



Peace & Democratic Transition in Libya

A Dream Deferred or
an Everlasting Nightmare?



**CAIRO INSTITUTE
FOR HUMAN RIGHTS STUDIES**

Institut du Caire pour les études des droits de l'homme

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On Tuesday May 29th 2018, rival Libyan parties met in Paris with the UN and representatives of the international community. While the Cairo Institute for Human Rights Studies (CIHRS) welcomes this step, it fears this latest attempt to implement peace will prove futile once again. The key international actors and Libyan authorities have failed to recognize one key underlying reality: With the persistence of security sector fragmentation and impunity for crimes, the commitments produced at this meeting - especially holding a constitutional referendum and elections - are not worth anything more than the paper on which they are written. By not addressing these issues, the meeting's participants failed to bring Libya any closer towards ending the transition.

Earlier that same month, on May 2nd, suicide bombers stormed the electoral commission in Tripoli, killing at least a dozen people in an attack claimed by Islamic State terrorist organisation (ISIL). CIHRS condemns the attack, which attempts to undermine Libyans' hope to end the transition and draft a new constitution as a step towards building democratic institutions. Yet despite the focus on terrorism given this recent attack, terrorism is not the only- or even the primary - obstacle halting Libya's transitional process. Instead, Libyan state institutions themselves are standing in the way of their own transition into functional, democratic institutions. The state institutions' dysfunction and inter-fighting are guaranteeing that the Libyan citizens' dream of a democratic future remains unfulfilled.

The conflicts between Libya's state institutions fertilize the ground upon which terrorist attacks, such as last month's against the electoral commission, occur with regularity. Without this internecine fighting between state institutions, it is unlikely that ISIL's presence in Libya would even be possible. The fragmentation and inter-fighting of these state institutions and their affiliated militias enables ISIL to remain operative in Libya, even without territorial control. Extremist armed groups have proliferated in western and eastern Libya, including radical armed groups with close ties to al-Qaeda and the Salafist Madkhali sect.

The ongoing armed conflict by military and paramilitary groups—occurring in the context of their struggle for power—has negative implications that go beyond enabling the near daily spectacle of terrorist attacks in the country. It has paralysed and weakened the legislative and executive authorities, preventing them from achieving

their mandates. Among these mandates that remain unachieved are the three primary processes necessary to ending the transition: establishing a national constitution, holding parliamentary and presidential elections, and reforming Libya's security sector. Furthermore, external regional actors- such as Egypt, the United Arab Emirates, and Turkey - fuel the cycle of violence and contribute to Libya's instability by supporting armed groups in western and eastern Libya, including radical armed groups. Such support is a grave breach of the arms embargo¹: a breach that continues to be documented by the Security Council Committee of Experts, mandated by Resolution 1970/2011, according to reports covering the years 2017, 2016, and 2015.

Finally, the constitutional referendum, elections, and any democratic transition require a safe public space guaranteeing freedom of expression and association. This space will allow civil actors - including human rights activists and media workers as well as local representatives and tribal elders - to play a key role in implementing any potential successful democratic transition. Empowering and enabling those actors could very well be Libya's only hope to fight extremism of all kinds, by disempowering extremist ideologies and inhibiting their spread across the country.

¹ On 26 February 2011 the United Nations Security Council (UNSC) unanimously passed Security Council Resolution 1970, which established sanctions against Libya including an open-ended embargo on the supply of arms and military equipment to and from Libya

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Libya's political transition began in 2011 with the Libyan Revolution, resulting in the overthrow of the government under Muammar Ghaddafi in October of that same year. Since then, a myriad of actors –on the national, regional, and international levels - have been involved in either progressing or stalling Libya's transition into a peaceful, democratic mode of governance. This transition includes three primary political processes that will be discussed in further detail below: parliamentary and presidential elections, the drafting and passing of Libya's constitution, and the reform of its national security sector.

I. History of Libya's Political Transition

The transition into a better-functioning, free mode of governance featuring a constitution and elections has been prolonged for nearly seven years, beginning on February 17th, 2011 with the start of the Libyan Revolution. Two years after the UN-backed peace negotiations, parties from the House of Representatives (HoR) and the General National Congress (GNC) signed the Libyan Political Agreement (LPA) on 17 December 2015 in Skhirat, Morocco. The LPA previewed the creation of the Presidential Council (head of executive power), the State Council (consultative assembly), and a plan to revive the House of Representatives.

Despite considerable international support and the momentum of the Libyan Political Agreement, it did not produce progress in the political landscape two years after its signing. Since his appointment in June 2017, the Special Representative and Head of the United Nations Support Mission in Libya (UNSMIL) Ghassan Salamé bolstered efforts towards reaching a political solution. In September 2017², he proposed an action plan to the UN Security Council to revise the implementation of the peace agreement. This action plan on Libya was endorsed by the Quartet (composed of the African Union, the European Union, the League of Arab States, and the United Nations) at their fourth meeting on September 21st 2017.

At the Quartet's fifth meeting on April 30th, 2018 in Cairo, the Quartet members called on the Libyan authorities to hold elections before the end of 2018. Among other recommendations, the Quartet requested that the House of Representatives issue legislation regulating the upcoming constitutional referendum, as well as for presidential and parliamentary elections. The Quartet also stressed the importance of unifying security sectors in Libya.

² The plan consisted to work with the House of Representatives and State Council through a drafting committee composed by the two assemblies, then a National conference, supposed to be held on February 2018 and aim to give Libyans from all across the country the opportunity to come together in one place; to renew their common national narrative; and to agree on the tangible steps required to end the transition, but until the end of May 2018, tentatives failed to hold the National conference. The objective of the national conference is to allow the adoption of a true National Charter and provide guidelines for the legislation needed to end the transition. The third stage would be the adoption by the House of Representatives the legislation for a constitutional referendum, and presidential and parliamentary elections.

At the present time, Libyan institutions have not carried out the Quartet's recommendations to hold presidential and parliamentary elections, nor have they issued legislation for a constitutional referendum. They also have not made any progress on the Quartet's recommendation to unify the nation's security forces. Libyan institutions - including the House of Representatives (HoR), the State Council, the Presidential Council, the judicial system, and security institutions - are frail and dysfunctional, rendering their ability to implement democratic processes much more fantastical than feasible.

II. Elections

Despite the high number of Libyans registered to vote at the High National Electoral Commission (HNEC), 55% of illegible citizens are registered to vote, (approximately 2,430,000 recorded by 2018). Moreover, the elections may not take place due to the HoR's incapacity to hold a session with the required legal quorum. This failure to hold the quorum stalls the process of holding elections, as well as the process of adopting legislation for the referendum on the national constitution.

Furthermore, the inter-fighting of the militias associated with the Presidential Council and the Libyan National Army (LNA) under Haftar directly impedes any realization of the electoral process. On December 16th 2017, Haftar declared that he doesn't recognize the Presidential Council. Later, in a daring move aiming at undermining the

Quartet's recommendations, Haftar declared that he will not recognize the election being held by the National Election Commission in Tripoli, since he considers Tripoli to be besieged by militias and terrorists. On December 9th, 2017, protesters in Benghazi supporting Haftar destroyed banners on voting offices. They called for the bypassing of the elections and the direct appointment of Haftar to the presidency.

The majority of the political actors - including Ghaddafi loyalists, the HoR, and the Presidential Council - support holding elections. Even religious groups, such as the Libyan Islamic Fighting Group, the Muslim Brotherhood and Salafist Madkhali sect accept elections in Libya. Yet the question remains: how can the non-interference of armed and paramilitary groups in the electoral process be guaranteed? Despite the restrictive legal framework for civil society³, the CSOs already registered observe that armed groups will likely intervene in the electoral process – to influence the election in their respective favors as well as to prevent CSO monitoring of the electoral process. Furthermore, there is no guarantee that warlords in the east and west will accept election results. Without urgent steps to immediately set a concrete plan for the security sector vetting process and deterrence mechanisms through ICC intervention

³ From 2011 until the present time, no legal framework has been established for international and local CSOs, except decrees 1-2 issued by the CSOs' committee in 2016. Such decrees are very restrictive and allow the executive power (the Ministry of Foreign Affairs and the CSOs' committee) to intervene in authorizing the works of associations and their projects. Notably for human rights, CSOs operating on the ground are confronting potential abusive administrative intervention without judicial oversight, in addition to harsh attacks by armed groups, which function as the de facto brokers on the ground.

via a field office in Libya or even in Tunis, the electoral process will fail and the cycle of violence will continue to destroy Libya.

III. Constitutional Drafting Process

There are three state institutions involved directly and indirectly in finalizing a draft of Libya's constitution: The Constitutional Drafting Assembly (CDA), the House of Representatives (HoR), and the judiciary. Collectively, these institutions have not been able to produce a constitution. The CDA voted for a final draft of the constitution in July of 2017. A month later, in August, the administrative justice department of the Al-Bayda Court of Appeal ruled to cancel the decision of the Commission's vote in accordance with the complaint submitted by the member of the Constituent Assembly in August 2007. In February 2018, the Administrative Chamber of the Supreme Court overturned the judgment of the Court of Appeal in Al-Bayda, since the administrative judiciary was not competent to consider the decisions of the CDA.

Although the Libyan Supreme Court's invalidation of the blockage of the CDA's vote is a positive development, the House of Representatives is failing to achieve its legislative mandate of issuing legislation for a constitutional referendum, as well as for presidential and parliamentary elections. The HoR held its ordinary session on August 14th, 2017, and its agenda was the legal framework for the referendum.

The HoR suspended its meeting for the next day after the Legislative Committee was assigned - by the assembly of the HoR - to prepare a referendum law on the draft constitution and present it to the Council the following week for adoption. Until the end of May 2018, this referendum law was neither prepared nor did the HoR hold any further sessions with the required legal quorums.

The draft constitution itself faces numerous critiques, including: the lack of consensus over the drafting process, the marginalization of minorities, and the failure of the draft provisions to conform to international standards regarding fundamental rights.⁴

One of the points of contention over the July 2017 draft constitution is that it upholds Islamic rules as the source of legislation and deleted the previous definition of legislation, which considered legislation legitimate if it did not require a “specific jurisprudential opinion in matters of jurisprudence.” In other words, this definition of legislation did not require the state to follow one specific dogma or interpretation of Islamic Sharia when drafting laws. With the definition deleted, the draft constitution allows for radical legislation to be adopted, potentially based on extremist interpretations of religion and the adoption of one specific doctrine by the state. Moreover, the draft has repeated references to the Islamic Sharia in articles 6, 153 and 161 without reference to the international instruments relating to human rights and fundamental freedoms.

⁴ Study issued by Benghazi University Research Center

The actual draft of the constitution considers only Arabic as the official language of Libya, which marginalizes non-Arab communities such as communities as Tebu and Amazigh. Furthermore, the vague formulation of Article 65 is potentially restrictive of rights and freedoms, as it gives the state wide discretionary powers to protect and promote national and local cultures. Articles 163, 38 and 37 fail to guarantee sufficient protection for media independence and freedom of expression⁵.

IV. Security Sector Reform

The transition process is being immobilized by the lack of progress on both the national and international levels in regards to reforming the security sector. Since the 2011 uprising, successive Libyan legislative authorities have neither set national strategies nor clear plans to rebuild national security institutions. Instead, laws and decrees adopted by the National Transitional Council of Libya have fostered the creation of paramilitary structures not controlled by the state. This legislation includes: bill no. 38/2012 (Special Procedures, giving militias the right to arrest, detain, interrogate and give amnesty on acts perpetrated for the ‘success’ of the revolution) and the General National Congress (GNC) decrees 7/2012 and 134/2013.

Further exacerbating the fragmentation of the national landscape is the following legislation: Presidential Council (PC) decree 555/2018, giving wide discretionary

⁵ Letter to the Libyan Constitution Drafting Committee

powers for the purpose of deterring armed groups in Tripoli, and decree 2/2016 issued by the Presidential Council, creating a parallel security group called the Presidential Guard. The Libyan National Army (LNA), under commander Khalifa Haftar, has been integrating civilians and Salafist armed groups since 2014. Both the LNA and the PC continue to operate through armed and paramilitary groups in the absence of any mechanism for proper integration or an instrument to define the chain of command.

Paramilitary structures - such as the High Security Committee to Defend Libya, the Chamber of Libyan Revolutionaries, the National Guard, Libyan Dawn, and Operation Dignity - gave sovereign positions to militias and paramilitary leaders in the Ministry of Defense and the Ministry of Interior, as is the case with Haftar. Haftar was formerly the head of paramilitary group Operation Dignity and now leads the LNA. These groups also benefit from vast sums from the state treasury, all the while continuing to operate only nominally under state security institutions.

In addition, amnesty bills such as bill no. 35/2012 issued by the National Transitional Council of Libya in 2012, and bill no. 6/2015 issued by HoR in 2015 have made these rival armed factions the real power brokers on the ground. These armed groups, not fully subordinate to state institutions, continue to regularly perpetrate numerous indiscriminate attacks targeting civilians and civilian infrastructure. Extrajudicial killings, torture, arbitrary detention, and violations amounting to war crimes continue to be committed in total impunity. The GNA and HoR should stop repeating these fatal mistakes.

The Presidential Council (PC) remains weak and divided. It has not taken any real steps in the vetting process of Libya's security sectors, as previewed by Articles 34 and 42 of the Libyan Peace Agreement (LPA), and the sixth annex of the LPA under the section on security arrangement dispositions. The PC did not regulate ceasefire arrangements and the withdrawal of armed groups from cities. Nor did the PC define the following: operating rules and rules of engagement for the military and police in dealing with armed groups, disciplinary and criminal procedures, and measures monitoring the implementation and effectiveness of the aforementioned security arrangements.

Security sector reform has been further immobilized by the lack of international efforts to prioritize a transparent vetting process for security sectors. Countries such as Italy, Egypt and the UAE deal directly with armed groups in the east and west, thus failing to establish unified national security institutions. The weak support of the ICC, which could play an active deterrence role in the face of armed and paramilitary groups, is also compromising the electoral process. If the Libyan justice system continues to fail in this regard, jurisdiction will be transferred to the General Prosecutor of the ICC, who may investigate and issue arrest warrants for the perpetrators of grave violations. The international community – particularly the UN Security Council and the European Union – need to step up their support of the ICC in order for its accountability role to be effective.

V. Armed Groups Preventing Local Reconciliation

Warlords in eastern and western Libya prevent any implementation of the numerous reconciliation agreements on the national and local levels. These groups include radical armed groups with close ties to al-Qaeda and the Salafists' Madkhali sect. Furthermore, individuals affiliated to these groups claim to be fighting terror while committing the same violations as the terrorists, without respect for the four Geneva Conventions on the basic principles of International Humanitarian Law relating to armed conflict, whether internal or international.

The weak security sector, which allows for the prominence of armed and paramilitary groups, further undermines national reconciliation and the progress made by local reconciliation sessions in Libya and the UN-backed political dialogue committee. Two of the most prominent examples of local reconciliation agreements blocked by armed groups are the agreement between the Tawergha and Misrata peoples in the west, blocked by Bunyan al-Marsous⁶ militias; and the reconciliation efforts in Derna, blocked by Haftar's forces in the east.

⁶ Misratan forces comprised the largest component of Bunyan al Marsous (BAM), the coalition formed in summer 2016 to take on ISIS in Sirte. It declared victory against ISIS in December that year. BAM forces also include the 604 Battalion, formed mostly by Madkhali Salafists from across western Libya, including Sirte. As in other parts of Libya, Madkhali Salafists have grown in influence in Misrata and its environs over the past year.

Progress had been made in the reconciliation between the Tawargha and Misrata communities when the Presidential Council of Libya's Government of National Accord (GNA) - following the statement⁷ issued on December 26, 2017 - declared that Tawargha would be open for the return of city residents as of February 1, 2018. The announcement was made as part of and pursuant to the agreement signed between the Misrata and Tawargha committees, under the aegis of the United Nations Support Mission in Libya (UNSMIL).

Yet this progress was fatally undermined when on February 1, militias in Misrata associated with the Bunyan al-Marsous and the Sirte Protection and Security Force, as well as a force under Mohammed Baayu, known as "Sherikhan," blocked Tawarghans' access to the city from the eastern, southern, and western routes. Tawarghans remain camped out on the outskirts of the city, yearning to return to their home.

Meanwhile the city of Derna, located in a mountainous region of northeastern Libya, has been blockaded for over 17 months by forces loyal to Marshal Khalifa Haftar. This has resulted in a dire economic and humanitarian crisis for the city's inhabitants, compounded by arrest campaigns and occasional airstrikes. In spite of all these challenges, some parties have attempted to move forward with the reconciliation process. The efforts of the High Council of Reconciliation (HCR), a body composed

⁷ The video statement is titled, "The president of the Presidential council declares February 1 as the beginning of the return of Tawargha residents to their city."

mainly of notables from western and southern Libya⁸ has constituted the most significant attempt at mediation during the six years of crisis in Derna.

Yet the paramilitary forces under Haftar continue to obstruct the reconciliation efforts. The HCR has itself admitted that there are many obstacles to successful reconciliation, particularly its lack of political or military leverage over Haftar's forces, and lack of social leverage over the eastern tribes. The HCR has been unable to push the LNA General Command to commit to the outcome of the dialogue and to the HCR's recommendations.

VI. Conclusion

CIHRS believes that terrorist attacks, such as the May 2nd suicide bombing of the electoral commission in Tripoli, are an expected outcome of Libya's stalled political process combined with the failure to restructure and reform its national security sector as well as to activate effective international deterrence mechanisms. The fragmentation and inter-fighting between Libyan state institutions creates a volatile framework conducive to the regular perpetration of terrorist attacks in Libya. There can be no talk of combatting terrorism, peaceful coexistence, and the rule of law without first

⁸ The HCR is essentially a group of reconciliation committees, heads and members of local councils from the Libyan west, except for its president who is from the south (Sebha). The HCR held its founding meeting in Qasr Bin Ghashir (34 km south of Tripoli) in August 2016. The meeting brought together 14 members. Following its efforts on solving the crisis in Derna, new members from different regions of Libya joined the HCR, including from the east. The total number of HCR members as of July 2017 is 67.

establishing effective state institutions capable of implementing local agreements and the national peace process, and advancing a democratic transition by holding parliamentary and presidential elections and a referendum for a national constitution.

Activating international accountability mechanisms and security sector reform are requisite for establishing a framework that enables a referendum and elections to be held without interference or disruption. Without a unified security sector and effective international deterrence, a Libya governed by a constitution and leaders chosen through democratic elections will not be viable. The international community – particularly the UN Security Council and the European Union - must strengthen its support of this process. Without building effective state institutions, terrorism will continue to be pervasive in Libya, and the Libyan people’s dream of a democratic future indefinitely deferred.

VII. Recommendations

1. Demands that the Libyan Public Prosecutor immediately disclose, to the public, the results of the investigations into numerous suicide bombings and the circumstances surrounding the lethal clashes. Those culpable for the killing, systematic torture and terrorizing of civilians and the destruction of vital

civilian sites must be brought to justice, in a fair trial. The majority of the aforementioned violations remain unaddressed without any concrete steps regarding investigation and accountability.

2. The Quartet – particularly the UN Security Council and the European Union - and the Libyan authorities should increase support to the ICC with the aim of expanding and intensifying its investigations inside Libya, or from a neighboring state given the incapacity of the Libyan judicial system to undertake its national responsibilities in the current situation.
3. The Quartet –particularly the UN Security Council and the European Union – should pressure the House of Representatives (HoR) to accomplish its legislative mandate of issuing the legislation for a constitutional referendum, and for presidential and parliamentary elections.
4. Pressure the official and de facto Libyan authorities to draft a practical plan, in the form of a draft bill, for a comprehensive, transparent national strategy for the restructuring of the national security establishment in the short, medium, and long terms.
5. The following (based on clear, precise criteria) should be considered as conditions for lifting the arms embargo on Libya: progress towards the reform

of the security sector, the rule of law, and respect for human rights, according to international standards and as monitored by civil society.

6. Prioritize breaking the cycle of impunity, restoring the effectiveness of the criminal justice system, and spurring international mechanisms for accountability.
7. Pressure the Libyan authorities to guarantee freedom of expression, association, and peaceful assembly; protect civil society activists and organizations, journalists, and media workers from attacks; ensure their safety and guarantee a secure environment for them and take serious action to combat hate speech and incitement to violence in the media.
8. Enable local groups and civil society to efficiently influence peace negotiations. The Libyan Political Agreement (LPA) was based on the demands of members of the National Congress, the Parliament, and their allies in paramilitary groups, while devoid of contributions from a popular base on the local and national levels for a vision of sustainable national reconciliation in Libya.