICC), 2013, paras. 12-17). The ICC's Pre-Trial Chamber rejected Libya's admissibility challenge in Saif's case, relying mainly on the fact that Qadhafi's son remains in the custody of a Zintani brigade and not the central government (Pre-Trial Chamber I (ICC), 2013b). In contrast, in the case of Senussi the Chamber decided that the case was inadmissible to the ICC because he was held by the government (Pre-Trial Chamber I (ICC), 2013a).

<sup>14</sup> Colonel Ahmed Bani, military spokesman of the NTC explained: "We will not accept that our sovereignty be violated like that. We will put him on trial here. This is where he must face the consequences of what he has done. We will prove to the world that we are a civilised people with a fair justice system. Libya has its rights and its sovereignty and we will exercise them" (as cited by Kersten, 2014, p. 191).

The dispute between Libya and the ICC was illustrative of a ‘disparity between Libyans’ desire to deal internally with their transitional justice issues and the international best practice of the International Criminal Court’ (Cole & McQuinn, 2015, p. 8). It was also illustrative of a broader mistrust towards international involvement in domestic affairs, which was fostered during the Qadhafi years (Martin, 2015, p. 129). Foreign policy-makers recognised that ‘a prominent external role would be perceived in Libya as intrusive and end up undermining the transition process’ and that ‘suspicion of foreign conspiracies runs high in Libya’ (Lacher, 2015, p. 7). Ian Martin, the Special Representative of the Secretary General for the UN Support Mission in Libya (UNSMIL) in 2011, noted that ‘the Libyans making their revolution were determined to control [the] transition, and were wary [...] of post-conflict situations dominated by external actors’ (Martin, 2015, p. 129).

Without a mandate offered by the Libyans, UNSMIL, along with other international actors, was only able to adopt an advisory role on transitional justice. Advisors were provided to limit their support to ‘the development and implementation of a comprehensive transitional justice strategy, and providing assistance towards national reconciliation’, mainly through the coordination of international support and provision of technical expertise (Kane & Gluck, 2012; United Nations Security Council, 12 March 2012, para. 6b). At various instances, ‘UNSMIL attempted to promote coordination and strategic policy-making’ on transitional justice and reconciliation issues, but found that governmental follow-up was often ‘extremely weak’ (Martin, 2015, p. 142).

More assertive international engagement may have also been encumbered by the international expert’s limited knowledge of the country and its workings as compared to other contexts (Wierda, 2017). In the early days of the transition, international strategists may have ‘overestimated the cohesion of the revolutionary forces and the clout of their political leadership’ (Lacher, 2017, p. 140). The surprisingly positive trajectory of the transition in the first months after Qadhafi’s fall further glossed over the limited capacity of Libya’s transitional institutions to handle deep political and social rifts. While an inclusive national dialogue together with the promotion reconciliation was identified as a priority area for the transition already during the revolution (Martin, 2011), its realisation was side-tracked by efforts to support the smooth implementation of the ambitious Roadmap set out by the Constitutional Declaration.

The combination of these factors may have deterred international experts from advocating more forcefully the integration of a national dialogue into the overall transitional process. In retrospect, some experts claim that Libyan and international policy makers missed a short window of opportunity during a period of national euphoria in the immediate aftermath of the revolution to install a comprehensive dialogue on state-building and transitional justice.

### 3 The National Dialogue Preparatory Commission (NDPC): Design and Enactment

By mid-2013, the above issues had festered and developed into a crisis which was on the verge of derailing the transition. The rush to elect a transitional legislature had opened a race for political interests to attempt to control the transition before broad, inclusive consensus on its aims had been achieved. New governance institutions had only limited legal mandates and were soon mired in political infighting.

Important reforms of legislation or administration that were needed suffered serious delays or were geared towards exclusion of political rivals – or, in the case of the security sector and the judiciary, were postponed indefinitely. Transitional justice measures were adopted haphazardly without being embedded in a wider reconciliation process and carried the marks of ‘victor’s justice’. New grievances were added to unresolved old ones, and new societal divisions were added to the existing societal rifts inherited from Qadhafi’s regime.

In recognition of these issues, national and international calls for initiating a national dialogue process were voiced since the early days of the revolution and continued to be voiced throughout the transitional phase. The UN, and some Libyan political actors, actively attempted to promote national reconciliation and unity through various dialogue initiatives. For various reasons, none of these initiatives became accepted or adopted on the national level. Some dialogues were successful locally, but could not be translated to the national level; some were dismissed as being guided by political sympathies others became rallies in favour of the revolution; yet others lacked political will or the necessary resources for nationwide implementation.

The earliest dialogue efforts were started during the revolution by the NTC, with support from the Centre for Humanitarian Dialogue. The ‘Dialogue and the Future of Libya: Hopes and Fears’ included a series of events in key locations across the country. While initially HD’s collaboration with the NTC was productive, the initiative eventually lost traction when the NTC membership was expanded and divisions emerged (Thornton, 2016). In early December 2011, the NTC organised the ‘First National Congress for Libyan Reconciliation and Reconstruction’, which was joined by the moderate Islamist Ennahdha leader Rachid Ghannouchi, the Deputy Prime Minister of Qatar, Khaled Al Attiya, and Islamic scholar Sheikh Yusuf Al-Qaradawi (Mzioudet, 2011). The Islamist tinge of the dialogue initiative fuelled scepticism among more liberal-leaning political factions and the initiative finally stalled.

In addition to these early government-led dialogue initiatives, many other groups launched their own locally or thematically limited so-called ‘national dialogue’ and ‘national reconciliation’ activities during the transition. This included different groupings of tribal elders, NGOs, local councils, such as the Benghazi local council, and parliamentary commissions, such as the parliamentary Human Rights Commission. Besides being uncoordinated at a national level, these efforts dealt with isolated issues of the transition and often lacked conceptual clarity (Thornton, 2016).

This proliferation of uncoordinated ‘dialogue initiatives’ as well the deteriorating security situation and ‘deep divisions’ emerging within the GNC gave rise to concerns among the international actors. In February 2013, then-UN Head Tarek Mitri reiterated the need of an ‘inclusive, national dialogue’ to build consensus among ‘different actors, whether political, communal or from civil society organizations, and consensus on guiding principles and priorities until a new constitution is adopted’ (United Nations Security Council, 21 February 2013).

In July 2013, the President of the parliament, Nouri Bou Sahmain officially formed an Office of National Dialogue Consulting to conduct a national dialogue, apparently without prior consultation with the government. The GNC President’s reasons for launching the dialogue echoed Mitri’s concerns, noting the rising frustration among the Libyan citizens vis-à-vis the growing tensions within the GNC, which in his eyes could hamper the elections for the constitution-drafting assembly (Thornton, 2016). Bou Sahmain subsequently appointed Mohamed Harari to lead the National Dialogue, who had previously stood as a rival candidate for Prime Minister against Zaidan (H20 & Bokrah, 2013).

While the GNC dialogue was being prepared, then-Prime Minister Ali Zaidan invited the then-UN head of mission for Libya, Tarek Mitri, to back his own initiative to launch a ‘National Dialogue’. At a press conference on 25 August 2013, both figures jointly announced the launch of a National Dialogue Preparatory Commission (NDPC). Arguably, the UN’s public support, along with the provision of resources and technical assistance, made Zaidan’s initiative stand out from the GNC dialogue and other previous initiatives (Thornton, 2016). As discussed further below, the circumstances of the NDPC’s launch politicised the NDPC by creating two official rival dialogues, which rendered a viable dialogue process impossible.

The NDPC was formally established by Presidential Decree No. 477 of 2013 with a very broad mandate: to prepare a framework for an inclusive national dialogue by building national unity and establishing a shared vision for the future; implement steps to conduct strategic dialogues on national issues including security, political, and social aspects of the transition; and communicate and coordinate with institutions which can provide the necessary technical support (Prime Minister’s Office, 2013, Art. 3). The following sections describe the efforts of the newly established NDPC to design a process to fulfil this broad mandate. While initially good progress was made, the dialogue

process was cut short by the deterioration of the security situation and the disintegration of the political landscape. Unable to reposition itself, the NDPC finally dissolved.

### **3.1 Design of the NDPC**

From August to December, the 13-member NDPC, headed by Fadeel Lameen, worked on preparing the dialogue's structures and processes. The process was gradually developed through discussions with local actors, a UN Technical Assistance Team, and international NGOs such as USAID (Lameen, 2016; Mitri, 2016). Via these discussions the commission members were presented with international best practice on national dialogues, visited then-active National Dialogue leaders in Yemen and Tunisia, and held workshops and seminars with Libyan experts and civil society groups to determine how a national dialogue process could be adapted to Libya (Baiou, 2016; Lameen, 2016).

Through this process, the NDPC settled on a 6-month preparatory phase, which began only after some delay due to the organisational and political difficulties in setting up the NDPC, as described below. The first phase, envisioned to last 3 months, was a nationwide outreach program called the Engagement and Participation Tour. This 'grassroots-element' of the process was launched in January 2014 and was intended to solicit public input and to increase public visibility of the NDPC's work. The tour included town hall-style meetings in 42 Libyan cities and towns and was accompanied by an extensive media campaign. The meetings were open to Libyan nationals on the condition that they would join unarmed, and debates were recorded on film and by note takers for future records. Further public opinion was gathered through open-ended surveys which were designed by the University of Benghazi Research and Consulting Centre. The NDPC also collaborated with local youth organisations, such as H20, to broaden the range of voices through online tools, such as Facebook, Twitter, and YouTube (National Dialogue Preparatory Commission, 2014b). The Tour was intended to be concluded by a National Conference of 300 participants, selected by representatives of nine segments of Libyan society, which were pre-defined by the NDPC after the Participation and Engagement Tour. The Conference participants would draft a National Charter articulating those values and aspirations of Libyan citizens which could achieve broad assent, based on outcomes of the Tour.

The second and following 3-month phase was intended to address more contentious questions of the transition, and was named the Strategic Issues Driven Dialogue (SIDD). The SIDD would have been divided into various dialogue tracks, based on the issues identified during the Engagement Tour and by the National Conference. As will be described, the NDPC never reached this stage; according to its chairman, had it done so, dialogue tracks would likely have included issues such as security and the role of militias, economic development and equitable sharing of natural resources, transitional justice, and national reconciliation (Lameen, 2016).

The key features of this design were firstly, its 'bottom-up' approach; second, the sequencing of broad principles of assent followed by special issues of particular dispute; and thirdly, the 'National Conference' structure. All were felt to be systemic solutions for the Libyan political and cultural context. The Libyan conflict lacked political or military factions with strong organisational roots; instead, conflict actors and stakeholders had emerged, in some cases without obvious leadership, from within local communities themselves. The Conference approach and preceding Tour was designed to achieve broad early consensus, to make it easy for communities to be absorbed into the structure, and to forestall objections that dialogue participants were exclusive and not representative – objections that had dogged the NTC and transitional government.

More aspirationally, therefore, the NDPC aimed through this process to reset Libya's transition itself. Given that the Roadmap negotiated by the NTC between its own factions had come to a near stand-still on the political stage by this time, the NDPC's design aimed to provide an alternative institutional framework that could break this deadlock. By leading with the National Conference and its anticipated statement, it hoped to formulate, though only in vague terms, a set of long-term goals for the transition, and sought to maximise its chances of achieving this by deferring more divisive issues to sub-committees and secondary tracks (Lameen, 2016). It is unclear whether this aspiration was shared either by then-Prime Minister Zaidan, or by UN head of mission Mitri. Regardless, the NDPC continued to talk about the outcome of the process, the National Charter, as a sort of 'social contract,' by distilling the outcomes of the engagement tour into an agreement on national identity and unity, including basic principles of political conduct (National Dialogue Preparatory Commission, 2014b).

These aspirations led the NDPC to place its Engagement and Participation Tour very much as its centre piece. Its belief that many Libyans had become disillusioned with Libya's transition, and had lost trust in their transitional institutions, informed their 'bottom-up' design, through which they hoped to reignite public engagement, and foster a sense of ownership of the transitional process amongst Libyans who felt excluded from the existing political process.

The NDPC's thinking was also informed by its scepticism towards the more conventional political frameworks which the Roadmap had tried to accelerate into being. The Commission assessed that the Roadmap, in allowing the design of a transition to be determined by an elected body mandated only to govern the transition, had given rise to a crude 'politics of exclusion'. Far from ensuring a representative process, elections, it was felt, had allowed successful political factions and coalitions to too easily exclude other components of society. In preferring a selection process defined by ensuring representation of certain categories of Libyan society – though the details of that selection process itself remained opaque and undefined – the Commission believed it could provide a filtering mechanism for including previously side-lined actors and for the selection of moderate conference participants.

The aspirations behind the designing of the NDPC's dialogue design sometimes appeared to obscure questions of detail and process which remained unresolved. For example, while the National Conference was presented as a remedy for an allegedly exclusionary electoral selection process, the NDPC did not elaborate on how the selection process for the National Conference itself would take place, nor how it could possibly be immune to similar charges of exclusivity or filtering of views. These lacunae were possibly due to the short planning period and to the limited role of the NDPC as a preparatory Commission. Potentially divisive questions had yet to be decided; as well as the criteria of participation in the National Conference, there was the form and function of the SIDD, the question of how to deal with representatives of armed militias in the Conference, and how formal and informal institutions such as tribes should be integrated in the process. Perhaps because the National Dialogue was designed as a corrective to the GNC's governance of the transition, there was no concrete vision of how to embed the National Dialogue in the overall transitional process, for which the Roadmap, however outdated, remained the sole reference point. Similarly there was no clear plan of cooperation and coordination with other institutions of the transitional phase, most importantly with the CDA and local dialogue and local mediation efforts.

### **The Constitution-Drafting Assembly**

The Constitution-Drafting Assembly is regarded as the key institution for Libya's political transition. The issues that lie at the core of the conflict, namely the decentralisation of the country, the re-organisation of the security apparatus, finding a system of effective government, and the fair distribution of resources, are fundamentally constitutional issues. On a broader level, the constitution should also address questions of national unity and identity. There were also hopes that the constitution-drafting process may also address a number of transitional justice issues and that an inclusive drafting process may 'result in some kind of national dialogue in its own right that might resolve some of our concerns' (Chatham House, 9 April 2014).

Despite being elected by a margin of the population in February 2014, the CDA initially enjoyed widespread public support (Eljarh, 2014d). The CDA offered a fresh and fairly inclusive institution whose members were largely uninvolved in the political turmoil of the other institutions. The remoteness of its seat, the eastern town of al-Beyda, allowed the CDA to deliberate unstirred from influence of political factions and armed militias. Contrary to the NDPC, the CDA took the decision to abstain from any direct involvement in the political process, including the UN-led Political Dialogue (Daragahi, 2015; Eljarh, 2014c). Thus, for a while, the body has maintained its political independence and for a long time remained the only largely uncontested and elected institution in the country.

At the same time the CDA struggled to include wider segments of the Libyan people in the constitution-making process. The process became less accessible for Libyan civil society and was largely disconnected from the Libyan citizens. A hastily organised outreach tour conducted in the summer of 2014 did not foster any meaningful public participation (Hammady, 16 June 2014). Eventually Libyan civil society activists started to criticise the CDA's lack of accessibility, transparency, and outreach (Democracy Reporting International, 2016, p. 7). Against the backdrop of a failing transition some Libyans started to dismiss the CDA as irrelevant to their everyday concerns (Hammady & Meyer-Reisende, 2015). The slow progress of the constitution-drafting process fuelled scepticism about the viability of the proceedings.

In this regard, the coordination of the constitution-making process with the National Dialogue from the outset may have had mutual benefits and could have avoided a duplication of efforts. Instead of conducting its own outreach programme, the CDA could have built on the NDPC's broad engagement with the public during the Participation and Engagement Tour. The National Dialogue's extensive outreach campaign may have contributed to the procedural and substantive aspects of the constitution-making process and avoided potential disputes about some aspects of constitutional ordering. At the same time, the constitution-making process may have served to anchor the National Dialogue's 'national vision' within the constitution.

Meanwhile, political rifts in the CDA deepened and several members have boycotted the proceedings. In July 2017, 43 of the remaining 44 participating members voted for a new draft constitution, despite pressure from armed militias who tried to obstruct the voting procedure (Libyan Express, 2017). According to the Roadmap, the draft should now be put to a public referendum. But with no unitary government to organise such a vote, the future of the constitution remains uncertain and the chances that the CDA will be able to positively contribute to the challenges of Libya's transition remain slim.

Though the National Dialogue would be beset by further unforeseen challenges in 2014, its ability to meet those challenges was limited at root by the aspects of its design discussed above. The vagueness of the mandate, the quasi-political aspiration of its designers, and its lack of connection to the Roadmap and the work of other transitional institutions, all left it vulnerable to changes in the political landscape. In the end, the NDPC was only able to successfully implement the Engagement and Participation Tour over spring 2014. During the preparation for the National Conference in May 2014, the process was cut short by a wave of political violence created when the Roadmap's timeframe finally expired, and elections for a new, unplanned-for transitional authority were called for 25 June 2014.

## 3.2 Repositioning the NDPC

Conditions for a successful implementation of the National Dialogue started to deteriorate in early 2014, when Prime Minister Ali Zaidan was ousted after a vote of no-confidence in the GNC on 11 March 2014. The government had come under severe pressure from political opponents, who had repeatedly targeted Zaidan with several unsuccessful votes of no-confidence in the previous months. Zaidan's failure to exercise control over the myriad of militias, epitomised by his own abduction in early October 2013, was used as a main argument for his ousting by his opponents (Al Jazeera, 2013). In July 2013 federalist militias had seized control over important oil facilities in the east, and ransomed the central government by taking control over Libya's main economic lifeline. When Zeidan's government failed to prevent the rebels from filling an oil tanker with crude oil and moving it into international waters, those who wanted to remove Zaidan from office were able to get a majority to sack the Prime Minister (Al Arabiya News, 2014). As described in further detail below, Zeidan's dismissal created new uncertainty for the NDPC.

The key moment and challenge to the NDPC came in May 2014. In that month Khalifa Hiftar, a retired general, formerly close to Qadhafi, who defected from the regime in 1990 and returned to Libya

during the 2011 revolution, launched ‘Operation Dignity’ – a coalition of eastern military units and armed groups that assembled to disrupt Islamist armed groups’ control over Benghazi on 6 May 2014. Two days later, militias from the village of Zintan, loosely aligned with Hiftar’s movement, stormed the parliament building in Tripoli and declared that the GNC no longer represented the Libyan people and would be suspended (Mezzofiore, 2014).

In the wake of this violence, the NDPC felt that the situation required external mediation and joined with Libyan and international voices urging UNSMIL to take the lead in a political dialogue. The NDPC attempted to position itself as the interlocutor and broker of a UN dialogue (Baïou, 2016). In early June, it supported UNSMIL in organising a meeting bringing together major political actors alongside notable civic leaders, women’s representatives, and tribal leaders. The aim was to forge an agreement on principles of political interaction, national priorities during the remainder of the transition, and on ways of addressing immediate security, and otherwise divisive issues, prior to the upcoming HOR elections (UNSMIL, 2014).

This move, however, served only to politicise the NDPC and bring it into the firing line at a time of heightened anger and emotion. Key documents containing the names of dialogue participants were leaked, prompting backlash and criticism by some political factions objecting to those names. Furthermore, the timing of a ‘political dialogue’ reconciliation initiative, aimed at political actors a month before scheduled elections, proved a miscalculation. Those confident that the public mood favoured them, such as Mahmud Jibril and the National Forces Alliances, had no interest in reaching a dialogue-based compromise prior to the elections, and supportive commentators accused the NDPC of being biased towards their political Islamist opponents (Eljarh, 2014a). Public anger soon grew and turned upon the UN as the sponsor of the Dialogue. As protesters gathered in front of the UNSMIL compound, Tarek Mitri decided to postpone the dialogue and the initiative collapsed.

Meanwhile, the security situation continued to deteriorate. After elections for the HoR on 25 June 2014 indeed resulted in a landslide electoral defeat of Islamist factions, a coalition of Islamist politicians, armed groups, and some Misratan militias launched a military campaign against Hiftar’s ‘Operation Dignity’, dubbed ‘Libya Dawn’. As Dawn forces invaded Tripoli, driving out Hiftar-aligned armed groups, the country slipped into civil war. Some GNC members used the chaos and resulting security vacuum to continue the GNC operating in Tripoli, and refused to participate in a symbolic but important handover of power to the HOR. The country was now divided between two parliaments, as parts the elected HoR convened in the eastern town of Tobruk, and remnants of the GNC held firm in Tripoli.

With military and armed groups caught between the confrontation of Operations Dignity and Dawn, and the GNC and HOR split collapsing the political process, the National Dialogue – in any case legitimised only by the now-expired Zaidan government – was brought to a complete halt.

### **3.3 From National Dialogue to Political Dialogue**

Under a new head of mission, Bernadino Leon, the UN Support Mission in Libya adjusted its strategy over the summer of 2014 further towards pursuing a political dialogue. The NDPC remained active in its efforts to be a broker in the process, but, due to the limitations described above, found it a challenge to establish itself as a credible and neutral mediator. It eventually ceased its activities, though its chair, Fadeel Lameen, continued on as a political dialogue participant.

The UN, rather than pursuing dialogue through a Libyan mediating broker, instead mediated the dispute directly, initiating a Political Dialogue process with a meeting in Ghadames in September 2014. Its goals and mandate, in sharp distinction to the broadly aspirational and long-term vision of the NDPC, were focused solely on forming a unity government and reaching an agreement between rival factions on confidence-building measures, and a comprehensive ceasefire (United Nations Security Council, 27 August 2014). Leon adopted a shuttle diplomacy approach, focused on forging a common understanding on how to unite the split governments via a Libya Political Agreement (LPA).

Given the different and narrower context, UNSMIL adopted a different selection process to that of the 'bottom-up' efforts of the NDPC, identifying and engaging key stakeholders and actors within the standoff, including members of the two rival governments and those boycotting them. The UN also selected a number of independent participants, absorbing in the process former NDPC board members such as Fadeel Lameen, Fayez Serraj and Zahra Langhi. They participated as individuals, not officially as members of the NDPC. Meanwhile, while never formally dissolved, the NDPC de facto disintegrated.

## 4 Assessment: Conditions for a Libyan ‘National Dialogue’

Considering the difficult circumstances of its establishment, the NDPC’s design of a national dialogue process was sensitively adjusted to the political and social circumstances of the country. However, on the account presented above, certain conditions of its establishment led to the NDPC struggling to adjust to a rapidly deteriorating political and security situation that was not predicted at its birth, and for which it was neither designed, nor best suited. Consequently, national dialogue efforts faltered in Libya, though – through the NDPC’s preservation within the political dialogue process – were not extinguished.

Given this hypothesis, what lessons or features can be extracted from the NDPC case that best illustrate the reasons for the demise of national dialogue efforts in Libya in 2014? This section attempts to summarise those features which are of relevance to future National Dialogue design processes, both in Libya and elsewhere.

### **4.1 A Vague Mandate, with Limited Sanction from Libyan Actors**

While every national dialogue is subject to its specific dynamics and needs to be analysed within its particular political context, it is generally believed that National Dialogues ‘benefit from a clear, manageable mandate and a well-defined relationship to ongoing political processes which is negotiated prior to the commencement of the dialogue’ (Papagianni, 2013). Dialogues initiated unilaterally by an incumbent president or a transitional government, like in Sudan or in Iraq, are often not able to garner sufficient support both from the public and key political actors. Similarly, the national dialogue in Bahrain was initiated by King Hamad, following protests and a general deterioration of security in the country. However, the main Shia opposition groups felt that they could not meaningfully participate and negotiations eventually reached a stalemate (Fakhro, 2013). Hence, a mandate negotiated between key actors, such as the mandates of the Afghan or Yemeni dialogues, can be crucial to the success of national dialogue, as it may avoid powerful constituencies that have been excluded from the negotiations from targeting the dialogue process or simply refusing to participate down the line. Negotiated processes are also believed to enhance the legitimacy of the dialogue, and may provide conflict parties with a sense of ownership and involvement (Public International Law and Policy Group, 2015).

The drawbacks of a unilateral mandate, issued without prior negotiation or coordination with other key political players, were soon felt by the NDPC. The mandate for the National Dialogue, and the

NDPC, was set out not by a peace agreement, a constitutional assembly nor by a legislature, but by Prime Ministerial Decree. Given that the Prime Minister, Ali Zaidan, was by 2013 drawn into rivalry with the parliament, and given that the authority of both were by then in question due to the expiry of the Roadmap, the unilateral launch of the NDPC under the auspices of the executive was highly problematic.

Furthermore, Decree 477 of 2013 equipped the NDPC with a very broad mandate. Broad mandates may be successfully narrowed by the participants in the course of the process, but they tend to overburden national dialogues and may lead to disputes over the goal of the dialogue down the line, as it may have been the case in Yemen (Berghof Foundation, 2017, p. 52). Arguably, the key success of the Tunisian Dialogue was the limitation of its mandate to the key issues that had led to a political deadlock debilitating the transition. Hence, mediation experts tend to advocate clear and narrow mandates (Papagianni, 2013). Perhaps, the problematic unilateral launch of the NDPC led the drafters of the mandate to abstain from formulating all too concrete goals for the dialogue, so as to allow for input from those political actors who were excluded from the NDPC's inception. This meant, however, that the task of turning the mandate into process and goals substance was largely left to the NDPC, and its reading of the situation.

## **4.2 Limited Integration into Other Transitional Processes**

The sanctioning of the dialogue by Prime Ministerial decree and its vagueness also meant that it had no clear relationship to other key institutions in the transitional process, and the NDPC arguably could have done more to fill this gap in its design process. In particular, the process design lacked clear cooperation and coordination with the Constitutional Drafting Authority, and pre-existing and concurrent local dialogue and mediation efforts. While an informal understanding was reached between Lameen and the chairman of the CDA, Ali Tarhouni, that the outcomes of the National Dialogue would feed into the drafting of a new constitution, no mechanisms were established to ensure that the processes were mutually reinforcing and that competing visions of the constitutional future of the country would not emerge. Similarly, while the NDPC expressed its intent to integrate tribal and civic notables into the National Conference, its mapping and understanding of tribal leaders in particular was itself a work in progress by mid-2014, reflecting the fact that by this time, the NDPC had achieved insufficient buy-in from tribal communities. Though this problem was by no means unique to the NDPC, tribal notables being cautious and resistant to even UN and international brokering efforts, it meant that there were no arrangements for connecting the local mediation and reconciliation efforts of leaders to the National Dialogue. Better integration into these institutions could, arguably, have only been achieved by providing for a National Dialogue within the Roadmap of 2011, and the limited Prime Ministerial mandate likely hampered NDPC efforts to reach out. In any case, clearly established links between the dialogue and existing institutions would have allowed the NDPC to work towards more clearly defined goals beyond the slightly elusive aim of building a vision of national unity.

### 4.3 Politicisation of the NDPC

The NDPC's establishment by presidential decree and its unilateral launch by press conference rather than by political consensus politicised the NDPC at birth. Reflecting this, no high-ranking representative of the GNC attended the NDPC launch of the National Dialogue Preparatory Commission, and the then-President of the GNC, Nouri Bou Sahmain, allegedly resisted entreaties by Prime Minister Zaidan to support and announce the dialogue together (Lameen, 2016).

Though the principle of a National Dialogue was not necessarily in dispute, the difficulty for Libyan transitional authorities of resolving protracted objections over who should convene, and who should attend, seems to have prevented a preparatory commission being borne out of a negotiation (Lameen, 2016). However, the decision to proceed unilaterally, and the fact that the rest of the 13 commission members were hand-picked by Chairman Fadeel Lameen and Ali Zaidan (Baiou, 2016), only entrenched the opposition of political actors, who saw the NDPC as an attempt by the Prime Minister to strengthen his position at a critical stage of his tenure.

Unwittingly the UN backing the government's initiative further politicised the matter. Tarek Mitri understood this initiative would include the GNC, following an alleged agreement between Bou Sahmain and Zaidan (Mitri, 2016). Ultimately the UN's support of the government initiative created a *fait accompli* on the ground and by default all international support was funnelled towards the NDPC.

Consequently, and inevitably, the NDPC's establishment fuelled the launch or reinvigoration of dozens of rival 'national dialogue' initiatives. The anti-Zaidan political bloc in the GNC continued to pursue its own and observers at the time counted up to thirty-two parallel dialogue initiatives (Nayed, 2014, p. 11).

This blurred the narrative, making it harder for the NDPC to stand out as an 'official' national dialogue, and left it vulnerable to sinking into one voice amongst many power plays between the executive and the parliament. NDPC commissioners remarked that few Libyans and international staff were aware of which organisation specifically was mandated, and by whom, to convene the national dialogue (Baiou, 2016; Lameen, 2016). These factors significantly hindered the NDPC's ability to create important momentum at its early stages.

It also, critically, delayed the Dialogue as the transitional Roadmap ran out the clock over 2014; the first months of the Commission's existence were consumed by negotiations with leaders of competing national dialogue initiatives by political actors (Lameen, 2016).

The politicisation of the NDPC also extended to its personalities. While claiming to be independent, the commission members were generally seen as leaning towards the more liberal side of the political

spectrum (Mitri, 2016). Chairman Fadeel Lameen, though he had largely stayed out of Libya's post-revolutionary politics, was not able to alleviate such scepticism and gather cross-platform political and public goodwill around his persona. His status as a Libyan who had spent a long time in exile and had returned only after the revolution left him open to political attack, as this category of returned exiles was viewed with suspicion or resentment by many Libyans who had stayed in Libya during the Qaddafi era.

The Commission made significant efforts to defuse these attacks, but in vain. It stressed the temporary and preparatory nature of the commission; that members of the Commission conducted their work voluntarily; and that it was independent from government. (National Dialogue Preparatory Commission, 2014b). A special funding mechanism ensured that Commission members never had direct access to its financial resources. It also appointed an advisory board, composed of 74 members, including leaders from Libya's major political parties, tribal groups, ethnic minorities, civil society and local councils from different regions and towns from Libya. However, such measures may have come too late to be impactful. The lack of broad political buy-in significantly tainted the NDPC's efforts to position itself as a national unifier or a platform for national reconciliation.

#### **4.4 Termination of the Sponsoring Government**

The ousting of Zaidan on 11 March 2014 created new uncertainty over the fate of the NDPC, given its strong association with Zaidan personally. Zaidan's successor Abdullah al-Thinni kept a strategic ambiguity towards his support of the dialogue process (Mezran, 2014), while the GNC, whose proceedings were now dominated by rival political factions, maintained its opposition. The ensuing split between two rival governments in summer 2014 left no authority to guarantee the dialogue's implementation, and with it the NDPC not only lost its institutional anchoring, but also reliable financial support.

#### **4.5 Limited Engagement with Conflict Parties in Libya**

The NDPC made a concerted effort over the summer of 2014 to change strategy following the outbreak of conflict, and reinvent itself as the Libyan partner for international mediation and dialogue efforts. These efforts, however, were aimed largely at the international community in efforts to secure ongoing funding, rather than at Libyans. The significance of its three-month Engagement and Participation Tour, which had seen it travel across Libya holding town-hall style debates, waned as the armed conflict erupted. The NDPC's limited integration with local and regional dialogue initiatives that emerged in the early days of the conflict, and its limited sway with emerging conflict parties, prevented it from building traction and consolidating the efforts made during its Tour. Furthermore, its efforts to be seen as a neutral broker were undermined by the public statements of some commission members seen as being aligned with the HoR (Judd, 2016).

Adding to its difficulties, the NDPC was compelled to spend most of the summer outside Libya at the time when any dialogue effort required visibility and momentum on the ground. There were several, all equally understandable, reasons for the NDPC's self-imposed exile at this critical time. In late June 2014, the NDPC's vice-chairman Salwa Bughaighis was assassinated in her home in Benghazi (Culzac, 26 June 2014) by unidentified gunmen, apparently – though no formal claim of responsibility was issued – because of her advocacy of human and women's rights in a city then under the sway of armed Islamist groups. The descent of Tripoli into violence in July 2014 made the NDPC's offices unusable, and the evacuation of the UN and most embassies left it without interlocutors both in the donor community and in the emerging UN political dialogue. Commission members ultimately chose to follow the exodus of this community, but in any case the depletion of morale caused by Bughaighis's murder – plus the combined toll of a year of voluntary unpaid work – meant that convincing members to remain through the fighting was never likely to succeed. Instead, members dispersed to places as varied as Tunis, Malta, New York, Washington DC and Dubai, with no staff or premises remaining on the ground.

## 5 Conclusion and Lessons Learned

Since the establishment of the fragile Government of National Accord through the UN-brokered Libyan Political Agreement in December 2015, Libya has been governed by three competing governments. Violence and instability continues in most parts of the country, as a large number of armed groups consisting of town-, tribe-, and militia-based networks continue to engage in a chaotic struggle for the access to resources and political power.

Given this patchwork of continuing local divisions and regional interests, calls for an ‘inclusive national dialogue’ to achieve national reconciliation have not ceased (Ali, 2016; Ani, 2016). Similarly, voices in the international community regard the fragile Libyan Political Agreement merely as a stepping stone for a more comprehensive national dialogue. In April 2017, US Ambassador to the UN, Nikki Haley, emphasized that ‘the important point is that every Libyan faction needs to come together in a national dialogue and agree on how to carry out [the LPA’s] terms’ (Haley, 2017).

A recapitulation of the NDPC’s challenges may provide lessons for the difficulties of conducting a new national dialogue in Libya, and in deeply divided societies, more generally. It also highlights the dilemmas that stem from a leaderless revolution and from a context in which political authority was contested from the outset.

First, for a National Dialogue to be fruitful, the context and conditions need to be favourable. In Libya, this was arguably the case in the immediate aftermath of the revolution, when the country was still in a phase of revolutionary euphoria and political actors and armed militias had not yet entrenched their positions in the transitional framework. However, Libyan politicians – supported by the international community – privileged early electoral competition over a gradual transitional process via a prior national dialogue and reconciliation process. When the NDPC was finally launched in August 2013, the political environment had already significantly deteriorated and there was little readiness for dialogue and compromise among key political leaders. Agreement for a re-orientation, or indeed, a reset of the transition was very hard to achieve.

A second, and related aspect, is that the NDPC’s establishment was not backed by broad political consensus. The unilateral establishment of the dialogue by the Prime Minister Zeidan, without prior negotiation with other key actors, made the initiative appear to be a pawn for Zeidan’s political interests in the eyes of his political rivals. Greater efforts to secure broad political buy-in may have ensured the readiness of key actors to support and actively contribute to the proceedings and prevented the dialogue from fraying. On the other hand, considering the deep political rivalry between the government and the parliament at the time, it is unlikely that an agreement on a National Dialogue would have been achieved swiftly.

Third, the Prime Minister equipped the NDPC with a very broad mandate. Arguably, such a broad and vague mandate was necessary to guarantee the NDPC's independence by reducing the government's influence in the process. However, this caused critical delays as the NDPC had to spend several months carving out a plan for the dialogue process. This severely hampered the NDPC's momentum after its inauguration. Additionally, despite the NDPC's efforts, the dialogue's ultimate goal and its role in the country's transition remained vague. This led to confusion both among international donors and the local population and further limited the NDPC's impact.

A fourth aspect is the inclusiveness of the dialogue process. Libya's transition was marked by the exclusion or marginalisation of several societal actors, such as former Qadhafi officials and suspected loyalists, political rivals, minorities, women and the youth. One of the key successes of the Libyan national dialogue was its engagement with a broad range of societal actors at the local level during the Participation and Engagement Tour. However, the deterioration of the security situation in July 2014 prevented the NDPC from transforming this public input into a meaningful and productive dialogue.

Fifth, in addition to being firmly integrated into a broader transitional plan from the outset, the NDPC would have benefitted from coordination with other relevant transitional institutions, both formal and informal. When, as in Libya, an entire regime collapses and institutions are weak, several mutually dependent and potentially complementary governance processes tend to emerge at the same time. The most relevant processes for the NDPC were the 2014 constitution-making process and relatively successful local dialogue and mediation efforts. The coordination with these processes within a comprehensive transitional framework could have been both mutually beneficial and may have avoided the duplication of efforts and potentially adverse outcomes.

Finally, the Libyan example underlines the international community's complicated and delicate role in political transformations. From the outset, Libyan scepticism towards international involvement in domestic processes and the initial lack of thorough international expertise on the country rendered international assistance to the transition very difficult. Despite the UN's cautious 'light footprint' approach, the Libyan case provides a good example of how international actors can unintentionally become complicit in the use of a national dialogue as a tool for political power play.

On the 20<sup>th</sup> of September 2017, the new UNSMIL Head Ghassan Salamé, an experienced mediator, presented an ambitious plan to revive Libya's stalled transition. The 'Libya Action Plan' centres on a National Conference to be held early 2018, which will be part of a wider attempt to simultaneously tie together Libya's frayed political processes, including the constitution-drafting process, local dialogue initiatives and the dialogue with armed groups. While the details of the National Conference have not yet been made public, it is 'intended to open the door to those ostracized, those self-marginalized, those players who have been reluctant to join the political process' (Salamé, 2017). The whole process is envisioned to end with the adoption of a constitution via a referendum and subsequent parliamentary and presidential elections by the end of 2018. Whilst inevitably fraught with

uncertainty by a number of unresolved political conflicts this integrated and inclusive approach appears to be a step in the right direction.

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