

Transitional Justice in the Context of the Democratic Transition in the Libyan Experience (2011-2020)

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ARTICLE INFO

Article history:

Received 20 Oct 2024

Accepted 03 Dec 2024

Published 01 Jan 2026

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Abstract

This study seeks to explore the concept of transitional justice, its core elements, and its mechanisms, with a specific focus on its application in Libya. It addresses the multifaceted challenges confronting transitional justice in the country, particularly the uncertainties associated with political exclusion and the enforceability of laws established since 2011, which marked the beginning of Libya's political transition following the revolution. Employing a descriptive-analytical approach, the research illustrates how a lack of local forces committed to upholding the law and protecting human rights has significantly hindered the pursuit of justice amid ongoing conflict and security challenges. Additionally, the political exclusion law has marginalized revolutionary powers, contributing to a fragmented political landscape and a shift in internal power dynamics. The study highlights the urgent need for reform, advocating for the revision of the political exclusion law to foster inclusivity and representation. It emphasizes the importance of preventing foreign intervention—particularly during times of conflict and revolution—and enhancing political, cultural, and social awareness to encourage broader political participation. By addressing these critical issues, this research aims to contribute to the dialogue on how to create a more equitable and transparent electoral process in Libya, ultimately advancing the prospects for national reconciliation and democratic transition.

Keywords: International Relations, Transitional Justice, Democracy, Libya.

1. Introduction

1.1 Theoretical Framework and Previous Studies

Transitional justice is an essential aspect of the democratic transition process, particularly in nations that have endured internal conflicts or significant human rights violations. In the context of Libya, the pursuit of transitional justice became crucial following the overthrow of Muammar Gaddafi's regime in 2011, which ended over 42 years of authoritarian rule (1969-2011). This effort is vital for achieving stability and rebuilding trust in political institutions.

Addressing transitional justice in a country like Libya, which has experienced multiple armed conflicts and periods of unrest, poses considerable challenges. Although Libya had not faced internal armed conflict or civil war since its independence in 1951, the violent nature of the 2011 revolution and the ensuing developments complicated the democratic transition process. In 2012, Libya held its first democratic elections, establishing a legislative and executive authority that raised hopes for stability. However, the democratic process struggled, veering towards a military trajectory, which led to a constitutional crisis and resulted in a dual legislative-executive authority system (Congressional Research Service, 2020; IREX, 2022; Oxford Academic, 2021).

Any phase of democratic transition or regime change necessitates a comprehensive legislative, societal, and political approach to transitional justice. This process plays a vital role in the democratic transition by uncovering the truth, providing redress, ensuring accountability, and implementing institutional reforms. Ultimately, it fosters genuine national reconciliation, promotes social cohesion, and propels the country towards stability and development (Fischer, 2004; Kritz, 2009; Political Settlements Research Programme, 2021).

Despite several attempts, successive Libyan authorities have not succeeded in establishing a robust transitional justice initiative with a solid foundation. Sporadic efforts have been insufficient in creating a clear path forward, with disorder and political apathy significantly impeding the transitional justice process in Libya (IREX, 2020; United States Institute of Peace, 2021).

In conclusion, Libya's journey toward establishing a sustainable transitional justice framework underscores the complexities that post-conflict nations face when rebuilding from periods of intense division and conflict. The lack of a cohesive political will, compounded by ongoing instability, regional fragmentation, and competing authorities, has continually obstructed efforts to address past human rights abuses effectively and foster genuine national reconciliation (IREX, 2020). Moving forward, Libya's path to peace and stability may depend on a renewed commitment to reforming its transitional justice initiatives to include comprehensive legal, institutional, and societal changes that ensure accountability, promote social cohesion, and lay a foundation for long-term stability (United States Institute of Peace, 2021).

1.1.1 Previous Studies

Nagresh (2023) identifies several obstacles that hinder the democratic transition process in Libya and examines the regional implications of this transition. Through a historical and analytical approach, the study concludes that a successful democratic transition in Libya is heavily contingent upon the presence of qualified political leadership committed to adopting democracy as a strategic national choice. The research identifies six primary challenges to this transition: a fragile political culture, weak state institutions, deteriorating economic conditions, social fragmentation, a fragile civil society, and a lack of consensus on political processes and public policies, alongside the impact of foreign intervention. Recommendations include the enhancement of education, the elevation of political awareness, and the strengthening of institutional capacities.

Khalki and Dakheel (2022) examine the role of national reconciliation in Libya's democratic transition. Employing a case study methodology alongside analytical and descriptive approaches, the study interprets the relationships between variables and their potential impact on the democratic transition process. It asserts that Libya's transition to democracy provides vital insights into the nature of political change and the long-term effects of national reconciliation. Although the shift toward democracy in Libya has been marked by violence, the objective

articulated by the transitional authorities was the establishment of a democratic state. The study recommends that efforts toward national reconciliation address both the legacies of the previous regime and the conflicts that emerged post-revolution.

Dahmani (2016) investigates the political transformations initiated in the Arab world from 2011 onward and the associated complexities, particularly concerning national security. By comparing Tunisia and Libya, the study finds that Tunisia successfully met the criteria for democratic transition while contending with security threats that influenced its political trajectory. Conversely, Libya faced significant social divisions, raising critical questions about its future. The study emphasizes the crucial interplay between democratic transition and national security in shaping a state's capacity to navigate crises during political transformation.

The three studies on Libya's democratic transition explore different facets of the country's political transformation post-2011. Nagresh (2023) focuses on the broader challenges impeding Libya's democratic transition, identifying weak political culture, fragile state institutions, and social fragmentation as key obstacles. It emphasizes the need for competent leadership and strengthened institutions for successful democratization. Khalki and Dakheel (2022) specifically examine the role of national reconciliation, arguing that efforts to overcome the legacies of the Gaddafi regime and post-revolutionary conflicts are vital for building a democratic state. In contrast, Dahmani (2016) compares Libya's transition to Tunisia's, highlighting the critical role of national security in shaping the political trajectory. While Tunisia managed to balance democratic progress with security concerns, Libya's deep social divisions hindered its transition. Together, these studies underscore the importance of leadership, national reconciliation, and security in determining Libya's path to democracy, with each offering insights into the varying challenges the country faces in comparison to its regional neighbors.

1.1.2 Differences Between Previous Studies and the Current Study

While earlier studies predominantly focused on the democratic transition and related political and security challenges in Libya, the present study offers distinct perspectives:

- **Focus on Transitional Justice:** This study specifically highlights transitional justice as a mechanism for fostering reconciliation and rebuilding institutional frameworks, addressing challenges arising from social divisions and conflicts.
- **Interconnection of Transitional Justice and Democratic Transition:** The study explores the relationship between transitional justice and democratic transition, investigating how transitional justice can facilitate political stability through national reconciliation.
- **Broader Timeframe:** By covering the years from 2011 to 2020, this study affords a more nuanced understanding of the dynamics of democratic transition and the evolving impact of transitional justice throughout this period. Previous studies often concentrated on narrower timeframes, which limited their capacity to analyze recent developments in Libya.
- **Legal Framework:** The current study places particular emphasis on the legal and policy frameworks associated with transitional justice and their implementation in Libya, thereby providing insights that extend beyond the prevailing political and security focus found in prior research.

2. Problem of the Study and Its Questions

This study tackles the pressing challenges of transitional justice in Libya, seeking to assess its viability amidst a complex internal political and security landscape, as well as a regional and international environment that is often prone to intervention. With the objective of achieving political stability, this research aims to guide Libya out of the persistent cycle of violence, military conflicts, and political strife that have plagued the nation since the February revolution. The vital research question posed is: How can political trust be effectively cultivated among citizens and public authorities during the transitional justice phase to avert further human rights violations?

Through this investigation, we aim to identify the essential frameworks and mechanisms needed to build trust, ensuring that the transitional justice process not only addresses past wrongs but also creates a robust platform for a more stable and inclusive political future. By scrutinizing the relationships between citizens and authorities and pinpointing the obstacles to trust, this research aspires to provide compelling insights that can significantly improve the effectiveness of transitional justice initiatives in Libya, ultimately fostering a more peaceful and unified society.

2.1 Study Questions

The research will address the following questions:

3. What is the concept of transitional justice, and what are its foundational components and mechanisms?
4. What is the current state of transitional justice implementation on a global scale?
5. What challenges does transitional justice face in Libya, particularly concerning the complexities of political exclusion?
6. What laws and policies pertain to transitional justice, and how practical are they within the Libyan context?
7. What are the prospects for transitional justice in Libya?

3. Objectives and Significance of the Study

3.1 Objectives of the Study

This study aims to lay the groundwork for understanding transitional justice by exploring its core elements and mechanisms, specifically in relation to its application in the Libyan context from 2011 to 2020 and its effects on the democratic transition.

3.2 Significance of the Study

This study on transitional justice in Libya is crucial for understanding its role in achieving political and social stability in a post-conflict environment. Since the overthrow of Muammar Gaddafi's regime in 2011, Libya has faced a tumultuous transition marked by armed conflict and significant political division. Transitional justice is an essential mechanism for addressing historical human rights violations occurring both before and after the revolution, thereby facilitating national reconciliation.

The importance of this study lies in its exploration of how transitional justice can lay the groundwork for a stable democratic system by holding those responsible for violations accountable and ensuring that victims receive justice. This process not only bolsters public trust in the newly

established political framework but also aids in bridging the divides among various social and political factions in Libya, establishing a foundation for a unified society built on principles of justice and equality. Moreover, the study offers valuable insights into how transitional justice can influence the development of legal and political institutions capable of effectively addressing issues such as corruption and past abuses, ultimately reinforcing the rule of law within the country.

4. Method and Procedures

4.1 Methodology of the Study

This research employs a descriptive-analytical methodology, which encompasses a comprehensive description of transitional justice and an analysis of its implications for the democratic transition in Libya from 2011 to 2020.

4.2 Hypothesis of the Study

This study posits that transitional justice in Libya encounters several challenges stemming from the absence of clear foundational principles and mechanisms. Furthermore, the ambiguities associated with political exclusion and the inadequate implementation of transitional justice laws demand a comprehensive analysis of both the current state and prospects of transitional justice in Libya. This analysis will evaluate the feasibility of enforcing relevant laws to foster national reconciliation.

4.3 Scope of the Study

This study delineates its scope as follows:

- **Temporal Boundaries:** The research spans the period from 2011, which signifies the onset of the political transition in Libya following the revolution, to 2020. This timeframe encompasses the transitional phase characterized by substantial political and legal transformations.
- **Spatial Boundaries:** The focus of this study is specifically on Libya, with a thorough analysis of transitional justice within the context of the country's distinct political, social, and legal landscapes that emerged after the Libyan revolution.
- **Topical Boundaries:** The study centers on the notion of transitional justice, examining its legal and political mechanisms in Libya and assessing its impact on the democratic transition process. It critically explores the challenges confronting transitional justice in Libya, including issues of political exclusion and the enforceability of relevant laws, while also evaluating the prospects for justice and national reconciliation.

5. Discussion

Foundations of Transitional Justice: Components and Mechanisms

The concept of “transitional justice” beautifully intertwines the ideals of “justice” and “transition,” aiming to foster a fair and just society following a nation's period of upheaval. According to the International Center for Transitional Justice, this approach encompasses various judicial and non-judicial measures that nations implement to confront and resolve the legacies of significant human rights violations. Among these measures are legal prosecutions, truth commissions, reparation programs, and institutional reforms, all of which are essential to the

healing process. Transitional justice is inherently adaptable; it takes on different forms based on the unique circumstances and stages that each nation experiences during its transition

Understanding the Scope of Transitional Justice

Transitional justice occupies a unique space at the intersection of multiple disciplines. Some scholars view it through the lens of political science, noting its role in transitioning from authoritarian regimes to democratic governance. Others recognize it as a vital aspect of legal studies, particularly concerning international humanitarian law and its mission to rectify egregious human rights abuses. Many experts also align it with principles of criminal law, focused on ensuring accountability, while others advocate for a broader perspective that includes historical and social analyses to fully understand the roots of these violations. This comprehensive approach is often described as “social justice.”

Ultimately, transitional justice emerges as an interdisciplinary concept that incorporates political, social, legal, and historical dimensions.

Goals of Transitional Justice

The primary goal of transitional justice is to nurture societal reconciliation by addressing complex questions surrounding coexistence after periods of violence and oppression. A cornerstone of this process is accountability; it emphasizes the importance of holding those responsible for past offenses accountable under the rule of law, rather than resorting to personal vengeance. Additionally, transitional justice strives to create accurate historical records of injustices, document the impacts on individuals and communities, identify perpetrators, and validate the experiences of victims—thereby restoring public trust in state institutions through meaningful reforms and the promotion of the rule of law.

Global Application of Transitional Justice

The roots of transitional justice can be traced back to the aftermath of World War II, particularly through the landmark Nuremberg Trials, and it gained further prominence in Latin America during the late 1980s and early 1990s before expanding worldwide. The term was originally coined by American academics to articulate the range of strategies employed by countries to address the abuses committed by previous regimes. Throughout the 1990s and early 2000s, various transitional justice mechanisms—such as prosecutions, truth-seeking initiatives, reparations, and institutional reforms—were developed to uphold human rights principles and facilitate smooth political transitions.

Regional variations in the application of transitional justice reflect the diverse experiences and approaches taken by nations such as Chile, South Africa, Indonesia, and Morocco. Latin America has established a rich history of utilizing truth commissions and human rights trials, illustrated by impactful case studies from Argentina, Chile, Guatemala, and Colombia. These examples highlight the vital role transitional justice plays in advancing democracy, protecting human rights, and fostering lasting peace. The 1988 conference hosted by the Aspen Institute stands out as a pivotal moment in shaping the discourse on transitional justice, providing a platform to discuss the political, ethical, and legal challenges faced by those seeking justice for state actions during periods of political transition.

Transitional Justice Challenges in the Libyan Context

Implementing transitional justice in Libya is not merely a procedural formality, but a complex task deeply intertwined with cultural dynamics, societal values, and the current political climate. Achieving a cohesive national identity, fostering altruism, and cultivating respect for the law are crucial ingredients for a successful transitional justice initiative. Unfortunately, Libya's current environment presents numerous obstacles. This chapter examines the pivotal challenges that hamper the establishment of transitional justice in Libya.

The Challenge of Political Exclusion

One of the most significant impediments in Libya's transitional justice process is the broad and often indiscriminate application of political exclusion. The implementation of exclusionary laws, lacking clear guidelines, has resulted in individuals with ties to Gaddafi's regime no matter their specific roles being unjustly marginalized. This has not only strained the political fabric but has also caused a significant redistribution of power within governmental structures, while cultural and societal frameworks have largely remained stagnant. This stagnation is exacerbated by weak governmental capacity and an alarming deficit of public trust in state institutions.

Moreover, political exclusion laws significantly erode fundamental citizenship rights, denying people the opportunity to vote or hold public office based solely on their past associations. This indiscriminate approach fails to consider the nuances of individual involvement, leading to wider social fragmentation that ultimately hinders the creation of a cohesive state grounded in justice and mutual respect (Al-Ani, 2015).

The Fragility of Legislative Elections

Libya's political landscape has been further destabilized by a troubling trend: prioritizing party allegiance over national interests. This has muddied the waters in defining essential values for public service, resulting in political instability. The hesitance of independent representatives to actively engage in elections has dampened the spirit of participation. This was glaringly evident in the 2012 General National Congress elections, marked by a disappointing voter turnout of approximately 60%. Additionally, widespread dissatisfaction among Libyan nationals abroad, particularly in neighboring countries, has contributed to this lackluster electoral engagement, which further diminishes institutional legitimacy and undermines a strong sense of civic identity (Al-Zaheri, 2008).

Transitional Justice Laws and Their Implementation Feasibility in Libya

This chapter investigates the existing laws addressing transitional justice in Libya, scrutinizing the contentious political and legal dialogues surrounding them to identify effective strategies for navigating the post-revolution landscape.

Law No. 17 of 2012 on National Reconciliation and Transitional Justice

This law serves as a foundational text, defining transitional justice and outlining key goals such as nurturing social peace and documenting past abuses. However, it has come under scrutiny for placing a greater emphasis on “national reconciliation” at the expense of accountability—an approach perceived by many as undermining the law’s overall credibility. The lack of engagement with civil society during the drafting process has further weakened its potential impact. Moreover, the operational constraints faced by the fact-finding committees established under this law have limited their effectiveness (Al-Sayeh, 2014).

Law No. 29 of 2013 on Transitional Justice

This aims to address systematic human rights violations through a range of measures designed to uncover truth, hold perpetrators accountable, and foster social reconciliation. Unlike its predecessor, this law includes aspects of institutional reform. Various committees for documentation and investigation have been constituted under this legislative framework. However, critics express concern over the ambiguous terminology and vague stipulations regarding accountability, which diminish the law's effectiveness. In contrast, Tunisia's transitional justice law offers a more robust framework for accountability (Solidarity for Human Rights, 2013).

The implementation of transitional justice in Libya has encountered persistent delays due to ongoing political turmoil and internal conflict. In a recent 2020 briefing, the International Court of Justice underscored the urgency for Libyan authorities to revise their transitional justice laws to ensure genuine accountability and support victims of previous human rights violations.

The Berlin Conference in January 2020 reaffirmed the international community's support for Libya's transitional justice endeavors, emphasizing that accountability is indispensable for any sincere reconciliation effort.

Prospects for Transitional Justice in Libya

The establishment of a credible transitional justice framework in Libya is undeniably linked to the attainment of political stability and a unified governance structure. Without these foundational elements, the aspiration for effective transitional justice remains out of reach. The ongoing power struggles, epitomized by Khalifa Haftar's failed military offensive, cast a long shadow over progress in this area. While a new government emerged in March 2021 with international backing, deep-seated disagreements regarding critical political decisions continue to complicate the landscape. These persistent internal and external challenges indicate that the realization of transitional justice in Libya remains a distant goal, underscoring the urgent need for collaborative efforts to usher in a just and unified society.

6. Conclusion

This study presents several key conclusions and recommendations:

1. The human rights violations that transpired following the fall of Gaddafi's regime were more extensive than those experienced during his rule, encompassing numerous war crimes and acts deemed crimes against humanity.
2. Foreign interference in Libya's sovereignty, coupled with the lack of local forces to enforce the rule of law and protect human rights, has significantly hindered the transitional justice process.
3. The political exclusion law has adversely affected the transitional justice process by disqualifying competent individuals from vital positions that could have furthered the nation's interests.
4. The escalation of weapon proliferation, the presence of foreign mercenaries, and ongoing internal conflicts have intensified violence and increased civilian casualties, thereby destabilizing the country.

7. Recommendations

1. Amend the Political Exclusion Law: Revise this legislation to permit qualified professionals to assist decision-makers and policymakers effectively.
2. Limit Foreign Intervention: Implement restrictions on external influence in Libya's internal matters, particularly during periods of revolution and civil unrest, ensuring that security challenges are addressed exclusively by the state.
3. Promote Political and Cultural Awareness: Initiate educational programs aimed at fostering political participation among citizens, thereby enhancing trust and transparency and ultimately facilitating fairer electoral processes.
4. Establish a balance between State Institutions and Civil Society: Clearly delineate the roles of both state and civil society institutions to safeguard human rights and ensure the security of Libyan citizens.

Acknowledgments

We extend my sincere thanks to the reviewers and the Editor-in-Chief for their valuable comments on the initial draft of this research paper. We also express our appreciation to Applied Science Private University, Jordan, for facilitating the data collection process. Any remaining errors or shortcomings are entirely our responsibility.

Ethical Declarations

This study was conducted in accordance with the principles of academic integrity and research ethics. Since the research did not involve human participants, there was no need for informed consent or other participant-related ethical procedures. However, all data sources and materials used in the research were handled responsibly and with due regard for intellectual property rights. The research process adhered to the principles of accuracy, transparency, and reliability to ensure the integrity of the findings.

Data Availability Statement

The datasets collected and analyzed during this study are available from the researchers upon request.

Funding

No funding was received for conducting this research.

Conflict of Interest

The researchers declare no conflict of interest.

Author Contributions

- Surrayah bin Khatlan, Eman Fraihat, Majed Alabdallat and Hussein Qaddouri conceptualized and designed the study, in addition to collecting and analyzing the data.
- The first draft of the manuscript was written by the researchers.
- The researchers reviewed and edited the text and approved the final version for publication.

Consent for Publication

The researchers agree to submit this paper for publication and await the editorial decision after the peer-review process, agreeing to its publication. They also confirm that this work has not been previously published and has not been submitted to any other journal for consideration.

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