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منبر المرأة الليبية من أجل السلام
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The Political Accord through a HUMAN RIGHTS LENS

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Platform for Peace (LWPP)



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The Libyan Women's Platform for Peace (LWPP) was launched on the 7th of October 2011. The Platform has a particular emphasis on inclusive transitions, women's rights, youth leadership, advancement and security, as related to women's political and economic participation, constitutional reform, and education.

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THE POLITICAL ACCORD THROUGH A HUMAN RIGHTS LENS

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Observers of Libyan affairs notice a clear pattern of delays and obstructions in the efforts towards a political settlement which hopefully will bring Libya closer to national peace. Due to the failure of the various relevant actors to reconcile their differences, every step forward towards settlement has been promptly followed by two steps back.

The political dialogue was inaugurated on the 29th of September 2014 in the Libyan city of Ghadames, with the sponsorship and facilitation of the United Nations Mission. After grueling negotiations, a political agreement was initialed on 11 July 2015, then definitively signed on December 18th, 2015 at Sukhayrat, Morocco. The dialogue went on for more than a year and it has now been two months since the agreement was finalized. These two months succeeding the signing witnessed multiple disruptions to the political process. Foremost amongst those was the disruption concerning the position of the Minister of Defense. Additionally, we saw a continuation of, or more accurately, an increase in tension. This tension was coupled with a degree of general confusion. Doubtless, there are many reasons behind this.

First, it seems that one of the major causes of delays and obstructions and the resulting tensions and confusion is the fact that the Political Agreement and the process that produced it contained multiple fundamental flaws with regards to rights that contributed to the negative situation on the ground. A notable defect was the ambiguity of the lan-

guage of the agreement. The amendments were vague to a great extent, particularly after the addition of the amendments included after the initial signing in July. The Agreement did not take into consideration a number of realistic future possibilities that deserved to be addressed. All this has led to a degree of uncertainty and confusion in the application of the agreement.

The most significant flaws pertained to five fundamental areas in the agreement. These areas are (1) the question of national reconciliation, (2) the issue of transitional justice, (3) the issue of impunity and holding public office, (4) the issue of dismantling brigades and security arrangements, and (5) the international community's position towards the impeters of the implementation of the agreement. All the above weakened the Agreement and the settlement as shall be explained in the following.



Fundament Flaws

Let us start with the question of national reconciliation. The political agreement stipulated that the process of reconciliation falls within the jurisdiction of the State Council. It is known that the State Council is a newly established body and that the conveners of the dialogue decided that the majority of its members should be former members of the General National Congress. This was perceived as one of the solutions that would contribute to ending the state of division given the dispute between the General National Congress and the House of Representatives. Based on the above, how can a party to the conflict undertake the role of mediator in reaching a settlement for the aforementioned conflict? Normally, in any dispute between two parties, a mediator who is independent of the two parties is sought, irrespective of the merit and patriotism of the parties to

the conflict. The choice of a neutral party is one of the axioms observed in settlement formulas in all similar cases in other countries.

In addition to the problem of assigning the task of national reconciliation to a party to the conflict, there is a notable disregard of the pivotal role played by horizontal reconciliation efforts between the councils of tribal lead-



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ers, elders and municipal councils, which have succeeded in stemming the bloodshed more than anything else has. Assigning national reconciliation to one of the state institutions exclusively is a key factor in impeding the political process. Local experience as well as comparison have shown that horizontal reconciliations are more effective than state-led vertical reconciliations, especially if the state suffers from a structural weakness¹.

Additionally, there was more than one fundamental flaw with regards to the handling of transitional justice in the Agreement and in its construction.

First, the essence of the idea of “transitional justice” which is “the remedy of the damage” was diluted in favor of the concept of “achieving a settlement at any cost” which was magnified in the Agreement in contradiction with the well-established principle that there is no reconciliation

without justice. There was an absence of compensation, and an absence of fact-finding hearings as well as an absence of what is known as “collective soul searching”²

Second, the agreement was confined to requesting the activation of the Transitional Justice Law No. 29 of 2013³, which, in itself, was described by a number of experts as flawed.⁴

Third, the Agreement has introduced several bodies without providing a precise definition of their jurisdiction and the terms of reference that govern their performance including a fact-finding body, a human rights body, and a body to monitor violations. This would undoubtedly cause confusion and an unregulated overlapping in the performance of such bodies, in addition to a lack of coordination between them.

Fourth, the Political Agreement lacked a mechanism for activating transitional justice, reconciliation and fact-finding and documentation.

Fifth, the Agreement did not present a mechanism for developing rights' institutions' abilities to enable them to monitor the Agreement itself and the relevant breaches.

Finally, the Agreement did not define the basic and practical steps and mechanisms in vital issues. The most prominent of these is the issue of detainees, missing persons, prisoners, displaced persons and coerced immigrants. The first paragraph of Article 26 in the section on the Confidence Building Measures in the Agreement states: “All parties to this Agreement shall commit to collecting complete information on abductees and missing persons and submitting it to the Government of National Accord, which shall commit itself to establishing an independent body on missing persons pursuant to the provisions of Law 1 of 2014⁵ within sixty (60) days of com-

mencing the performance of its tasks.” When we carefully examine the wording of this article we immediately notice that it is replete with ambiguity. Who specifically will collect the required information? How would those collecting the information be nominated? Would a committee be established to carry out this function?

Likewise, the second paragraph of the same article



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states that: “All parties to the conflict shall, within thirty (30) days of the Government commencing the performance of its tasks, release persons held in their custody without legal basis or hand them over to the judicial authorities, which will determine within the following sixty (60) days whether they should be brought before the judiciary or released on the basis of Libyan legislations in force and international standards.” The question that poses itself here: How did the Agreement fail to observe the inability of the judiciary to function in many parts of the country since the outbreak of the conflict?

Likewise, the third paragraph of the same article in the Confidence Measures states the following: “All parties shall participate in the provision of effective protection to the competent judicial authorities and enable them to review all detention or arrest cases and an immediately release all

persons who are held or detained without legal basis. The competent authorities shall take the necessary legal procedures in case of non-compliance with implementation.” The questions that emerge here pertain to the identity of the party who will provide protection. Who would this party be? Would it be the parties represented in the political dialogue committee which lacks a specific structure? Or would the duty of protection be borne by the newly – minted Government of National Accord, which itself needs protection to enter the capital Tripoli and enforce its will? And thus are the schedules referred to in these paragraphs realistic and practical?

This question applies to the text of Article (5) of the Guiding Principles which goes as follows: “1. In case one of the Deputy Prime Ministers positions becomes vacant for any reason whatsoever, the House of Representatives shall consult with the State Council in order to reach consensus on a replacement within a date no later than ten (10) days of the date on which the post became vacant. This selection shall be endorsed by the House of Representatives.”

2. In case any positions of the Ministers members of the Presidency of the Council of Ministers becomes vacant, the Prime Minister and his deputies shall unanimously select a replacement within a date no later than ten (10) days of the date on which the post became vacant. If their unanimity is not achieved during the first and second voting, the decision shall be taken in the third voting through the majority of the members of the Presidency Council of the Council of Ministers. The President of the Presidency Council must be among the agreeing votes. This selection shall be endorsed by the House of Representatives.”

Furthermore, the agreement did not include mechanisms for the issue of displaced persons and coerced im-

migrants. Article (27) of the Confidence Measures states the following: “All parties to this Agreement shall commit themselves to cooperating with the efforts of the Government of National Accord, and the United Nations agencies as well as other relevant authorities to assist refugees and displaced persons in order to return voluntarily and safely as soon as possible to their areas, and facilitate the free, safe and unobstructed communication with humanitarian agencies and organizations. The Government of National



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Accord shall commit to developing the necessary plans for the safe and dignified return of the internally displaced and refugees to their cities, within 90 days of the date of the ceasefire’s entry into force.” In addition to failing to identify the identity of parties and their functions, the agreement failed to establish a mechanism for the cooperation between the pertinent parties and the Government of National Accord. The Agreement stipulated that the return of displaced persons and coerced immigrants within ninety days should be secured. So far, more than fifty days have lapsed, and yet, the government hasn’t even been formed.

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Women's Political Participation

On another level, the Agreement contains flaws in relation to the issue of positions, especially with regards to women's participation and representation. First of all, the process of constructing the Political Agreement failed to include a serious and adequate discussion of the issue of women's participation and qualitative representation. Rather, it dealt with it quantitatively.

The construction of the Political Agreement failed to address the agenda of women in peace and security issues, despite referencing Security Council Resolution 1325 on Women, Peace and Security. All the more, the Agreement failed to include provisions that contain detailed and specific principles reflecting that agenda. By the same token, it failed to adopt the approach that takes inspiration from the comprehensive human view of all aspects of conflict, and which addresses its root causes, focusing on the developmental, economic and social dimensions in diagnosing the problems and their remedy, which is known as “gender mainstreaming”.⁶

All the while, we find the agreement merely repeats phrases and stereotypical provisions stipulating the need to boost the participation of women regardless of the quality and effectiveness of that participation. For example, we find the preamble containing the phrase “the need to increase the role of women in decision-making and political participation,” and we find Article II underscoring the principles of merit, non-discrimination and equitable representation.

It is to this very vagueness of the Political Agreement, we believe, that we should attribute the prejudice against women in the formulation of the government resulting from the Agreement and which is reflected by the underrepresentation of women. In the formulation of the first

government which was rejected by the House of Representatives, women were represented by six percent (6%) as only two women were appointed ministers out of a total of thirty-two ministers. Then we find that in the announcement of the last government, women were three ministers of the total eighteen ministers, but that two of the three ministers are Commissioned State Ministers, i.e. ministers



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without any administrative powers.

It is no exaggeration to say that this injustice against women is a blow to all civil efforts exerted in the past and which were focused on politically empowering women. This injustice was further exacerbated by the government's failure in seeking to redress the obvious deficiencies and shortcomings by clarifying the mechanisms for the selection of ministers to justify excluding efficient women from governmental positions. Instead, the Agreement sufficed with stipulating the formation of a Women's Empowerment Unit which would be under the supervision of the head of the Presidential Council. The formation of such a unit indicates an approach in using such entities, that are distanced from real policy-making, to pay lip-service to boosting women's participation while excluding women from important sovereign positions which are assigned through partnership deals.

All of this is resultant from the fact that the government takes its cue from the Political Agreement on the basis of which it was formed and particularly from the indifference of the Agreement to the issue of women's representation that characterized the construction of the negotiation process.



The Issue of Impunity

On another level, the Agreement and its construction dealt with the issue of impunity in a manner which demonstrates an underestimation of the “principle of accountability” and a lack of full appreciation of its centrality in any effort to move from the state of civil confrontation towards a state of social stability and harmony.

In connection with filling sovereign positions, Article 68 in the 4th draft of the Political Agreement which was initialed in July stipulated that for a person to be eligible for candidacy, he/she must not have been previously subjected to an international criminal inquiry, or included in a sanctions list by the Security Council in accordance with the UN Security Council Resolution 2174. Surprisingly, this article was excluded from the Political Agreement in its final form.

Furthermore, we find that Article No. (7) of the Additional Provisions stipulates that those who have been convicted of crimes against the Libyan people will not be eligible for positions in security institutions. However, Article 11 of the Additional Provisions⁷ included a provision granting immunity from prosecution to those who participated in the fighting. This provision may, firstly, open the door to impunity, and secondly, to assigning positions

to those who ought not to fill sovereign positions and who are worthy of punishment. The article did not contain sufficient criteria in relation to the principle of accountability (non-impunity) and appointments in sovereign positions.

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tions which reflect the lack of adherence to the spirit of the principle of accountability (non-impunity), particularly in relation to occupying sovereign positions.

It may be argued that this phenomenon is a reflection of the ongoing debate over the issue of impunity and the assumption of positions between two schools of thought : The first attaches greater weight to the priority of human rights and takes a hard position towards exclusion. The second school attaches greater weight to the priority of peace-building and argues that the new system should be based on the participation of the very parties to the conflict. Our response is that the yield of adopting the argument of the second school would be a fragile peace which would not stand up to the first real challenge. The fighting over positions that we are witnessing today is but a natural outcome of the reluctance and fluctuation of the political agreement in relation to the issue of impunity and the

absence of fixed terms of reference which are based on respecting human rights and the rule of law and which are objective and applicable to all parties, regardless of personal desires and interests.

This reluctant approach to the political agreement has also been reflected on the Presidential Council's behavior towards security arrangements. Despite the existence



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of explicit provisions providing for dismantling armed brigades, rehabilitating their personnel as well as withdrawing them from all cities and communities and re-deploying them in specific locations, as seen in Articles (37) and (39)⁸ of the Security Arrangements Section, the Presidential Council, contrary to expectations, assigned the security arrangements related to entering the capital to armed brigades.

This has created a heated debate between those who criticize the formation of this committee in terms of its members, their backgrounds and their previous involvement in the conflict on one front and those who criticize its legal structure on the second front, and those who supported it. The Presidential Council explained this move by stating that this security committee is a temporary body which is formed to arrange the receipt by the Gov-

ernment's receiving its premises and headquarters and that its mission would end once that objective is fulfilled. The Presidential Council also stressed that the aforementioned body had nothing to do with the Security Committee mentioned in Article 37⁹, which will oversee the process of monitoring the ceasefire and the withdrawal of the armed brigades outside the cities. From its end, the Presidential Council had explained that this committee stems from the annex on the Temporary Security Arrangements. This raises the question whether it is realistic to assume that the government would be able to impose other security arrangements that will redeploy the brigades and supervise their withdrawal from the cities within (30) days as stated in the section of Security Arrangements of the Political Agreement, especially after entering the capital Tripoli with the help of these brigades, some of which were implicated in the conflict and some others implicated in war crimes.



Obstruction of Agreement Implementation

In addition to that, the agreement dealt in a very obscure manner with the issue of any obstruction of its implementation. The potentiality of obstructing the implementation of the Agreement was discussed during the negotiations that took place throughout the rounds of the dialogue. Also, during those rounds, the head of the United Nations Mission warned the parties against obstructing the Agreement's implementation and the political process. Additionally, the Security Council resolution No. 2213 of 2015¹⁰ re-affirmed the principle in paragraph eleven, indicating the penalties included in Resolution No. 2174 for the year 2014.

In spite of all this, the Political Agreement did not state its own position towards the notion of obstruction and the punitive measures the obstructionists should receive. All the more, the Political Agreement came devoid of any safeguards against its obstruction. All the above gave the impression that the Political Agreement has sufficed itself with the aforementioned provisions of the Security Council resolutions, willingly giving up its jurisdiction in the matter. Yet, even the Security Council resolution mentioned above contained a flaw, namely the absence of any genuine international political will to implement it. When the Security Council embarked once again on deciding something new in this regard in the last Resolution No. 2259, the latter decision was obscure and contradicted the former decision in some aspects. The recent Security Council Resolution No. 2259, which extended support to the Government of National Accord, stated in its tenth paragraph that:

“...individuals and entities engaging in or providing support for acts that threaten the peace, stability or security of Libya, or that obstruct or undermine the successful completion of the political transition to a stable, secure and prosperous Libya under a Government of National Accord, must be held strictly accountable, and in this regard, recalls the travel ban and asset freeze measures reaffirmed in paragraph 11 of resolution 2213 (2015)¹¹.”

The fourteenth paragraph stated that the resolution:

“Calls on the Government of National Accord to hold accountable those who are responsible for the violations of international humanitarian law and human rights abuses, including violations involving sexual violence, and to cooperate fully with the international Criminal Court and the General Prosecutor, to provide them with any necessary help based on the provisions contained in the reso-

lution 1970 (2011) and confirmed by the resolution 2238 (2015).”

So, the decision in the 10th paragraph is limited to the necessity of accountability without specifying the authority which would be in charge of same. As for the 14th paragraph, it does not do more than call upon the Government of National Accord itself to carry out the punitive



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measures. But the government itself, as everyone knows, lacks the “means of coercion”, to use the language of Max Weber.

The previous points lead us to endorse the assessment voiced by a number of experts in international law that what was issued by the Security Council was, in fact, no more than a hint, especially in the absence of a regulation by the Security Council on which the punishment may be based.

All of this raises the following question: Is general deterrence the purpose of all that was issued by the Security Council regarding the obstruction and is that deterrence sufficient to ensure the non-obstruction of the implementation of the Agreement and the political process? In answering this question, we have to remind ourselves of the division in the international community itself when it comes to Libya, and of the emergence of many indica-

tions that there is a lack of a genuine political will on the international level to truly participate in establishing the foundations of peace in Libya.



CONCLUSION

All of the previous points invite us to examine the ramifications of the flaws of the Political Agreement, especially the ramifications on the ultimate destiny of that very agreement. In doing so, it is imperative to recollect that the above mentioned flaws are fundamental flaws not marginal. Secondly, it is imperative to recollect that at the moment the Agreement entered into force the repercussions of the flaws unfolded and appeared. The state of tension within the Presidential Council itself, the delay in announcing the formation of the government and the continuation of the disastrous humanitarian situation are some of the manifestations of that.

Without prejudice to the above, the following question arises: Is it realistically possible to remedy those flaws wholly or at least partially, so as to arrive at a state of reasonable stability and peace?

There is no clear-cut answer to this question. However, it is not impossible, we believe, to lessen the effects of the flaws of the Political Agreement. Nonetheless, achieving this partial success depends on the extent of the political actors' awareness of Libya's national fundamentals, initially, and on their commitment to the principles of human rights. It also depends on whether the political actors have the political will to reexamine the Agreement during its implementation and to work to rectify loopholes and to redress the deficiencies contained therein.

Any peace or settlement without a national covenant based on national fundamentals, a transitional, restorative justice, a well studied plan of disarmament, demobilization of brigades and reintegration of armed groups according to well-defined scientific mechanisms in the presence of local “independent” observers throughout the negotiation phase and during implementation will only yield a fragile peace lacking a secure foundation that ensures its stability.



ENDNOTES

- [1] Graeme Simpson, “Reconciliation Beyond Conceptual Debates.” United States Institute of Peace.
- [2] Erin Daly. *Reconciliation in Divided Societies: Finding Common Ground*. Philadelphia: University of Pennsylvania.
- [3] Law Number 29 for the year 2013 with regard to Transitional Justice issued by the General National Congress before the political crisis. The law has not been implemented yet.
- [4] *Transitional Justice in Libya Guide*, Waheed Al-Farshishi, Marwa Belqasem et Marwan Tashani. The Arab Institute of Human Rights. 2015.
- [5] Law Number 1 for the year 2014 with regard to support of the families of martyrs and the missing one issued by the General National Congress.
- [6] Richard Strickland et Nata Duvvurg. *Gender Equity and Peace-building From Rhetoric to reality : Finding the Way*. International Center for Research on Women (ICRW). Washington DC.
- [7] Article Number 11 of the Libyan Political Accord published in the website of UNSMIL unsmil.unmissions.org
- [8] Article Number 37-39 of the Libyan Political Accord published in the website of UNSMIL unsmil.unmissions.org
- [9] Article Number 39 of the Libyan Political Accord published in the website of UNSMIL unsmil.unmissions.org
- [10] UN Security Council Resolutions on Libya.
- [11] UN Security Council Resolutions on Libya.