

Elections in Libya: Towards a Democratic Transition?

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(Hazem Turkia - Anadolu Agency)

Elections in Libya are scheduled for December 24, 2021, and have raised expectations of strengthening stability and the transition to democracy following a decade of conflict and division. However, doubts are growing as to whether the vote will go ahead as planned. As it stands today, there are several issues that stand out, most notably the lack of consensus around the constitution, as well as the candidacies of highly divisive figures such as Khalifa Haftar and Saif al-Islam al-Gaddafi. Considering the level of fragmentation within Libya, a decisive result is unlikely and it could ultimately lead to a renewed conflict.

Introduction

Elections in Libya are scheduled for December 24, raising hopes regarding the consolidation of stability and transition to democracy following a decade of conflict and division. Over the course of the last year, the country has made some reasonable progress in addressing the chaos and violence that ensued following the toppling of Gaddafi in 2011. In October 2020, the rival parties signed an official ceasefire agreement, which included a demand for all foreign fighters and mercenaries to leave Libya within three months. Despite the pressure from the international community, foreign forces and mercenaries remain in the country.

Despite the presence of foreign fighters, the ceasefire agreement has generally held so far. The agreement also created a basis for renewed political negotiations. As a consequence of these talks, in March 2021, a new interim government was established. The Government of National Unity (GNU), selected through a United Nations-supported process and also crucially approved by the House of Representatives (HoR). With this approval, the GNU became Libya's first unified government since 2014. The GNU replaced the previous GNA administration and the parallel cabinet based in the country's east.

For Libyans as well as the international community, the December election represents perhaps the final hope of forming a legitimate government that can achieve long-lasting stability and help energise the fragile economy. Despite the progress that has been made in recent months, there remain significant political and security obstacles ahead of the elections. One of the most pressing obstacles is the continued lack of a firm constitutional basis on which to hold the elections. As of yet, there is no agreement on the constitutional basis for the vote and there is no framework to define who can run for the presidency and what their powers should be.



Omar Boshah, Deputy President of The High Council of State, told journalists in Tripoli that if the vote goes ahead on December 24, "the results will not be accepted".
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The present electoral laws that were accepted by the UN are insufficient and highly controversial. Thus, this legitimacy crisis will presumably remain until rival parties agree on a constitution. However, doubts are growing as to whether the vote will go ahead as planned. Recently, Libya's High Council of State (HSC) [proposed](#) delaying the upcoming presidential and parliamentary elections until February 2022. The HSC's statement said that "pushing forward with presidential elections without any formal constitutional or legal rules, amid tension, mistrust among (Libyan) actors and foreign interference, could destroy the entire political process". Given the level of fragmentation within Libya, even if elections happen, a decisive result is improbable.

Remaining Challenges

The international community believes that the elections are needed in Libya because Libya suffers a crisis of legitimacy that can only be cured through a free and fair electoral process. While at this stage there are various issues including a lack of consensus on the current constitution and also polarising figures, most notably Haftar and Saif al-Islam al-Gaddafi who want to run for the presidency, adding to the uncertainty and chaos surrounding the forthcoming poll. Even if the elections take place as scheduled, there is a lack of broad support from Libyan society, which could increase the odds that one side of the conflict will reject the results and it could provoke a major escalation in the country.

Notwithstanding, there have been some positive developments since the ceasefire agreement was reached. However, potential impediments could still spoil political progress and undermine the prospects for a more sustainable political settlement in the country. These include the presence of foreign fighters and mercenaries, Haftar's role, interference from international and regional actors, a lack of general consensus on the election laws. For instance, the electoral commission has yet to decide which candidates qualify. Any of these could set the stage for continued gridlock.

In this respect, 98 people have [registered](#) so far to run for president. These include some divisive candidates such as Khalifa Haftar and Saif al-Islam Gaddafi, a son of Libya's overthrown dictator who is [wanted by](#) the International Criminal Court on charges of crimes against humanity.

An absence of a firm constitutional basis

In 2012, Mahmoud Jibril, Libya's former interim Prime Minister and chairperson of the National Transitional Council, stressed the urgent need for a new constitution in the [following quote](#): "There are different political factions - they don't talk to each other. They should sit around the



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table and find common ground for this transitional period. The moment we draft a constitution, then there is a frame of reference.”

Since 2011, Libya has experienced one of the most challenging revolutionary transformations of all the Arab states. Unlike Egypt and Tunisia, Libya witnessed what was effectively the complete destruction of national institutions and government administration in the wake of Gaddafi’s ouster. Forty-two years of the Gaddafi [regime left](#) Libya with minimal development in almost every sector and with his death and the dismantling of his regime, the Libyan state collapsed, leaving the country in chaos. As Youssef M. Sawani, Professor of political science at the University of Tripoli [argued](#), “Gaddafi’s decades-old authoritarian rule, which Libyans categorized as systemless which implies a regime that was highly eccentric and that avoided building state institutions”. Libya requires a new constitution, until now, no new constitution has been drafted. The delay in the constitutional process has left Libyan institutions with little legitimacy and also has created further division among rival groups.

In this context, it’s imperative to emphasise how Libyan society was constituted in the past. Three historic breaks can be identified here: first, the transition from Italian colonial rule to self-rule under a monarchy with a federal system of government. Second, Gaddafi’s coup d’état,

which turned Libya into a republic. His Green Book was later to become the de facto constitution of Libya until 2011. Third, the removal of Gaddafi and the breakdown of Libya’s government and administration after the uprising. The total collapse of the state institutions of the past totalitarian system has left Libya in a position where there is no starting point or recent example for the new constitution.¹

In the aftermath of the 2011 uprising, Libya’s constitution-making process did not occur in normal or peaceful conditions, but rather amidst growing political tensions and military conflict. In 2014, a constitution-formation process was established and the resulting [draft constitution was issued](#) in 2017. The reasons for this failure are numerous, consisting of both domestic and external challenges faced by the constitution-making body, but also a constant division by the different partners on several arrangements of the final draft constitution.²

The planned polls are part of an UN-backed settlement process led by the United Nations Support Mission in Libya (UNSMIL). [Based on](#) UN Security-Council resolution 2510 (2020), the UNSMIL crafted a new body, the Libyan Political Dialogue Forum (LPDF). The members of LPDF were selected from various political representatives, leading actors, and key groups of parliamentarians in order to engineer a power-sharing agreement, reach a legal framework that would establish political checks,

¹ Schnelzer, N. (2016). *Libya in the Arab Spring* (pp. 31-48). Wiesbaden: Springer VS.

² Nedra Cherif (2021). *Libya’s Constitutional Quagmire*. Retrieved 24 November 2021, from <https://www.kas.de/documents/282499/282548/Libya+Brief+10th+Edition.pdf/c070796b-8a61-e1b3-275f-78ddaa16d967?version=1.0&t=1622532740540>

institutional balances, and organise power between the parliament, presidency, and military ahead of the December elections.

On 4 May 2021, UN Special Envoy Ján Kubiš [submitted](#) to the participants of the LPDF the proposal elaborated by the LPDF's Legal Committee to serve as a possible constitutional basis for the elections, aiming to bring an end to the months-long deadlock on this matter. In accordance with the LPDF's political roadmap issued in November 2020, the House of Representatives (HoR) and High Council of State (HCS) initially had 60 days to clarify the legal foundations of elections and reach an agreement on a legal basis. One key question was whether to hold a referendum on a draft constitution prior to the elections or pass a temporary law and postpone broader constitutional questions. Another focus was on whether to hold direct presidential and parliamentary elections at the same time or allow the elected parliament to elect the president. Furthermore, there remain serious questions about which candidates are qualified to run for the presidency. Unfortunately, talks between the HoR and HCS have failed to produce any meaningful mandate for elections laws.

Subsequently, after a long dispute, Aguila Saleh, Speaker of the HoR and an ally of Khalifa Haftar, took advantage of the situation and [passed](#) both a presidential electoral law on September 9 and a parliamentary electoral law on October 3, which was met with strong opposition by the HCS. The law was drafted by a small group of HoR members allied to Saleh and Haftar and Saleh issued it without holding a vote in the HoR. The law establishes an all-powerful presidency and specifies that civilian and military officials are considered suspended from their posts during their candidacy and can resume their functions if they lose, a clause that appears [tailored](#) for both Saleh and Haftar.



Speaker of the House of Representatives of Libya, Aguila Saleh and Moroccan Foreign Minister Nasser Bourita hold a joint press conference after their meeting in Rabat, Morocco on September 02, 2021. (Jalal Morchidi - Anadolu Agency)

Saleh's decision has angered the HCS, whose chairman Khalid al-Mishri wanted to first organise a constitutional referendum before elections could be held. During his visit to Turkey in early November, Mishri [lamented a new election](#) law paving the way for Haftar's and Gadhafi's son, Saif al-Islam's, involvement in the race. Mishri [said](#) the law was passed by the HoR without coordination of the HCS and the GNU and he described the bill as illegal.

Wolfram Lacher, Researcher at German Institute for International and Security Affairs (SWP), [argued](#) that "HoR and HCS members, a majority of whom have long shown disinterest in brokering solutions that would see them lose their influence and lucrative salaries, failed to produce a constitutional framework. Within the LPDF itself, a series of meetings convened by UNSMIL between April and August 2021 did not resolve the key points of contention. Positions were entrenched between those seeking and opposing presidential elections, as well as those supporting and rejecting the ability of military officers and double nationals to run, in essence, a disagreement over whether Haftar should be able to present himself".

Resolving the constitutional and legal basis for the elections is critical. Currently, there is a lack of unity between the HoR and the HCS on the constitutional framework for elections, which could ultimately undermine the process. If the HoR and HCS had cooperated in decision-making processes, the parties may have developed a sense of partnership, and a joint interest in managing risk and producing more appropriate elections laws.

Ben Fishman, a senior fellow at The Washington Institute, [commented](#) that "once the United Nations-created forum to resolve these issues faded last summer, the wily eastern-based politician Aguila Saleh seized the vacuum, drew up an electoral law, and jammed it through the House of Representatives (HoR) he chairs. In over seven years, the HoR has rarely met officially, in part because of the manner that it was elected and a subsequent boycott by many of its members. Even so, the UN Special Envoy endorsed Saleh's law without trying to negotiate its contents with other Libyan political bodies that retain significant influence, particularly in the west".

Speaking to TRT World Research Centre, Umberto Profazio, Associate Fellow at the International Institute for Strategic Studies (IISS) commented that "in order to have successful and legitimate elections, Libya should have had a constitutional basis that had to be agreed between the main rival factions months before the elections. Without a constitutional framework that would point out the main prerogative of the institutional bodies and a clear system of checks and balances needed for a functioning democracy, it is highly unlikely that Libya will come out of its transitional state soon. As we approach the election date, the escalating infighting between the main institutions (HoR versus HCS; HoR versus GNU; PC versus Foreign Minister and GNU versus PC) is a clear symptom of the lack

of a comprehensive and inclusive agreement that would have paved the way to fair and free elections, seriously curbing their legitimacy and casting a long shadow on the aftermath of the electoral process”.

Electoral Timing

Elections are an indispensable aspect of contemporary post-conflict peacebuilding. As a remarkable manifestation of democracy, it is indeed rare that a civil war or other violent dispute over the state is today resolved without some recourse to the electoral process.³ Elections are usually held soon after a conflict ends. Though, the effect of early elections on post-conflict stability depends on the timing of these elections and the consequent environment in which they take place. While some argue that early elections further help to reach comprehensive peace agreements, speed up the democratisation process, and secure post-conflict stability, others claim that they could undermine genuine democracy and provoke a renewal in fighting. Lakhdar Brahimi, former UN envoy to Afghanistan and Iraq [said that](#) “an election will produce all the good expected of it only if it takes place at the right time in the sequence of activities that constitute the peace process”.

Elections are significant to stability, but poorly timed elections will certainly have negative consequences for the unification of both peace and democracy. In that regard, despite the progress that has been made over the last few months, there are a few dynamics that could still spoil the political progress and threaten the prospects for holding the elections in December. As it stands today, there is a strong argument to be made that the political and security landscape is not currently conducive to holding the elections.



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Security issues

As the deadlock over the legal framework for the elections has deepened, the international community’s insistence on the December 24, 2021, date to be held under any circumstances could ultimately lead to a renewed conflict rather than leading to security, peace, and stability. In this context, the present situation in Libya shows some of the worst possible preconditions for elections. Research on elections in post-conflict contexts have constantly found that such polls have the highest chance of achieving where the conflict ended with the defeat of one side over another; where the demobilisation of fighters, peacekeeping operations or effective security institutions prepare the ground for the vote; or where credible electoral and judicial establishments contain the risks of a disagreement over the results. Where such conditions do not hold, elections raise the risk of a relapse into conflict.⁴

Since the fall of Gaddafi, Libyan authorities have been unable to control different regional militias, many of which have, in an ever-changing jigsaw of political allegiances, acted as a law unto themselves, challenging and undermining the Libyan government’s capacity to exert central authority over key cities and regions. Following the conflict, militias that had taken up arms against the former regime and held on to them to fill the security vacuum after it collapsed, accumulated weapons and consolidated control over entire neighbourhoods and areas.⁵ The interim governments have been striving to establish the rule of law, while the militias, clinging to revolutionary legitimacy, want things done their own way with a general disregard for the law, which has become one of the core issues since Gaddafi was toppled in 2011. Thus, providing security has been one of the most pressing challenges for the unity government.



³ Benjamin Reilly. (2015). Timing and Sequencing in Post-Conflict Elections. Retrieved 15 November 2021, from <https://soc.kuleuven.be/crpd/files/working-papers/working-paper-reilly.pdf>

⁴ Kristine Höglund, Anna K. Jarstad & Mimmi Söderberg Kovacs (2009) The predicament of elections in war-torn societies, *Democratization*, 16:3, 530-557, DOI: [10.1080/13510340902884689](https://doi.org/10.1080/13510340902884689)

⁵ Annim Langer and Graham K. Brown. (2016). *Building Sustainable Peace: Timing and Sequencing of Post-Conflict Reconstruction and Peacebuilding* (p. 312-313). Oxford: Oxford University Press.

To this end, on 15 March 2021, Libya's Prime Minister Abdul Hamid Dbeibeh, [said](#) that he plans on unifying Libya's state institutions, including the military. In this respect, the UN has facilitated the Joint Military Committee (JMC), also known as the 5+5 Commission, composed of five representatives each from the two major opposing parties in the Libyan conflict: the previous UN-backed GNA administration in Tripoli and forces aligned with Khalifa Haftar. The JMC was established after the [Berlin conference in 2020](#) and tasked with uniting the country's disparate military institutions and determining what militias would become part of the army and which groups would be excluded. The intent is to provide for the continuation of the ceasefire arrangement and the formation of a unified military. However, so far, the only notable accomplishment of the committee has been to agree on a permanent truce following pressure by the UN.

According to Umberto Profazio "Coming from a respected body like the JMC (also known as 5+5), the Action Plan approved last month is a credible first step to start the process of removal of foreign fighters and mercenaries from Libya. However, the length of the timeframe reportedly adopted to complete the removal process raises serious doubts about its completion by the date of the elections. While it is improbable that all foreign fighters and mercenaries will be removed by 24 December 2021, their presence on the ground will represent a serious limit to free and fair elections in Libya, also considering the lack of rule of law, the presence of various militias and armed groups and the absence of a unified military. There is also some ambiguity here, considering that it is highly unlikely that foreign powers which have used mercenaries and foreign troops to gain more leverage on their local proxies in Libya would voluntarily relinquish this instrument ahead of an unpredictable electoral process, which could also result in a resumption of fighting in the country".

Umberto further observed that "the main obstacle for the reunification of the military institutions in Libya is General Khalifa Haftar, a divisive figure that has been able to stage a political resurrection following his defeat at the gates of Tripoli in 2020. Unexpectedly, his comeback has come in support of the claims of several foreign powers saying that the Libyan National Army (LNA) is the legitimate military of Libya. Egypt, in particular, has a prominent role in this issue and while Cairo may have distanced itself from Haftar following his failed offensive on Tripoli, it is inextricably linked to the LNA, which, in its view, acts as a bulwark against Islamist and terrorist groups along its western border. On the other hand, the infighting in western Libya, where clashes between several armed groups have recently resumed in Tripoli and Zawiya, for example, is indicative of the inability of the authorities to forge a new military and seriously implement a security sector reform that would disband all the militias proliferating in Libya".

Security and stability would encourage Libyans to take part in the process of reconciliation and to support paths of reconstruction and development. However, there has been a lack of will between the two major opposing parties to unify the military institutions during the 5+5 Commission talks. Furthermore, the presence of mercenaries also poses a great security challenge and continues to inhibit progress toward meeting the December 2021 election timeline.

Is there any way out of these challenges?

The elections will only succeed if the wider political, security and economic conditions are right. However, currently, Libya is arguably not in a conducive environment to hold these elections. The country still needs to make significant progress on several key issues, such as the reunification of institutions, consensus on the constitution, economic reform, security sector reform, reconciliation, and transitional justice. Therefore, it might be wise to consider a longer-term strategy of strengthening facilitating conditions before insisting on elections.

Recently, UN Secretary-General Antonio Guterres [stated](#) that these elections should be part of the solution and not be part of the problem. The current president of the UN Security Council, Abdou Abarry of Niger [said that](#) "the conditions of free, credible, democratic, consensual elections, an important link for the return of peace and stability in Libya, have not yet been met". He also highlighted that "foreign fighters are still in Libya, the dividing line of the conflict remains frozen, there is no real reunification of the forces".

For Umberto "The hope is that the elections will produce a much-needed reset in the politics of Libya, whose extreme polarisation in the past decade has created the conditions for the three civil wars (2011, 2014, 2020). Nevertheless, according to the most recent reports, the main frontrunners appear to represent the same class of political dinosaurs that have been responsible for the current state of Libyan affairs: Haftar, but also Fathi Bashagha, Ahmed Maiteeq, Aref Nayed and possibly Abdul Hamid Dbeibah are not exactly new names and would neither offer the reset needed nor the much-needed turnover of the political elite that Libya needs. Turning the page on the past decade would thus appear very difficult and past animosities between these political actors would likely create conditions for a renewed fighting".

Since October 2020, warring factions have engaged in UN-brokered peace negotiations. While it remains unclear whether the parties will reach a consensus on several key issues, including the draft constitution, unification of state institutions and so on. Therefore, the current peace negotiations can thus be seen as an opportunity to negotiate to settle the differences. The consolidation of stability and peace might be difficult to achieve until

there is a lasting cessation of hostilities, reaching a general consensus on electoral law, removing foreign fighters and mercenaries and also providing security across the country.

According to Umberto Profazio “The international community should recognise that a rush towards elections is not in the interest of Libya and the Libyan people. While it is true that there is the need for a reset and of a turnover of the political elite, elections would likely result in increasing political polarisation that could break the country apart. Recent calls for the establishment of a separate eastern government in Cyrenaica are a warning sign and a looming partition would at the best create the conditions for a frozen or low-intensity conflict in Libya. Presidential elections, in particular, can be highly divisive, and result in an inflamed contest between hardliners. The IC should then invest more in creating the proper conditions for having elections, helping Libya establish an inclusive framework that could serve the interest of the Libyan people. Otherwise, the risk is that elections could be a quick fix that would inadvertently plunge Libya into the renewed fighting, with serious for the entire region”.

Conclusion

The circumstances, the timing of the post-conflict elections and the coordination of these elections with the formation of a new constitution, all affect directly the prospect of workable post-conflict stability. Despite the manifold peacebuilding interventions, peace and stability remain fragile in Libya and there is no consensus within the country over the laws that govern the election.

Even though holding elections is critical for the country’s stability and long-term economic success, the UN political dialogue forum, unfortunately, has failed to bring about consensus. Consequently, the country is arguably not currently in a conducive environment for a peaceful political transition owing to continuing disputes between rival parties on several key issues, including on election laws. For these reasons, these planned elections are highly disputed. As a result, some Libyan experts believe that postponing the elections could be better than moving forward, as the present conditions are not right for holding the elections.

Still, there may be a window of opportunity to succeed in bringing rival parties to agree on the constitution. Therefore, the international community and some international actors, including the US, can help lay the groundwork for reaching a consensus on election laws. Therefore, the UN must continue to help facilitate talks between parties; offer technical assistance where it is needed, including the unification of state institutions, in particular, military ones and provide guidance on writing a constitution and preparing for elections. If these conditions are met then there is a greater chance to achieve to have a conducive environment to hold the elections. Otherwise, without settling the differences between rival parties, the elections could only risk a very high likelihood of pushing the country back into turmoil.



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