Libya: Elections at any cost?

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EXECUTIVE SUMMARY

General elections in Libya are scheduled for December 24, 2021. But competition between rival political factions has prevented agreement on the constitutional and legal framework for the elections. This situation has allowed the Speaker of the House of Representatives to unilaterally issue a law on presidential elections.

The lack of consensus on a legal framework increases the risk of violence and boycott as well as the likelihood that losers will not recognize the results. An equally alarming scenario is that if the elections do not take place, it would provide an opportunity for actors on all sides to exploit the situation, creating a risk of institutional division.

Western governments insist on holding elections and will be reluctant to question the results if there are major irregularities. This approach will help delegitimize the process, plunging Libya back into crisis.

The best option would be for Libya to benefit from further international mediation so that a legal framework recognized by the LPDF, HoR and HCS can be put in place. Once this process is complete, the election date will have to be postponed for several months to allow for the necessary preparations.
General elections scheduled for December 24, 2021, were to produce Libya’s first united, democratically elected government since the country split between eastern and western-based authorities in 2014. But brinkmanship by competing political factions has forestalled agreement on the constitutional and legal framework for the elections, making it unlikely that they will be held on time, and turning them into a deeply divisive process. The stakes are high: a presidential election would be a winner-takes-all contest between camps that until June 2020 openly fought each other.

An election on a contested legal basis would increase the risk of violence, boycotts, and the likelihood that the losers reject the results, provoking a renewed political split between eastern and western-based authorities. Crisis also looms if the elections do not take place: public opinion overwhelmingly demands elections, and their postponement would offer mobilizing potential for actors across the spectrum seeking to exploit the situation. With or without elections, risks abound that Libya returns to a state of institutional division.

The December 24, 2021 elections were set to be the culmination point of the UN-led political process launched after the end of Libya’s latest round of civil war in mid-2020. That war began with an attempt by Khalifa Haftar’s Libyan Arab Armed Forces (LAAF) to seize the capital Tripoli in April 2019, and ended with the LAAF’s defeat at the hand of Turkish-backed western Libyan forces in June 2020. Since then, a balance of power has prevailed between the Turkish military presence in the west and an unofficial Russian presence at LAAF bases in central and southern Libya. Notwithstanding the ceasefire brokered by the UN in October 2020, it was this balance of power that prevented a return to fighting, while at the same time cementing Libya’s division into competing military camps.

Despite these divisions, the UN-led political process was initially unexpectedly successful. In November 2020, the Libyan Political Dialogue Forum (LPDF), a body of 75 personalities picked by the UN, agreed on a roadmap towards elections. As a key step, the LPDF in February 2021 chose a three-member Presidency Council and a Prime Minister, Abdelhamid Dabeiba, to head a Government of National Unity (GNU). In March 2021, the GNU was endorsed by the House of Representatives (HoR), the parliament elected in 2014 marked by deep internal divisions. With this vote, the GNU became Libya’s first unified government since 2014. The parallel eastern government dissolved itself.

However, the settlement that created the GNU has inherently limited the potential for more substantial progress. The GNU’s formation relied on placating numerous factions with government positions without addressing any of the conflict’s core issues. The most important of the latter was the creation of a unified military command. Rival command structures have persisted; Haftar has declared that he refuses to recognize the GNU’s authority; and the GNU has made no effort to tighten control over the armed groups nominally operating as its security forces. Meanwhile, competition over access to state funds through the GNU has predictably intensified. Haftar and eastern-based factions in the HoR have grown increasingly adversarial towards the GNU in their quest for state budgets.

Among the preconditions set by the LPDF roadmap for elections, the unification of the military has therefore remained elusive, while the formation of the GNU has created vested interests in maintaining the status quo. Prime Minister Dabeiba, whose selection by the LPDF had been mired by vote-buying allegations, has focused on building a patronage network in the HoR, in municipalities and among political factions, hoping to postpone elections and stay in office. To boost his purchasing power, Dabeiba has closely allied himself with the governor of the Central Bank of Libya (CBL), Al-Siddiq al-Kabir. Prior to the GNU’s formation, al-Kabir’s hold over CBL had been increasingly fragile; Dabeiba’s backing has allowed al-Kabir to entrench himself and stall progress towards the reunification of the CBL, which remains split between east and west.

Dabeiba, in turn, has used his access to CBL funds to woo political allies and the wider public with a turn to populism. He has dedicated billions of dinars to construction and reconstruction projects, aiming to convey the image of a leader steering Libya towards a renaissance. He has also ordered the payment of social assistance subsidies, raised public sector salaries, created a LD1bn ($220m) fund to financially support young couples willing to marry, and announced a large-scale grant scheme for young home-builders. These measures transparently serve Dabeiba’s ambition to stay in power.

While Dabeiba has successfully cultivated popular support, this strategy has also set him on a collision course with rival political players, including Haftar and HoR speaker Agila Saleh. The veneer of political unity that covered the GNU’s formation has long since faded, as demonstrated by Saleh’s attempt to withdraw confidence from the GNU, and an open crisis between Dabeiba and eastern members of the GNU. Polarization has returned to the fore, crystallizing around the dispute over the planned elections.

"The stakes are high: a presidential election would be a winner-takes-all contest between camps that until June 2020 openly fought each other."
The Deadlock

While most actors routinely claim they support holding elections on December 24, 2021, many actually oppose them. Those supporting elections disagree on their modalities. Among the key points of contention are whether there should be presidential and parliamentary elections or only the latter; what competencies a president should have; whether presidential elections should be postponed until a permanent constitution regulates the powers of the president; and who should be allowed to run if presidential elections are held.

The dispute over these issues opposes three groups of actors: those seeking to bend the legal framework in their interest, gambling that they will win the elections; those harboring genuine fears of what would happen if their adversaries seize power; and those seeking to exploit the dispute between the former two groups in order to prevent the elections from happening at all. Proponents of a middle way that would assuage the fears associated with the elections have been marginalized in this struggle.

UNSMIL (the United Nations Support Mission in Libya) initially counted on the LPDF, which it had itself created, to agree on a constitutional basis for the elections that would enjoy buy-in from key political stakeholders. But the LPDF roadmap remained vague as to the exact path towards the adoption of the legal framework for the elections. It vaguely implied that the constitutional basis drafted either jointly by the HoR and the HCS or by the LPDF would then be adopted by the HoR, which would also approve the necessary electoral laws.

However, HoR and HCS members, a majority of whom have long shown disinterest in brokering solutions that would see them lose their own 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. UNSMIL’s efforts at brokering common ground were haphazard, partly owing to Special Envoy Ján Kubiš’s dismissive attitude towards the LPDF. Members of the forum heavily criticized UNSMIL for failing to mediate and allowing the creation of ever new committees, instead of working with the proposal of the LPDF’s legal committee and putting its points to a vote.

As Kubiš abandoned the LPDF in favor of the HoR in pursuit of the legal framework, they repeatedly requested UNSMIL to reconvene the forum, to no avail.

The deadlock over the constitutional basis opened up an opportunity for HoR speaker Agila Saleh to unilaterally issue a law on presidential elections in September 2021. The law was drafted by a small group of HoR members allied to Saleh and Haftar. 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.

Saleh’s law could have been a brief interlude in the negotiations. But Saleh had evidently coordinated with Kubiš, who immediately endorsed the law, thereby turning it into the default option for the elections. The HCS and various western Libyan politicians rejected the law, though many others remained silent, and several prospective candidates explicitly endorsed it.

To the presidential elections law, the HoR in October added a law on parliamentary elections on which only a minority of HoR members voted, after a cursory debate. Contrary to the LPDF roadmap’s requirement that presidential and parliamentary elections be held on December 24, the law stipulates that the HoR will determine the date of the parliamentary elections thirty days after the president has been elected. The law thereby leaves the door open for the HoR to stall on parliamentary elections, particularly if
Two other potential candidates are also the Haftar takeover. HoR and HCS who do not want elections at backing for Saleh's law therefore risks bol-electoral law, and more broadly to presiden-
This helps explain the opposition to Saleh's fear exclusion or worse if he comes to power. powers. They include many of those who were elected as a president with wide-ranging constituencies – particularly but not only in western Libya – who are deeply worried about the consequences of Haftar being elected as a president with wide-ranging powers. They include many of those who opposed Haftar's Tripoli offensive and must fear exclusion or worse if he comes to power. This helps explain the opposition to Saleh's electoral law, and more broadly to presidential elections that allow Haftar to run. The UN backing for Saleh's law therefore risks bolstering the position of those in the GNU, the HoR and HCS who do not want elections at all, by mobilizing constituencies fearful of a Haftar takeover.

Two other potential candidates are also the object of intense controversy. One is Saif al-Islam al-Qadhafi, who has not appeared freely in public since his father's demise in 2011, but is still considered a frontrunner in many opinion polls. His candidacy would likely provoke boycott calls by actors fearful that the former regime could return. A candidacy of Prime Minister Dabeiba would also add to the contestation around the vote's legality: like all those who put themselves forward for the GNU, Dabeiba formally committed not to run in the next elections. Indeed, behind closed doors, Dabeiba and his entourage long argued that the GNU's continuation in office was the best way to stabilize Libya – contradicting Dabeiba's public support for elections. More recently, however, Dabeiba's growing popularity has led him to consider running for president himself. Should he do so, his rivals could use his violation of the LPDF roadmap as a pretext for withdrawing and preventing the vote from taking place.

Even if Dabeiba decides to back Saleh's electoral framework in the hope of winning, it is uncertain whether that framework can gain sufficient support for elections to be held. Equally unclear is whether broader consensus on a legal basis can still be found. The dispute over the elections has escalated partly because actors simultaneously seek to shape the electoral playing field to their advantage and prepare to exploit the crisis that will erupt if the elections do not take place. If the elections do not take place, he either wins and seizes power or loses and contests the legality of the vote, restricting the authority of the elected president to western Libya. If they do not take place, Haftar is in a much stronger position to attack the GNU as illegitimate and pursue a confrontational course. His defeat in Tripoli widely discredited Haftar's pursuit of power by force, and violent mobilization against political adversaries lost much of its appeal during the process that produced the GNU. Renewed crisis in the absence of elections would recreate the conditions for Haftar to mobilize against his adversaries.

**Ambitions and fears**

Haftar's specter has loomed large in the electoral deadlock. He has announced his support for presidential and parliamentary elections, warned of a return to war if they do not take place, strongly hinted at his intention to run, and shaped Saleh's presidential elections law through his allies in the HoR. At the same time, his forces are in a position to strongly distort the results in areas under their control. This has alarmed constituencies – particularly but not only in western Libya - who are deeply worried about the consequences of Haftar being elected as a president with wide-ranging powers. His candidacy would likely provoke boycott calls by actors fearful that the former regime could return. If the elections do not take place, Haftar is in a much stronger position to attack the GNU as illegitimate and pursue a confrontational course. His defeat in Tripoli widely discredited Haftar's pursuit of power by force, and violent mobilization against political adversaries lost much of its appeal during the process that produced the GNU. Renewed crisis in the absence of elections would recreate the conditions for Haftar to mobilize against his adversaries.

**Electoral pitfalls**

As the deadlock over the legal basis for the elections has deepened, international insistence on the December 24, 2021 date increasingly amounts to a support for elections to be held under any circumstances. But the absence of agreement on the legal basis for the elections requires a reassessment of the chances a vote would have to avert a new crisis, rather than provoking an even more serious one.

The current situation in Libya presents some of the worst possible preconditions for elections. Studies of elections in post-conflict contexts have consistently concluded that such elections have the greatest chance of succeeding where the conflict ended with the victory of one party over another; where provisions for power-sharing limit the stakes of the election; where the demobilization of fighters, peacekeeping operations or strong security institutions prepare the ground for the vote; or where credible electoral and judicial institutions contain the risks of a dispute over the results. Where such condi-
On every single one of these points, Libya scores badly. Libya’s last war ended with a stalemate that is precariously held in place by a foreign military presence. The struggle for power is fundamentally unresolved, raising fears among the prospective losers of an election that their former military adversaries will annihilate them if they come to power. The proposed election of an all-powerful president further raises the stakes of the process, turning it into a winner-takes-all contest. There are no professional security forces to safeguard the process. The veneer of state security institutions hides a reality of armed groups whose leaders are acutely aware of the stakes of the elections, and should be expected to influence the vote through violence, intimidation, and ballot stuffing. The forces able to do so on a large scale are those of a leading prospective presidential candidate: Khalifa Haftar. The credibility of the High National Elections Commission (HNEC) is already suffering from accusations that HNEC chairman Emad al-Sayeh is doing HoR speaker Saleh’s bidding on electoral legislation. There are widespread fears of massive fraud fueled by recurrent rumors that voter registers contain a large number of fake ID numbers. Judith institutions have lost their credibility by becoming instruments in the political struggles; an ominous precedent was set when the Supreme Court ruled in 2014 that the legal basis for the HoR elections was void, only to be ignored by the HoR. The media landscape is heavily polarized and dominated by outlets directly related to actors in the conflict; disinformation is rife. While elections certainly would be marred by irregularities and fraud, allegations to that effect are equally certain to be even more widespread.

These conditions cannot be markedly improved in the foreseeable future. While publicly reiterating their support for free and fair elections, Western diplomats privately acknowledge that such standards are unrealistic. Officially, the UN-led process relied on the premise that military reunification would help pave the way for credible elections. In practice, the aim of military reunification was unrealistic as long as Haftar’s power structure persists.

When added to the deeply problematic overall circumstances in which elections would take place, the absence of even minimal consensus on the legal framework should raise serious doubts that the elections can serve their intended purpose. As seen by UNSMIL and Western governments, that purpose is, above all, to lead to the formation of a united Libyan government that enjoys popular legitimacy. The hope is that a popular mandate would allow this government to overcome remaining institutional divides – notably by unifying the military and the Central Bank – and compel foreign forces to leave the country.

A more immediate objective is to prevent the outbreak of conflict that looms if the elections do not take place. The fear of a return to fighting emanates above all from Haftar’s repeated warnings that the postponement of elections would mean war. More broadly, a delay is risky because the LDPF roadmap has raised expectations that the elections will take place, and opinion polls show that the demand for elections has overwhelming popular support. Not only Haftar, but also other prospective candidates could therefore mobilize against the GNU in the event of a delay, thereby provoking a crisis.

Realistically, however, the elections stand little chance of producing a government with a strong popular mandate and nationwide support. And instead of preventing the outbreak of conflict, they could catalyze it. The risks of elections spawning conflict and a government with weak legitimacy are present even in the best case, but substantially increase if the legal framework is intensely contested.

Scenarios with and without elections

Outlining realistic worst case scenarios helps highlighting the challenges facing any electoral process under current conditions. One such scenario would be the indefinite postponement of elections amid a persistent deadlock over their legal basis. This would involve escalating brinkmanship, including unsuccessful attempts to move towards elections on the basis of the HoR’s contested legislation, provoking displays of force – and possibly violence – by both proponents and opponents of a vote. Come December 24, those actors claiming to support elections could then ally to declare the GNU’s mandate over. This would offer an opportunity for Saleh and parts of the HoR to form a parallel government – albeit one lacking domestic and international legitimacy, since it would be highly unlikely to gather the necessary 120 votes for a formal vote of confidence. The GNU could lose its main advantage over the parallel government if Haftar’s forces revert to blocking oil production in areas under their control, thereby cutting off the GNU’s revenues. While the foreign military presence would prevent a relapse into all-out civil war, the conflict between proponents and opponents of elections could provoke serious violence between western Libyan armed groups, including in Tripoli. This would see armed groups supporting the GNU fighting against those allied with presidential candidates. Dabeiba’s continuation in office therefore does not offer stability. Even when

“There are no professional security forces to safeguard the process. The veneer of state security institutions hides a reality of armed groups whose leaders are acutely aware of the stakes of the elections, and should be expected to influence the vote through violence (...).”
acknowledging that Dabeiba’s popularity has soared, the GNU’s continuation would be certain to provoke a serious crisis.

Worst case scenarios are also conceivable in the event that elections do take place. Voting on the current, contested legal basis could provoke widespread boycott and abstention, as well as violence between supporters and opponents of the vote, particularly in western Libya. This would be particularly likely to happen if Haftar or Saif al-Islam were to run. Should Haftar win the elections and international recognition, this would be certain to trigger the overwhelming rejection of the results in western Libya. The elected government would then represent one party in a new conflict, with a rump GNU likely maintaining itself in office in Tripoli. Haftar could use his international recognition to demand the withdrawal of the Turkish military presence from Libya, thereby erasing the main argument made by Turkey to defend that presence: that it was based on an invitation from an internationally recognized government. Haftar’s foreign supporters could see this situation as an opportunity to alter the balance of power on the ground, provoking renewed civil war.

Even if major violence and boycotts are avoided, elections held on the current controversial legal basis would be unlikely to produce results that are accepted across the country. Following widespread accusations of fraud and unfair campaigning conditions, the losers could overtly reject the results. Opponents of the vote would then receive support from the losers in rejecting the elections as a whole, pointing to the contested legal basis. Should Haftar win, rejection would come from many western Libyan constituencies. In the event of a victory by a western Libyan candidate – such as Fathi Bashagha, a former interior minister with a power base in Misrata – a similar reaction could come from eastern Libya, including from Haftar himself. Should Dabeiba win, the losers could easily contest the legality of the vote by pointing to his prior commitment not to run. If the elections take place on the basis of current HoR legislation, the losers of the presidential election would likely prevent parliamentary elections from being held in areas under their control. At best, the result would be the de facto limitation of the new government’s authority to parts of the country; at worst, two parallel governments would form, returning Libya to a situation of split sovereignty.

A best case scenario that currently looks unlikely is that of a renewed international push to mediate a legal framework that enjoys minimal consensus between the LPDF, the HoR and HCS. Once that consensus has been found, the elections date would have to be postponed several months to allow for the necessary preparations. A compromise solution would likely involve permissive criteria for candidacy, allowing both Haftar and Dabeiba to run. This would be a source of controversy during the campaign, and could offer a pretext for the rejection of the results. The legitimacy of a Haftar victory would in any case be widely contested in western Libya, while electoral defeat would prompt Haftar to prevent the new government from exerting its authority in areas under his control.

In sum, there is no plausible scenario in which an elected president and government would be recognized as legitimate across the country. The elected government’s legitimacy would further suffer from its inability to impose its will on the actual forces on the ground - Haftar’s forces in eastern and central Libya; local armed groups elsewhere in the country. Moreover, a newly elected parliament and government would not differ from their predecessors in being afflicted by the competition among innumerable local factions for access to state offices and resources. The hopes placed in elections to remove structural obstacles to stabilization in Libya are therefore misplaced. And while elections could, in the best case, provide a sense of political progress even though the fundamentals remain largely the same, they could also furnish the trigger for major destabilization.

Any way out?

Libya’s elections risk becoming a divisive turning point that catalyzes existential fears of exclusion and repression in the event of defeat. Their postponement offers no way forward, but would likely trigger a renewed nationwide political crisis, and conflict within western Libya.

Few options exist to reduce the stakes – and the risks – of the vote. Negotiating tighter criteria for candidates that would exclude...
Haftar and other controversial figures would assuage the fears of their adversaries, but incentivize those figures to prevent the vote from taking place. Trying to hold parliamentary elections only, as constituencies opposed to Haftar are demanding, would trigger the same reaction. Reducing the competencies of the president to that of a largely ceremonial position would in principle be a sensible move. But in a situation where laws and procedures are routinely broken and formal powers only become meaningful in combination with forces on the ground, this would do little to reassure those worried about a Haftar victory, while ensuring the president’s impotence if anyone other than Haftar is elected. A leaked US proposal to hold the second round of presidential elections nine months after the first round has already provoked widespread rejection from key stakeholders, and would merely postpone the showdown. The unintended consequence could be further polarization, brinkmanship and crisis between the two rounds.

Nor is there any credible alternative to the elections. A new negotiated settlement offers no potential for stabilization. The biggest military actor, Haftar, is seeking domination, and anyone trying to share power with him risks being marginalized. The remainder of the political landscape is too fragmented to allow for a stable deal between clearly defined groups. And public opinion overwhelmingly rejects yet another transitional period.

Negotiating a legal and constitutional framework for the elections that enjoys a minimum of consensus across political divides is among the few ways to at least somewhat reduce the risks of an electoral crisis. Whether such minimal consensus can be reached is unclear: key actors simultaneously claim they favor elections and prepare to exploit the political crisis if the vote is prevented from being held. But backing one side in this struggle, as UN Special Envoy Kubiš has done, plays into the hands of those who do not want elections at all. Instead of labelling as spoilers those who harbor legitimate fears about the fairness and outcome of the vote, UNSMIL and Western governments should try to address these fears.

Failing a minimally consensual legal framework, international insistence on the elections amounts to a high-risk gamble of holding them at any cost. Given how invested Western governments are in the elections, they will be reluctant to draw political consequences if the vote is marred by major irregularities, fraud, and boycott. This approach threatens to turn the elections into a sham – a perception that is already prevalent among some local political actors, particularly in western Libya. Instead of bringing Libya’s transition to completion, the elections risk returning Libya to the starting point of political division, and the need for a new, internationally-led negotiating framework.

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4 An amount of 20,000 dinars (4,400 dollars) was paid to each of the spouses
5 Al-Wasat, “لباططسلا نحلاصإ لقاب رازاب رائعي رومأ 7000، راولومو راولومو - جاوز روعي رارومي راولومم صبيغت رانيد عيبات ينكسلا ئسارو" [Al-Dabeiba announces allocation of LD1bn in wedding allowances, and LD1.7bn in building grants], August 12, 2021.
6 Al-Wasat, “اتوص 73 راوجتلي يل راوفستا ددع تيكوك حيا ليقشلا بني عبرلا ساسلي ودوعومر ساوليا سايراليا" [15 interviews with Western diplomats, April-July 2021.
7 Half of the LPDF’s 75 delegates are members of the HoR and the successor institution to the parallel parliament in Tripoli, the High State Council (HCS); the remainder are representatives of political or military actors, social constituencies, and civil society.
8 LPDF, “Roadmap”.
9 Interviews with Western diplomats, April-July 2021.
11 Letter of 46 LPDF members to Ján Kubiš, September 26, 2021.
17 Al-Wasat, “ودرو يجوبو جوز فلتا 7000000 اروسيم ينكسلا ئسارو" [Talal Meihoub: There are 700,000 fake National ID numbers], August 3, 2021.
19 Al-Atrush, “Libya elections”.
Bruno Charbonneau gave an interview to Al Jazeera on October 12 on the occasion of the Africa-France Summit.

Maxime Ricard published an article in the 163 issue of the review Politique africaine "Fumoirs et relations d’interdépendance: négocier l’ordre social à Abobo, Abidjan".


Daniel Eizenga published an article "Chad’s ‘Political Transition’ is a Smokescreen for Military Rule" in the review World Politics Review.

On September 23, he co-published with Joseph Siegle an article "West Africa : Russia’s Wagner Play Undermines the Transition in Mali" on the website All africa.com.

Adib Bencherif published in the review Politique africaine an article "Des élites touarègues face aux trafics de drogue. Quelles recompositions morales et sociopolitiques ?".

Niagalé Bagayoko participated on October 3 in the TV France 5 programm "C Politique". The discussion was entitled: "La France doit-elle se retirer du Sahel ?". On October 24 she gave an interview to RTS info "Le Mali formalise son dialogue avec les djihadistes, au grand dam de la France".

Jonathan M. Sears delivered on October 5 a lecture on the occasion of the University of Winnipeg Lecture Series. It was entitled "Talking with terrorists amid chronic crisis in Mali, West Africa". The event took place at Portsmouth Retirement Residence.
The Centre FrancoPaix in Conflict Resolution and Peace Missions aims to promote scientific research, academic training and the development of conflict resolution research in the Francophonie.