Observatory on Contemporary Crises

Libya's elections: The day after

By Barah Mikaïl

Libya faces constant instability, even when circumstances seem to say otherwise. Any period of calm ends up being deceiving. In 2020, Libyans were still fighting against each other, with most of the conflict being concentrated in and around the capital Tripoli. Since then, diplomatic efforts (the Berlin and the Paris conferences, the Morocco talks, the Geneva processes, among others) together with an apparent responsible attitude from traditional regional and international spoilers seemed to bring a welcome recess. But the situation that prevails ahead of the coming presidential and legislative elections is further proof of the fact that tensions and their potential dramatic developments generally take the lead.

Successful elections would favor stability. Nonetheless, Libya is still reigned by divisions, rivalries, and power struggles. The only point in common between Libya's most influential and active political figures is their focus on presidential elections to obtain more – even absolute – power. But when it comes to implementing solutions to Libya's problems, candidates are less clear. Moreover, there is no assurance that they would accept and recognize election results if they lost.

Libya needs stability, and therefore it needs elections. Sovereignty and legitimate institutions are the way forward to shift from divisions and conflicts to a national project that will address the socioeconomic and the security needs of Libyan citizens. Insecurity is part of the daily life of Libyans, together with electricity cuts, fuel shortages, lack of access to basic services and products, as well as general inflation. The situation that prevails in the Southern province of Fezzan (Southern part of the country) is one of the most dramatic ones, where basic social services are lacking, infrastructures are underdeveloped, insecurity is the norm, and all forms of trafficking exist.

Libya's problems go very deep, and presidential and legislative elections will not solve them overnight. Yet defining a strong national project is a pressing priority. At the same time, there cannot be a strong national project without certain preconditions, namely the existence of solid and unified political, economic, and military institutions with

clearly defined roles. If presidential and legislative elections secure their existence, it will be an important step. If not, further alternative options will have to be explored.

Elections in Libya either must take place or be substituted by a viable option. The country is weak, with no strong institutional structures to rely on; militias are in a position of power, and while many of them have set aside their grievances, Libyans are sitting on a powder keg.

A similar trend of political fragmentation exists: Prime minister Abdelhamid Dbeiba and President Mohammad al-Manfi, Libya's current official leaders, benefit from international support, but they are not deemed legitimate by all actors. The main driver of the different dominating legal and political controversies weeks ahead of the elections - i.e. divisions between Tripoli-based institutions and the Tobrouk-based House of Representatives- is the struggle for power. The same situation prevails in the economic field, with for example the National Oil Company being the regular target of the oil minister in an attempt to get rid of its CEO.

Libya is a country of paradoxes, where elections are needed while they will not solve problems overnight. But as we are getting closer to the official starting date, whereas the logistical aspects seem to advance, the legal issues, as well as the will and the readiness of the average Libyan citizen to vote, are less certain.

Ready or not?

The Libyan context has several specificities: there is no strong rule of law, institutions are not always functional, and political representativity is deficient. Besides, whatever happens, Libya's elections most certainly will not achieve traditional Western standards.

Nonetheless, some institutions have had their say. For example, the High National Elections Commission (HNEC), headed by Mr Imad al-Sayeh. Al-Sayeh's lack of consensual approach is noticeable: the little distance taken in the recent past with the House of Representatives and its decisions renders him suspicious in the eyes of those who oppose Eastern-based institutions, in general, and the head of Parliament Aguila Saleh and strongman of the East Khalifa Haftar, in particular.

At the same time, al-Sayeh, whose action is to be read together with the action of tribunals and their decisions on candidacies, is a key actor as he heads the institution that has the authority to regulate how elections will be held. The applicable body of law is ready. However, uncertainties remain in relation to the number and the name of the candidates that will be able to run, the absence of consensus on the details of the presidential and the legislative calendars, and the expected turnout. Furthermore, any

rejection of the election and/or of its results by significant actors could undermine the political process as a whole.

The HNEC believes that the turnout for both presidential and legislative elections could be high, with around 2 million persons expected to register in electoral lists. But as a matter of controversy, some accuse the HNEC to draw on a list that had been used for the past 2014 elections. Such accusations could contribute to the disruption of the process.

Another reason that keeps the HNEC optimistic is the high number of persons who wish to run for these elections. On November 22, 2021, the day the registration for presidential elections was closed, the HNEC had registered 73 candidates in its Tripoli representation, 12 in Benghazi and 13 in Sebha, out of which 65 were then confirmed. The difference in numbers between regions is not only due to the population density; it also reflects Tripolitania's strong interest for presidential elections, Haftar-ruled Cyrenaica's general reluctance, and the lack of trust in the Southern-based Fezzan province, where people constantly say they feel excluded from the national process.

A similar trend of high numbers of candidates occurs in the context of the legislative elections and the future renewal of the 200-seat parliament. Registration for running is open until the December 17, 2021, but as of November 22, 2021, a total of 1,766 persons had already registered. The president of the HNEC expects a total of around 4,000 candidacies being declared. Furthermore, contrary to presidential elections, the number of candidates for legislative elections from Cyrenaica exceeds the number of candidates from Tripolitania and the Fezzan. This can be explained by the fact that citizens believe that they have more chances of becoming deputies (members of parliament), hence have their voices heard and their calls for action implemented.

Thus-far, the election that really counts is the presidential one.

First, because its first round is scheduled on December 24, 2021, followed by a second round that should coincide with the first round of legislative elections. This means that Libyans would know who their president is before they know who their deputies are.

Second, the president of Libya will be a strong national actor, while so far, this trait has belonged to the Prime minister. Amidst an absence of constitutional clarity, the current organization of presidential elections before the legislative will automatically give the chief of State the upper hand politically speaking. Whether the next president remains in a position of force will also depend on the way he deals with the other centers of power.

We need to be cautious and observe how the ongoing controversies evolve.

First, candidates such as Khalifa Haftar or Saif al-Islam Gaddafi are problematic because the Libyan society has polarized feelings towards them. The strong tensions that have risen at the end of November 2021 after Libya's Election Commission rejected Gaddafi's candidacy were very telling; and so were the military moves undertaken by the Libyan National Army (LNA) after a military Court in Misrata issued a death sentence in absentia against Khalifa Haftar.

Second, even Western-based militias do not oppose the elections. However, this does not mean that they would abide by any result. Equally and independently from whether elections are held or not, Khalifa Haftar and the LNA are strong enough to keep imposing their sovereignty and their will on the population of Cyrenaica. As for the South, it is further fragmented and depends more on locally rooted logics; its population wants to be represented at a national institutional level, but not at any price.

Third, whenever presidential elections are finally held, we should not overlook the possible consequences of a victory for Abdelhamid Dbeiba. The current Prime minister has exploited a loophole to run for elections; yet, in doing so, he is taking the risk of being praised by a part of Libya's population and rejected by those who may really make the difference, that is Libya's key institutional representatives.

Finally, while former Interior minister Fathi Bachagha is considered one of the strong candidates, his political strategy has not resonated with Libyans in general. Fathi Bachagha has secretly taken steps towards rapprochement with head of parliament Aguila Saleh and Khalifa Haftar, yet this move has been motivated by his aversion to the Dbeiba government, as well as his intention of assuming transitional power if presidential elections were not to be held. Though not officialized, this undisclosed deal is known in Libya and does not have the backing of the Libyan population.

In sum, even if Libyans would be ready to vote, they almost certainly will not agree on the results. This leaves open any possible scenario, including more problems and tensions.

Voting or not… the day after

Three main scenarios can be summarized as follows:

Scenario 1- Presidential elections are successful and their results are recognized by all Libyans

This first scenario is the least realistic one. Elections are officially at the door, but there are many serious obstacles for a smooth process to take place. This is clearly exemplified by the radical military move that Khalifa Haftar has taken, not only as a response to the death sentence issued against him by a military Court in Misrata, but also towards the statements pronounced made by Khaled al-Mishri, head of the High Council of State (HCS), rejecting the participation in the elections of those he sees as political enemies. Tensions already exist, and their potential implications should not be overlooked. Elections will generate more tensions and rejection, not only from part of the candidates, but also by a portion of the Libyan population. This situation paves the way to the following scenario.

Scenario 2 - Presidential elections lead to controversial results

Once presidential elections are held, most likely, people unhappy with the results will reject them. Indeed, there is very little room for political negotiation in the Libyan scene: the presidential position will be key and will guarantee power to the winner, in a "winner takes it all" scenario.

In addition, there are multiple layers that must be considered. For instance, if current PM Abdelhamid Dbeiba would win, he would probably be open to negotiate a consensual political formula with his main rivals, including the East and the South. Yet, it is not clear to what extent Khalifa Haftar would agree to a blueprint where he would not have the upper hand on political and/or military matters.

On another hand, a victory for either former Interior minister Fathi Bachagha or Marshall Khalifa Haftar would probably leave room for a political alliance limited to them and their allies only. The implicit deal that both Haftar and Bachagha had agreed on with Aguila Saleh in Cairo could then lead to a power-sharing formula over executive, military, and legislative positions. Opposition to this scenario is also to be envisaged, be it at a military/militia level or among the public opinion. Furthermore, this formula would theoretically not hold long considering that legislative elections will lead to a renewed parliament and a new Prime minister. Potential instability is also foreseen in this scenario for Libya.

The conclusion would probably be the same if a less influential actor would win the presidential elections. Consensus does not seem feasible, and the new President would have to take sides with one of the parties to the conflict; or end politically crushed due to rivalries. In both cases, the stakes are high for the continuance of disputes, as well as the return of tensions and general instability.

Scenario 3 - Presidential elections are postponed

Although the international community wants elections to be held on time, postponing the coming Libyan elections is still a possibility, as we can understand from statements and/or fears expressed by both Libyan and UN key representatives. If elections are finally postponed, and this decision is backed and justified by the HNEC, it remains to be seen whether this situation would generate additional problems or not for Libya. Candidates would either criticize or understand this decision, depending on the gains that they expect from elections.

While their organization is needed, it is also true that presidential elections are synonym of polarization, and there is risk for this to have an impact on the legislative elections that are meant to follow directly. Postponing presidential and legislative elections up to when the Libyan context can benefit from better prospects would be an option. If not, then it may then be a desirable alternative to hold legislative elections before presidential elections. In the current context, and as long as presidential elections do not take place, the large number of candidates and their naturally diverse ideologies and origins make legislative elections potentially less polarized and less controversial.

Recommendations

Lacking a sound foundation, the situation in Libya is volatile and it can degenerate very quickly.

Elections alone will not solve Libya's structural and deep-rooted problems. In the best-case scenario, solutions to issues and challenges would be long to come, in a context where tensions prevail; in the worst-case scenario, presidential elections and their many disagreements could pave the way to the reemergence of deep rivalries and thus lead to further violence. The high tensions that Libya is already witnessing ahead of elections do not point to an optimistic future.

But Libya also depends on the support of foreign actors and the international community. Some may criticize this state of facts, arguing that Libya needs to be independent: however, a Libya left to its own devices would crumble rapidly.

In this context, it is important that decisions are based on pragmatism and address the most pressing priorities. Libya has experienced a decade of instability and war and another decade of violence could easily follow. The recommendations outlined in this brief seek to limit the return of another episode of violence and assist the country to stay on the right track. The time factor and the strong determination of the international community are crucial elements.

Urgent priorities

- *It is better for presidential elections to be postponed*

Presidential elections are important, but they add to polarization in the country. Therefore, they need to be considered later, for the sake of saving the country from further divide;

- *Put priority on the organization of legislative elections*

A healthy parliament is a diverse legislative body where numerous regions and points of view are represented. To achieve this, Libyans need to designate their deputies before their President, as a way to guarantee a smoother electoral process and less controversial results for elections;

- *Put socioeconomic perspectives at the center of the agenda.*

It is critical that basic needs are guaranteed for Libyans, especially – but not only – in underdeveloped regions. Securing this is far from easy, and it needs time: but working correctly on the modalities needed to assist Libyans would be an efficient way to move forward. Assistance plans are ready, but they need to be implemented and transformed into authentic sustainable development plans. This would strengthen Libyans' trust in institutions and governance, thus leading to a positive political environment.

Mid-term priorities

- *Put the priority on security considerations*

Since the so-called "war on Tripoli" (2019-2020) ended, it may seem as if the security situation in Libya has improved, but the reality is that it has not. Libyans continue living in poor security conditions, and the apparent safer situation in the East and West compared to what was before may be misleading. The situation is even worse in parts of the Fezzan, including unsafe circulation between towns and villages and an intense smuggling activity. An important matter in this area includes corruption, hence the need to put an end to the complicity between some security officials and smugglers. Libyans put as one of their priorities their need to move safely from town to town and to live without fear in their day-to-day lives.

- *Put more focus on constitutional perspectives*

Only a new constitution that includes clear definitions of the Libyan State and institutions can help unfold peaceful steps. An *ad hoc* committee tasked with drafting a new Constitution needs to be formed. A formula similar to the Libyan Political Dialogue Forum, where 75 representatives from all Libya were brought together, could be

followed for the creation of a constitutional committee. The new Constitution would then be submitted to popular referendum - with a clear role defined for the Parliament within the process. This constitution must clearly define institutions as well as precisely determine the nature of the Libyan regime system: presidential, parliamentarian, federal, etc. Putting in place unified institutions would not necessarily follow directly, since they would need a safe environment to prevail. But with a new constitution, Libyans would have a legitimate and consensual basis with a clearly defined horizon that they could build on.

- *Focusing on military perspectives is key*

There are many obstacles to bringing an easy solution to Libya's military prospects. First and foremost, the fragmentation of the Libyan security and military scene. Militias, in their various forms, exert power all over the country. Equally problematic is the presence and the role of paramilitary foreign groups such as the Wagner, combatants from Chad, Sudan, and Syria, as well as regular soldiers (Turkish, Russian…) that are allegedly present in Libya. That said, all through 2021, the 5+5 committee, despite some limits in its actions, proved to be a reliable body when it comes to taking military decisions that serve de-escalation. Its action, combined with the contribution and involvement of the UN and the limitation of foreign negative interference, could pave the way forward to a more positive situation in the long run. However, there is a pressing need to work on the plan to create Libya's army based on a combination of Security Sector Reform and diplomatic influence.

Getting rid of the rule of the military and militias will not happen overnight. But this does not make it less important to clearly define the nature of the Libyan State and the exact role of its institutions. This is a key prerequisite for building a peaceful and functioning state. Elections are important, but they are one piece in the whole Libya puzzle.

Libyans want change towards the better, but they are building on a decade of divisions, rivalries and struggle for power that their leaders are mostly responsible for. Elections are an important step towards stability and constructiveness, though they need to come together with strong advances on some basics that are crucial for Libyans, and that relate to human security taken as a whole.

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