ELECTING FREEDOM? KEY CHALLENGES FOR LIBYA AFTER THE 7 JULY 2012 ELECTION

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Abstract

Of all the upheavals in the Middle East, the Libyan uprising has been among the more violent and devastating. The removal of Libya's erstwhile dictator and the triumph of the rebel forces, supported by Operation Unified Protector, have provided the Libyan people with the clearest cut to its previous regime that the Arab Spring has yet produced. Yet, Libya is now facing a different sort of challenge: realising the promise of democratic government and personal freedom in an environment where the state's control over the country is incomplete at best.

Now that the first elections have been a success, one of the primary concerns Libya faces is the drafting of the final constitution. The 200 parliamentarians elected on July 7th 2012 are now responsible for appointing the 60-member body that will draft the constitution, a process that requires the entrenchment of rule of law and human rights, whilst maintain a healthily open consultation process. Further crucial priorities are security sector reform, where the international community plays a key role, strengthening the rule of law through establishing clearer communication channels and defined roles between different ministries, and continuing the process of state-building and drawing a line under the past through transitional justice programmes that meet the needs of Libyan society.

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The problem of Asserting Central Authority

While some analysts have pointed out that the country is now facing deep divisions, it is important to keep in mind that Libya has always been more fragmented than most other countries in the region. Its three major regions—Eastern Cyrenaica, Western Tripolitania and Central Fezzan—have maintained their separate identities and cross-cultural interaction was historically limited. Libya's vast territory, its harsh climate and geographical inhospitality have made the development of a single national culture particularly challenging.

The existence of autonomous power centres reluctant to adhere to the regulations of a centralized authority was a major feature of these regions. Neither the Arabs have been able to establish effective control over these territories, nor the Turks and the Italians in their attempt to colonise these areas. A major feature of today's Libyan political and security environment is what can be called *localist thinking*. Libya has for centuries been a place where local notables and power groups merge only in the presence of a common threat. After such a threat is overcome, the situation reverts back.

Visible splits re-emerged in the summer of 2012 following the end of the civil war. This proves to be a challenge for the new authorities to re-assert themselves. Before the international community authorised the allied intervention to stop the imminent mass murder in Benghazi, the country's various militias already struggled to focus on their common goal. In the immediate aftermath of Qadhafi's toppling the unifying glues quickly faded away and the new government was faced with the task of re-establishing itself as the only legitimate holder of means of power. The huge amount of small arms in the country and the various well-organised militias presented a tremendous challenge to new and sometimes inexperienced authorities.[1] The abundance of small arms has already had negative repercussions for the security of the region as the deteriorating situation in Mali demonstrates.[2]

Moreover, the problem of establishing the central government's authority is exacerbated by the influence wielded by various tribes in Libya. Though these tribal allegiances are no longer as influential as they once have been, they can still trump the interests of the central government, creating competing loyalties. Qadhafi, during the early years of his rule, attempted to downplay the importance of the tribal system by abolishing the tribe as a legal and administrative institution. When these measures failed to diminish the tribes' influence, Qadhafi then began elevating some tribes while marginalising others.[3] In the South, tribes have maintained significant political weight: hostility among rival tribes is now a major element of destabilisation in the major cities of the South, such as Kufra and Sabha. In some other areas of the country: there is an overwhelming trust-deficit coming from both sides and the former rebels still struggle to trust even those tribal leaders who eventually came to support the uprising against Qadhafi.

Strong State and Weak Institutions?

Given the challenges the new administration is facing, the legacy of the Qadhafi regime is a major hurdle. The country's administration has been sidelined for decades. The lack of institutional consolidation served Qadhafi well in maintaining control over the state in which virtually every part of the administration remained under his personal control. Qadhafi made no effort to hide the institutional inadequacies of the Libyan state and instead highlighted what he called the Republic of the Masses. A key priority for the new government will be to strengthen the state whilst establishing transparency, rule of law and democratic accountability. Finding the right equilibrium between establishing legitimacy and capacity is a challenge to all states in transition. The National Transitional Council (NTC) has so far had a mixed record: the country's first elections were certainly a success, yet the consolidation of state institutions remains insufficient and the goal of deepening democracy and rule of law is still a significant challenge.

The 2012 Elections – credible and successful

Libya's first free, national elections in 60 years on July 7th a remarkable success for a country that had seen armed conflict only months before: turnout was an estimated 60%, indicative of widespread faith in the democratic process. Moreover, turnout was high in all parts of the often regionally-divided country. The High National Electoral Commission and the UN

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[1] Rachel Stohl, Libya's Missing Weapons, *Stimson Center*, 2012.
[2] Dario Cristiani, Dustin Dehez, Joy Alemazung, The Coup in Mali – A Setback for the EU? *Global Governance Institute*, 2012.

[3] Lisa Anderson, Tribes and State: Libyan Anomalies, in Philip S. Khoury and Joseph Kostiner (Eds.), *Tribes and State Formations in the Middle East*, London 1991, pp. 288-302.

Electoral Support Team coordinated over 20,000 domestic observers and party agents as well as 180 international observers.[4] There was less violence on Election Day than expected, and the Carter Center, an independent election monitor, found the electoral proceedings *credible*.[5] The UN Security Council also endorsed the elections as a success of democratic practice, while UNMSIL positively noted the large presence of both women voters and women candidates.[6] The final results, published a week after the elections affirms this positive impression. The preliminary composition of the 200-seat single chamber General People's *Congress* (*Mutamar Al Chaab Al Aaam*) consists of a relative majority for liberal parties. The National Forces Alliance, viewed as liberal and headed by former interim Prime Minister Jibril, won 39 seats, the highest of any group, while a Muslim Brotherhood-affiliate coalition came second with 17 seats: Jibril's party will now lead a coalition of liberal and centrist parties. The key challenge for the new government will be to consolidate this success, entrenching the democratic process, while ensuring groups who may have been inclined to turn to extra-democratic actions feel that they have a stake in the new system of governance. From the aftermath of the elections, several key challenges emerge: the first is to ensure the parliament's composition is finalised as efficiently and quickly as possible. The second is the coordination of the establishment of new governmental bodies and ministries—most pressing will be the appointment of the 60-person body that will draft Libya's constitution. During this period, it will also be crucial to reflect on what can be improved for Libya's next elections, particularly when it comes to the timely announcement of results. In a nutshell, the challenge that now presents itself is how broad the coalition drafting the constitution can and should be, without undermining the democratic principles that need to be established.

The United Nations' Post Election's Role

Through the United Nations Support Mission in Libya (UNSMIL) the UN has assisted with the country's first elections. Having coordinated the observation of the July 7th elections, UNSMIL must now focus on establishing good working relations with the new government and to enhance coordination and effective administration by the Ministries and Departments.

After the election, UNSMIL now has an opportunity to concentrate on the much-needed reform of the security sector – which is needed to strengthen legitimacy and allow for the full control of the state – that has been a recurrent challenge since the February 17th revolution. Clarification of the role of the Ministry of Interior to complete police reform and appropriate police training in compliance with new legislation will be a significant task in which the new governmental authorities, UNSMIL and the international community must work together. The lingering question, despite the success of the country's first elections, of how to deal with and incorporate the remnants of revolutionary fighters who may currently feel they have little stake in the new parliamentary democracy. A functioning army, with civilian oversight and democratic control, is similarly crucial to draw a line under the Qadhafi-era authoritarianism and consolidate the state-building process: UNSMIL has been working alongside Libyan and international experts to develop a Defence White Paper which identifies the current main challenges and outlines the future military structure and remit, and these plans should begin to be realised after the elections.

Libya's Future

One of the primary concerns Libya faces is the drafting of the final constitution. The 200 parliamentarians elected on July 7th 2012 are now responsible for appointing the 60-member body that will draft the constitution, a process that requires the entrenchment of rule of law and human rights, whilst maintain a healthily open consultation process. The interim constitutional declaration of the NTC in 2011 was necessarily tentative: with the NTC's legitimacy so contested, the document concerned itself primarily with outlining a timetable for how the constitution will finally be adopted. One of the tasks ahead of the 60-member constitutional body appointed by the new Parliament will be to navigate this timeline in the face of new challenges, and to resolve the inherent discrepancies in the different bodies of law, from shari'a to human rights statutes, proposed by various interest groups who will lobby on the constitutional drafting process.

[4] Briefing by Mr Ian Martin, SRSG for Libya at the UN Security Council, 18 July 2012.
[5] Carter Center Finds Libya's Tabulation Process Credible, *Carter Center*, 2012.
[6] UN Envoy Praises Women's Electoral Role, 28 June 2012. The Tripoli Post.

A second challenge facing Libya's new Parliament will be the establishment of new electoral laws and frameworks, learning from the experience of these first elections. Some analysts have suggested that in future elections Libya would benefit from an electoral system that encourages nation-wide electoral alliances across the regions: this election rewarded parties and movements concentrated in one part of the country.[7] This is especially pertinent considering the Qadhafi-era marginalisation of the periphery and the influence this has had on the proto-federalist and proto-separatist voices emerging after the February 17th revolution.

Related to the consolidation of democracy is the further establishment of rule of law. The International Center on Transitional Justice criticised the interim government for falling short on transitional justice efforts: as the Parliament forms, it is imperative that Libya no longer stalls on implementing a coherent transitional justice framework. Analysts are divided on what course Libya should take, and the analytical divide between those in favour of formal prosecutorial procedures and truth-telling or reconciliation procedures has played out in the debate on Libya: authors such as Tupaz and Wagner argue that "what Libya needs today is a media-genic war crime court".[8] Taking the starting point from Roht-Arriaza and Mariezcurrena's advancing of the 'transitional justice divide' to move beyond 'truth versus justice' dichotomies, Libya's focus, as the International Center on Transitional Justice advises, should balance formal procedures with societal-level acknowledgement and reconciliation initiatives.

Finally, security sector reform is now imperative to draw a line under Qadhafi-era practices of authoritarianism and maintain viable security for Libyan citizens. UNSMIL can contribute to security sector and governance reform, but it also requires the Parliament passing relevant legislation on the security sector, clarifying the current roles of the police, the armed forces and domestic security forces, as well as initiating the process of appointment of new judges trained in the new legislative framework. One of the new roles of the international community should therefore be to give recommendations to the new governmental institutions on how to coordinate and internally monitor governmental work effectively. This is also a concern for the constitutional body drawing up the eventual structure of governance and institutional power-balance. Libya's first elections since the 2011 revolution were a remarkable success: the challenge ahead is to consolidate its success to allow democracy to take root in Libya.

Recommendations

The immediate key post-election tasks are to facilitate the drafting of the constitution, to consolidate the legitimacy of the new regime through an integrated transitional justice process and prioritise thorough and transparent security sector reform.

In the security sector, two initiatives should be taken forward: Firstly, enhancing security sector governance, i.e. consolidating democratic oversight in parliamentary structures. Secondly, initiating the integration of the militias in the country's armed forces or in organised forms of civil society to mediate situations of conflict without violence.

A major challenge for domestic political actors over the coming years will be to shift from focusing on the local level to debates and interests at the national level, overcoming tribal differences. Alongside, Libya's long-term stabilisation requires diversification of the economy and major discussion about the distribution of resources by the government.

Taking a step back from the promising outcome of the elections and the Arab Spring more broadly, it is now for society to organise their interests, for the government to be accountable and for the UN and the European Union to stand ready to assist. One year after NATO's campaign in Libya, challenges persist, but the thrust of the election offers a great opportunity to Libya.

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[7] Sean Kane, Libya's Constitutional Balancing Act, *Foreign Policy*, 12/14/2011.
[8] Edsel Tupaz, Daniel Wagner, Libya's Constitutional Moment, *Huffington Post*, 2012.