

Make Justice a Foundation of the New Libya David Tolbert International Center for Transitional Justice

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As gunfire dies down over Tripoli, the new Libyan authorities will be coming to terms with enormous dilemmas about the hierarchy of priorities in building a new society. Their offices will see long processions of emissaries from near and far in the coming days and weeks. Some will be sternly pressing for issues of security to be immediately addressed and others will demand that business and development concerns precede all else, while there are also bound to be those advocating for justice to be done first and quickly. (...)

In the new reality of post-Qaddafi Libya, one task towers in its importance: building institutions capable of delivering justice and safeguarding human rights of all citizens, including—if not starting with—the Qaddafi clan itself.

This is the case not only because it was the thirst for justice and equality that ignited the revolution in the first place, but because rule of law and impartial, fair, and effective institutions will be key to overcoming internal divisions and ensuring a successful transition to a stable society untroubled by its past. And although it is clear that it can never be limited to one man, in today's Libya a single case is on the mind of all who speak of justice. (...)

The International Criminal Court (ICC) issued arrest warrants for Muammar El-Qaddafi, his son Saif al-Islam and intelligence chief Abdullah al-Sanussi for crimes committed against demonstrators in the early days of the Libyan uprising. The UN Security Council referred the case to the ICC under Chapter VII of the UN Charter, under circumstances in which it was impossible to expect alleged crimes against humanity to be adequately investigated in Libya itself.

Mustafa Abdel-Jalil, chairman of the Libyan National Transitional Council, stated that Qaddafi and his cohorts should be judged “in fair trial that must take place in Libya.” This would require Libya to submit a challenge to the ICC’s jurisdiction and demonstrate that it is actively investigating the case and is capable of fairly carrying out such a prosecution. In considering this decision Libyan authorities will be treading a narrow path between the need for justice to be seen to be done and the perceptions of victor’s justice.

While the ICC is effectively the court of last resort and Libyans should see it as such in

considering how to proceed with the case, the complete devastation of Libyan institutions under Qaddafi's regime must also be considered. (...)

Libyan authorities should not be rushed into making this decision by either internal or external pressures. And, most importantly, whichever path they decide to take they should do so with full understanding that the trial of Qaddafi and his henchmen will not in itself be enough to provide the comprehensive justice the country needs.

The words of Mustafa Abdel-Jalil clearly illustrate this understanding: "We need to find out why we were mistreated in the past 42 years and this can only happen if there is a genuine chance for every prisoner to be held accountable in a just trial." Abdel-Jalil, a former minister of justice, knows well that Libyans deserve to know the truth about torture, forced disappearances, and the killings that took place under Qaddafi, which extend from the bloody crackdown of March 2011 to the massacre at Abu Salim prison of 1996 and beyond.

However, the truth and justice Libyans hunger for will require more than trials of a select number of perpetrators against whom evidence will be available. They will require a platform for victims to tell their stories, efforts to identify the causes of the abuse, and access to archives of the former regime. They will require a mechanism to complement facts established in trials, domestic or international, and a way for the victims to receive both material and symbolic reparations for their suffering. Such mechanisms would help create a comprehensive historical record, a record that will serve to prevent revisionism and educate the new generation of Libyans about the past to make sure they don't repeat it.

None of this will be possible without strong and independent institutions free of political influence, security forces and the judiciary above all. (...)

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