Politicizing Laws: Legitimizing impunity in time of political division

Joint Statements · Libya · 24 March 2025

On the 19 of march 2024, recent legal provisions were amended, the Libyan House of Representatives has rectified Law No. (6) Of 2015 on General Amnesty.

All crimes committed by Libyans before 2011 up to 7 September 2015 (Law No. (6) Of 2015 release date) shall be covered by a general amnesty as stated in Law No. (4) Of 2024 on General Amnesty.

Aforementioned, this amendment can be interpreted as legitimating impunity and unaccountability, principally overlooking atrocities committed under Muammar Gaddafi's regime.

In fact, Law No. (4) Of 2024, counters the principle of "Rule of Law" and constitutes an establishment of a non recognition of Laws by political authorities and citizens.

For instance, it is epochal to dissect the history of this law elaboration, and its numerous phases.

The birth of Impunity exceptions

The Libyan Revolution in 2011 has swiftly shifted from popular rebellion against the regime to a civil war demolishing every segment of the Libyan state.

The Libyan National Transitional Council, a de facto government of Libya for ten months between 2011 and 2012, elaborated Law No. (35) Of 2012 On The Amnesty Of Particular Crimes, insisting on the non inclusion of " Crimes committed by the spouse, adopted and biological sons and daughters, siblings-in-law and assistants of Muammar Mohammed Abdul Salam Abu Minyar Gaddafi" among the legal provisions.

This law was elaborated in a context of " transition ", a fragile political passage from authoritarianism to revolt, in the middle of a Libyan civil war.

According to a letter sent to the ICC Prosecutor on Libyan Amnesty Laws by Human Rights Watch on May 25, 2012, " On May 2, Libya's National Transitional Council (NTC) passed a new law that grants a blanket amnesty to those who committed crimes ", chiefly as according to the article 4 of the Law No. (38) Of 2012 On Some Procedures Concerning The Transitional Phase, which was passed on the same day as Law No. (35) Of 2012 On The Amnesty Of Particular Crimes; " There is no penalty for necessities of the 17 February Revolution in terms of military, security or civil acts carried out by revolutionaries to save or protect the revolution."

Consequently, Law No. (35) Of 2012 On The Amnesty Of Particular Crimes, cannot only follow the

same logic as Law No. (38) Of 2012 On Some Procedures Concerning The Transitional Phase, giving full impunity to militias and forces who were against Gaddafi during the time period between 15 February 2011 and 23 October 2011.

Conforming to the International Commission of Inquiry to investigate human rights violations in Libya " the thuwar (anti-Qadhafi forces) committed serious violations, including war crimes and breaches of international human rights law".

Overlooking Human Rights violations started from this turning point, the supposedly Transitional de facto government representing the Libyan people claims, has failed in holding those who have committed serious violations, accountable.

From an "amnesty on Particular Crimes" to a " General Amnesty "

Law No. (35) Of 2012 On The Amnesty Of Particular Crimes was repealed leaving the space for a new law elaborated by the Libyan House of Representatives.

A different context, urged a distinct legislative body, as a result of the 2014 Libyan parliamentary election held on 25 June 2014.

A parliament that supposedly was about to be a step towards building up the Libyan state, after a lifetime authoritarian regime and a civil war.

Hence, the establishment of the Libyan House of representatives was not greeted by the Transitional government, therefore this arm wrestling paved the way for a division between the east and the west.

The Libyan House of Representatives elaborated Law No. (6) Of 2015 on General Amnesty, asserting on " With due regard to the provisions of Articles 2 and 3 of the present Law, all Libyans who committed crimes during the period from 15 February 2011 until the promulgation of the Present Law shall be covered by a general amnesty."

Additionally, the law clarified it non application on specific crimes such as " The crimes of terrorism stipulated in Law 3/2014" and " Identity-based murder, abduction, forced disappearance and torture".

Nevertheless, this law can be interpreted as legitimizing impunity for Human Rights violations' including torture, ill treatment and extrajudicial killing that has occurred between 2011 and 2015.

Libyan Authorities did not hold accountable political figures and militias for their crimes, instead they elaborated a law providing full amnesty despite numerous reports documenting violations happening after the Libyan Revolution.

Recommendations during UPR session (Cycle 2 (2012-2016)), tackled the importance of preserving Human Rights during the civil libyan war, and maintaining the right to fair trials, hence political chaos ensuing from a political division, drew traits of a stateless state.

A new era of impunity: turning the page on 2011 crimes

The amendment of Law No. (6) Of 2015 on General Amnesty, was not welcomed by both Libyan civil society and the International community.

In fact, Law No. (4) Of 2024 on General Amnesty, has indicated that amnesty concerns those who have committed crimes before 2011 till the elaboration of Law No. (6) Of 2015 on General Amnesty.

Significantly, one cannot deny the impact of political division on the Libyan situation, laws in time of crisis can become a tool to instrumentalize despotism.

Throughout history, regimes have shown that laws could be used as an efficient instrument to chain any attempt towards paving the path to build a rule of law state which ensures and protects freedoms and rights.

Law No. (4) Of 2024 on General Amnesty, is an example of politicizing legislation; protecting political authorities who have committed tremendous crimes before 2011.

For instance, Law No. (4) Of 2024 on General Amnesty, is legitimizing penal protection to Haftar, the commander of the Tobruk-based Libyan National Army, and the ex- commanded Libyan forces during the Chadian–Libyan conflict under Gadaffi regime.

The International Criminal Court (ICC) Prosecutor Karim Khan announced, on 11 May 2023 new arrest warrants for crimes in Libya, because of violence caused between Tripoli, Benghazi, and their associates.

Moreover, the US District Court in Virginia, issued a default judgment, on 29 June 2022, charging Khalifa Haftar with war crimes.

In fact, direct victims of torture and other ill-treatment, and families of civilian victims killed by “ bombardments and indiscriminate shelling conducted by forces of the LAAF” , filed 3 separate suits, under the Torture Victim Protection Act of 1991, since Haftar holds the american nationaly.

Among the alleged war crimes committed by Haftar, are the violations perpetrated during the first civil war by the Anti Gaddafi forces, and during his launch of Operation Dignity.

Additionally, in Derna, during the second civil war, civilians were killed; according to Yaccoub

El Hillo, more than 345,000 people became displaced, at the end of 2019 since Haftar’s offensive began.

Apart from this, he allegedly has the responsibility of holding Mahmoud Mustafa Busayf Al-Werfalli accountable for his actions judicially, especially that the ICC delivered two arrest warrants against this latter, accused of committing extrajudicial killings classified as war crimes, hence the Military Prosecutor under Haftar’s command refused to surrender Al-Werfalli to ICC.

Impunity disguised as general amnesty

Law No. (4) Of 2024 on General Amnesty, is an object for open interpretation because of its broad legal terms, which can constitute an open door for impunity for those who have committed atrocities against humanity either as political figures or militias.

Perpetrators of serious Human Rights violations, either before the fall of Gaddafi regime or during the Libyan civil war, are not facing accountability.

Instead, Law No. (4) Of 2024 on General Amnesty, is contributing to the minimization of victims' agony.

Published at https://humena.org/legitimizing-impunity-in-time-of-political-division/
HuMENA for Human Rights and Civic Engagement · info@humena.org