



# LIBYA'S TROUBLED TRANSITION

Paul Salem and Amanda Kadlec

JUNE 2012

CARNEGIE MIDDLE EAST CENTER

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**Paul Salem and Amanda Kadlec**

**JUNE 2012**

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## Summary

More than a year after the outbreak of the uprising against Muammar Qaddafi's rule, Libya is in the midst of a challenging transition. Qaddafi is dead, his forty-two-year-old regime overthrown, and the country liberated. And now Libyans are laying the groundwork for elections that will start their country on the path to a new constitution.

But absent are state institutions to manage the transition, security services to keep the peace, and sufficient national unity to ensure a safe transition. The National Transitional Council laid out a timetable for transition, but its legitimacy among the public is weak. What is more, it lacks the institutional infrastructure to ensure the timely and successful implementation of its own road map.

Adding to the tension are tens of thousands of armed revolutionaries refusing to give up their weapons until their various needs are attended to and repeated outbreaks of fighting between a range of tribal and militia groups settling scores from the recent past or battling over turf. And the country remains deeply fragmented along regional lines. The numerical strength of the westerners of Tripolitania is tensely balanced against the revolutionary force of the eastern region of Cyrenaica—which includes the rebel stronghold of Benghazi—and the divided southern tribes of Fezzan.

Still, the chances of a successful transition are not bleak. The process is bolstered by widespread pride in Qaddafi's overthrow, a significant sense of Libyan identity, and general agreement about the next key steps: hold elections, draft a new constitution, and establish a structure of democratic governance. Tribal and regional differences may be at the root of internecine conflict, but they are less virulent than the sectarian and ethnic divisions that have fueled prolonged civil conflict in some other regions of the Middle East. Libya's geopolitical environment is fairly positive, particularly when compared to countries in the Levant that are arenas of intense international struggle. And then there is Libya's copious oil revenue, which if properly managed can help to rapidly rebuild state and national institutions in a way that is not available to some other post-revolutionary states in the region.

There are many ways that the Libyan transition can go wrong. But if Libyan leaders and their friends in the region and abroad stay the course, Libya has a good chance of transitioning from dictatorship to accountable government—and taking the first steps toward rebuilding state, society, and economy in that ravaged land.



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## From Liberation to Constitution

In its Constitutional Declaration of August 3, 2011, the National Transitional Council (NTC) announced an ambitious eighteen-month timetable for transition that would begin immediately after the overthrow of the regime. When Tripoli was liberated on October 23, 2011, the countdown began and the transition was slated to be complete by May 2013. The first phase included the appointment of an interim government, the promulgation of an election law, the establishment of a Higher National Election Commission (HNEC), and preparations for national Constituent Assembly elections, which were scheduled for June 19, 2012. The NTC is supposed to be dissolved upon the assembly's first meeting, and the newly elected body is to appoint a new government and a committee to draft a new constitution by August. The constitution will then be presented to the Libyan people for approval, and it will pave the way for a fresh round of elections and a new political order by May 2013.

While there is little disagreement in Libya over the broad outlines of this road map, there is considerable uncertainty both within Libya and abroad as to whether it can be implemented successfully, particularly within a reasonable time frame. The June elections have already been postponed to July 7 due to technical delays and challenges by disqualified candidates. Among the other immediate challenges are the limited credibility and capacity of the NTC and its interim government, the fragile state of internal security, the reluctance of armed brigades to cede control, and serious questions about whether elections can be successfully held in the absence of effective electoral security and management. As illustrated by the postponement of the June elections, the transition timetable will have to continue to adapt to Libya's shifting realities.

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## The NTC's Mixed Record

The NTC was founded in the early weeks of the revolution after ad hoc local councils that emerged in rebel towns and cities—Benghazi, Bayda, Derna, Tobruk, and others—sought to organize their representation in a broader group that would represent the anti-Qaddafi rebellion and reach out to towns and regions still under regime control. Originally based in Benghazi, the NTC also served to initiate communication and seek support from the international



community. The organization named an Executive Board to assume government functions in areas under rebel control.

The NTC was initially led predominantly by leaders from the east but had members from all regions. A powerful group consisted of former officials from the Qaddafi regime who had defected early, including the NTC's leader, Mustafa Abdel Jalil, a former justice minister under Qaddafi; former economy minister Ali al-Issawi; and former interior minister Abd al-Fattah Yunis, who became a rebel military leader but was assassinated in July 2011. All three are from eastern Libya. A second group was also part of Qaddafi's state but was associated with his son Saif al-Islam's supposed efforts to reform and modernize from within. These included Mahmoud Jibril, who left a university position in the United States to head Libya's National Economic Development Council in 2007 and became the head of the NTC's Executive Board; Ahmad Jehani, his deputy; Muhammad al-Alaqi, a former justice minister; and others. A third group was made up of Libyan expatriates who returned to the country when the revolution broke out, including Ali Tarhouni, who left the United States to head the economics and finance division of the NTC, and Mahmoud Shammam, who returned from his position with Al Jazeera in Qatar to serve as the NTC's media and information official. The fourth category included Libyan professors, lawyers, and activists, such as NTC spokesman Abdel Hafidh Ghoga, Fathi al Baja, Fathi Terbil, and others.<sup>1</sup>

In territories still under regime control, the NTC worked with covert groups who nominated representatives to the body; these members' names remained necessarily secret until their regions were liberated. This partially covert nature in the early stages, as well as poor public communication and behind-closed-door decisionmaking, created a deficit of transparency in the council that has come back to haunt the NTC. As long as Qaddafi had yet

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to fall, popular revulsion toward him united opposition groups and sidelined the process of sorting out the finer points of NTC makeup and decisionmaking. And during the revolution and its immediate aftermath, the NTC enjoyed a temporary "revolutionary legitimacy" in public opinion for leading a successful overthrow of the regime. But as the country moved from revolution to transition, issues of the NTC's transparency, legitimacy, and performance came to the fore.

Since the NTC is essentially a self-appointed body, it has been open to questions about how its members are selected and what authority they have to govern. This has caused problems with various local groups and armed brigades who are dissatisfied with their representation or lack thereof in the NTC, or dispute the NTC's authority over them. In response, citizens in localities throughout the country, many of which had no role in electing or nominating those who currently represent them in the NTC, have organized

and held their own local elections in order to replace their representatives. Civil society groups have consistently pressed interim leaders on a range of progressive issues from increased transparency to minority rights to women's representation in parliament. At other times, the NTC has come under threat from militia groups demanding various concessions and privileges. The NTC has tried to manage these tensions through negotiation, increased transparency in its operations, and its expansion to represent a wider array of groups and places. It has grown steadily in size since the early days of the revolution and, as of this writing, has 81 members.

The NTC moved its operations from Benghazi to Tripoli and named an interim government after Qaddafi's fall. Over time, the balance of power in the NTC, too, has shifted from its eastern to western membership. This shift has created rancor among eastern groups and partially fueled calls for a federalist state and autonomy for the east. The council also greatly underrepresents women despite their significant role in the revolution; only two women are in the NTC and there were only two female ministers in the twenty-four-member interim government. Indeed, there is a growing fear among some that the NTC might be reproducing Tripoli-centric and patriarchal patterns that had been part of the Qaddafi past.

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The Executive Board and interim government that the NTC appointed have, on the one hand, done an impressive job of garnering international support for the revolution and managing the transition so far. They have averted a major breakdown despite the extremely difficult circumstances of transitioning from revolution and civil war to the beginning of a post-Qaddafi era. On the other hand, both bodies have faced intense public criticism, with some arguing that they are not adequately representative and accountable and others that they are moving too slowly in rebuilding security, mismanaging public funds, and harboring their own political agendas.

Yet, unlike interim authorities in Tunisia or Egypt, the NTC as well as its Executive Board and interim government did not have strong state institutions to command. During his rule, although the bulk of the labor force was on the public payroll, Qaddafi had actively weakened most state institutions and governed through a network of personal relations and security units; the revolution and the fall of the regime further weakened these feeble institutions. And not only were basic state institutions in shambles, the new governing authorities faced financial, security, and political difficulties as well. After the fall of Tripoli, the interim government faced several immediate challenges: work to recover \$170 billion in Libyan assets frozen abroad; revive oil production<sup>2</sup>; reestablish security by disarming and integrating armed revolutionaries and rebuilding the national army and police; deal with transitional justice issues; and prepare to hold elections in mid-2012—a tall order by any stretch of the imagination.

## Finances and Politics

The most immediate concern was revenue. In mid-December, the United Nations Security Council (UNSC), in accordance with UNSC Resolution 2009, ordered the unfreezing of government assets held by the Libyan National Oil Corporation, Libyan banks, the Libyan Investment Authority, and other national entities. The assets had been frozen at the outset of the war with UNSC Resolution 1970. While roughly \$100 billion has now been released as the remainder of UN sanctions have been lifted, individual member states are continuing to unfreeze funds piecemeal in accordance with domestic laws. It was the large single injection totaling roughly \$40 billion in December 2011 that finally allowed the interim government to resume salary payments to hundreds of thousands of public employees, some of which had not been paid since the uprising began. The financial inflow provided the transitional government with funds for launching a rebel reintegration plan as well.

The country was also left without its major income stream following the war. Libya has the largest proven oil reserves in Africa at 46.4 billion barrels. Before the uprising, roughly 95 percent of total export earnings came from oil, and energy accounted for over half of GDP. The sector suffered significant damage from airstrikes, looting, and neglect during the revolution, but oil workers were able to return to the job after the revolution and start to gradually revive oil and gas production. In May 2012, production was at around 1.5 million barrels per day,<sup>3</sup> nearing the pre-war levels of 1.8 million barrels per day.

The return of cash streams, however, also revived concerns about corruption—a hallmark of the past regime threatened to resurface in the post-Qaddafi order. Without an adequate system of financial oversight and transparency, the NTC and interim government have been unable to effectively refute accusations of financial mismanagement.

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The key concern in Libya is not the lack of resources, but the capacity to effectively manage them. A case in point is the provision of medical care to revolutionaries who fought in the war. Patients seeking treatment for minor injuries or conditions totally unrelated to the uprising were able to pretend to be victims of the war, staying in expensive hospitals in Europe and various Arab countries for extended periods while their relatives were housed in nearby hotels. By the time the government became aware of the extent of the fraud and began to curb it, hundreds of millions of dollars had already streamed out of the country.

National elections will produce the Constituent Assembly that will then elect a government to replace the NTC and its interim government. Until elections are successfully held and Libya's first assembly convenes, the NTC and its interim government will continue to face the large public legitimacy and confidence deficit that has marked its leadership in the transition.

# The Security Challenge

## Brigades and the Central Authorities

The most direct challenge to Libya's transition is the tenuous state of security in the country. Tens of thousands of armed revolutionaries, organized loosely into dozens of self-led militias—or as they call themselves, brigades (*Kata'ib*)—form a patchwork pattern of control over various parts of the country. Exerting authority over these well-armed brigades has been challenging. In the early stages of fighting, the NTC established a National Liberation Army, but it functioned less as an army than a loose amalgamation of independent brigades formed by former officers and ordinary citizens. In the post-revolutionary environment, these brigades emerged distrustful not only of the transitional government but also of each other.

In Tripoli, the overlap of dozens of brigades and their proclaimed territories has made for especially tense conditions. The Tripoli Revolutionist Council led by Adbullah Naker and claiming to command over 20,000 men coexisted uneasily with the Tripoli Military Council led (until his resignation on May 14, 2012) by Abdel Hakim Belhadj—a figure formerly allied with the Libyan Islamic Fighting Group, a militant organization dating back to the 1990s and previously suspected of links to al-Qaeda. Belhadj's outfit in turn was overshadowed by the powerful Zintani and Misratan brigades. The Sadoon Swayhil brigade from Misrata to the east and a five-militia coalition from Zintan to the south of Tripoli are the most powerful groups still occupying Tripoli.

The Sadoon Swayhil brigade sacrificed thousands in quite possibly the bloodiest battle of the nine-month war and bears the distinction of having captured and killed Qaddafi. The Zintanis fought northward, captured the airport, and along the way found Saif al-Islam. The Zintani militia protects some of Tripoli's vital institutions, such as oil fields and refineries.

In a deft maneuver, the NTC appointed the commanders of these brigades to key government ministries, which not only balanced political sensitivities but effectively pulled the command of the forces into the orbit of the central government. Brigade leaders Fawzi Abdul Alal of Misrata and Osama Al Juwali of Zintan head the interior and defense ministries, respectively. Fully aware of their empowered bargaining positions, however, both groups have ignored repeated calls from the NTC to disarm and vacate their positions.<sup>4</sup> Equally aware of the need to avoid direct confrontation, these and up to 100 other armed groups joined together in a coalition Military Council of West Libya, which was established by an inter-militia agreement in February 2012 and was designed to maintain security in the Tripoli region.

Armed groups in the eastern region of Cyrenaica are also part of larger coalitions, with the Barqa Military Council and the Union of Revolutionary Brigades the most powerful groupings. Eruptions of violence in the east have been fewer

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than in the west as brigades there united early in the revolution and bear fewer tribal hostilities. Despite political differences over decentralization and the roles that forces in Tripoli and Benghazi might play if present trends continue, a serious east-west armed confrontation currently appears unlikely.<sup>5</sup>

Brigades in the southern region are small, localized, and more rigidly associated by tribe than is the case in the north. But flare-ups have been occurring in the south with increasing frequency and lethality; disagreements among tribes in Sebha and Kufra have killed hundreds and wounded hundreds more.

Generally, in areas where the brigades have social and familial roots, they are accepted and seen as a local protection force; but when they enter areas beyond their social base—for example, the Misratans and Zintanis in Tripoli—the opportunity for friction with local communities has increased. And in the general lawlessness that has descended upon the country, a number of armed groups have begun to resemble gangs, becoming involved in extortion, smuggling, drugs, prostitution, and other criminal behavior. The overall number of people claiming to be rebels is estimated at around 200,000, although it is likely that numerous Libyans are simply making the rebel claim to cash in on post-revolutionary handouts.

The NTC and the interim government have chosen patience over confrontation: they started a program to put a growing number of the revolutionaries on the government's payroll and to integrate those who wish into the army or police force, offering alternative job training or continuing education opportunities to those who decline. In March 2012, the government announced it would provide salaries ranging from \$1,900 (single males) to \$3,100 (married with children) to rebels willing to join the integration program.<sup>6</sup> Almost 80,000 have registered to enlist and receive payments, yet the state still has little control over them. Among those that registered, only a minority have actually been integrated into the army and police, while many others continue serving in militia brigades, arguing that their compensation is for the security service they are providing in their area.

In another attempt to reign in these militias, the interior and defense ministries operate a High Security Council that is trying to manage these brigades within a coordinated national framework without immediately integrating all their members into state institutions or other state-sponsored programs. In this way, the interim government wants to defuse the problem gradually, while hoping that national elections will provide a political avenue for the representation of disgruntled groups and will encourage them to pursue their interests within the political process.

## Resurrecting the Government's Forces

Rebuilding the national army has been an uphill struggle. A formal Defense Ministry existed during Qaddafi's rule, but internal security was managed informally through various praetorian units like the Khamis Brigade (officially the Thirty-Second Reinforced Brigade of the Armed People), the Seventy-Seventh Brigade, and various units led by the sons of Qaddafi, such as Mutassim and Saadi. The national army was kept weak in favor of these praetorian units to avoid the risk of a coup d'état and was further decimated during the revolution by desertions and NATO attacks. The special praetorian units melted away with the regime's demise, and after the revolution, the army was in no position to impose authority over armed rebel groups or to adequately provide security in the transitional phase.

The NTC found only a handful of officers and soldiers with which to begin the military-rebuilding process. The reintegration of some of these Qaddafi-era officers and soldiers has caused controversy. In their defense, a number of them had defected during the revolution and led rebel units; many others argue that they were as much hostages of the Qaddafi regime as the rest of the population and hence should be treated as fellow victims, not erstwhile oppressors. Despite the criticisms, the NTC went ahead with its reintegration program, and by May 2012 the army claimed it had grown to around 35,000. The bulk of that force is rebels that have signed up to join the army but have not yet been fully trained and integrated.

Though the army's record so far has been spotty and it is still dwarfed by the number of armed rebels and Libya's sheer size, there are signs that its development is moving in the right direction. In January 2012, the army's garrison in the town of Bani Walid was quickly overwhelmed by local armed groups who took over the city. But in late February army troops were able to intervene to stop a deadly clash in the southeast town of Kufra between the Toubou and Zwai tribes. In another incident in late March, 3,000 soldiers were dispatched to the southern town of Sabah to prevent the deterioration of tribal violence that had already killed over 100 people. A government-led, locally brokered cease-fire suspended the clashes, restoring the area to relative order.

The regular police forces fared slightly better than the army during the Qaddafi era because their tasks were focused largely on traffic and civilian policing, so the regime had little reason to fear or weaken them. In addition, wartime desertion and the effects of NATO intervention on their functions were less than those of the army. Moreover, their public image was fairly positive because they had not been involved in the political and intelligence network; that was left to other agencies.

Yet, this force too has had its struggles. Police officers were back on the streets right after the revolution, but with little authority over the armed brigades. They also lack the institutional background and technical capacity to quickly become an effective internal security force—that function used to be

performed by the intelligence services and praetorian units. To overcome these obstacles, the NTC is integrating revolutionaries into the police force and is working with friendly governments to bring the structure, staffing, training, policing practices, and equipment of the police up to speed.

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Building the national army and police is an urgent priority, and the government has put in place a security-sector-reform plan that includes recruitment, rehabilitation, training, and equipment with the assistance and collaboration of friendly governments, such as Jordan, Qatar, and Turkey. The armed forces will not be rebuilt rapidly enough to ensure a safe transition, but they need to be ready soon thereafter to help establish and maintain national security following this period of insecurity and instability.

### **Cross-Border Concerns**

In the coming months, Libya also faces the urgent tasks of securing its borders, particularly to the south, and regaining control over the loose weapons from Qaddafi's arsenal that are crossing those borders and increasing instability in neighboring countries. Libyan land and sea borders are extensive, and the Libyan armed forces need urgent help to develop the capacities to adequately control them. Although the government's recent commitment of 8,000 soldiers specifically for border control is impressive given the difficult circumstances of forming a national army,<sup>7</sup> it remains inadequate.

Of particular concern are loose or missing surface-to-air heat-seeking missiles known as MANPADS (Man-Portable Air Defense Systems) that revolutionaries took from Qaddafi weapons depots during the war. These weapons are capable of taking down commercial aircraft and were used for exactly that purpose by an al-Qaeda affiliate in Kenya to shoot at an Israeli passenger jet in 2002. The United States has so far committed \$40 million to collect an estimated 20,000 of these weapons and others that present a threat to regional stability. Thus far, with the assistance of technical experts on the ground in Libya and near borders with neighboring states, about 5,000 have been collected and destroyed.<sup>8</sup> Britain, Canada, the Netherlands, and Germany have also committed a combined \$5 million in technical support to secure MANPADS.

The extensive smuggling of other weapons and ammunition through every country sharing a border with Libya and beyond is also a critical security issue. Near and distant neighbors have legitimate concerns about the threats of terrorism, drug smuggling, and illegal immigration that originate in the Sahel region and move to Libya and other North African countries and then on to Europe. A UN mission to the Sahel in November 2011 highlighting the effects of the Libyan situation on the region appealed to UN agencies to assist in border management of the region. Indeed, the urgency was clear as heavily armed Tuareg

tribesman, partly using cross-border Libyan routes, caused a cascade of events leading in March 2012 to a military coup in neighboring Mali.

While the UN report noted that Chad, Mauritania, and Niger had achieved “relative success” in curbing the flow of weapons since the Libyan uprising began in February last year, weapons of supposed Libyan origin are possibly being funneled to terrorist organizations. The UN mission said that Libyan arms that do make it through Niger are reaching the militant Islamist group Boko Haram in Nigeria and al-Qaeda in the Maghreb based in Mali.

The NTC has been in consultations with neighboring Tunisia, Sudan, and Egypt on multilateral border security efforts, and the international community is contributing in this area as well. Italy signed an agreement in January offering financial and technical assistance to train police to monitor borders. The Canadian government has donated \$10 million specifically for disarmament, and the European Union is assisting in security and border management.

Whether the tenuous calm that has largely prevailed since the fall of Qaddafi can be sustained and whether elections can be held under current conditions remain very open questions. Security during the transition will remain in the hands of the tens of thousands of armed rebels split into dozens of brigades throughout the country and cannot be ensured. The country will have to proceed through summer elections and the constitution-drafting process under the careful management of tenuous transitional institutions, who in turn will have to rely on the goodwill of the largely armed population.

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## Transitional Justice and Reconciliation

During the revolution and its aftermath, several groups throughout the country have been labeled by revolutionary militias as pro-Qaddafi and accused of war crimes. People with dark skin, regardless of origin, are commonly assumed to be sub-Saharan mercenaries who were allegedly once employed by the regime. A February 2012 report by Amnesty International noted frequent detention and torture of immigrant workers who were alleged to be pro-Qaddafi simply due to their skin color.<sup>9</sup> The Mshashiya and Qawalish tribes of the Nafusa Mountains and inhabitants of former Qaddafi strongholds such as Bani Walid and Sirte are automatic targets for arbitrary detention and violence.<sup>10</sup> The people of the Tawergha tribe in particular have been subjected to ongoing and indiscriminate arrests, abuse, and torture by the very Misratan fighters who helped to liberate Tripoli. Rape, a tool of war during the fighting on all sides, is likely to go largely unaddressed due to the social stigma associated with it both for the victim and her—or his—family. Libya’s various



armed brigades continue to arbitrarily hold some 5,000 to 6,000 allegedly pro-Qaddafi detainees nationwide with many having been tortured.<sup>11</sup>

With assistance and encouragement from the UN Support Mission in Libya (UNSMIL), the transitional government may be able to bring most independently run militia detention centers under control of the Justice Ministry by the time the Constituent Assembly elections are held. In addition, the NTC drafted a transitional justice law with considerable UNSMIL support and consultation. The law is intended to address the period between the Qaddafi era beginning in 1969 through the revolution of 2011 and the transition to a new government after Constituent Assembly elections in 2012. A combination of commissions, public apologies, reparations, trials, and purges of civil and security staff have been proposed, and a Fact Finding and Reconciliation Commission is tasked with investigating incidents of human rights violations and cases of disappeared persons. Reparations to victims are to be managed by a compensation fund, with funding sources and regulation guidelines to be determined by the NTC. Each crime presented to the commission must be backed by evidence, name specific individuals accused of responsibility for the crime, and allow a thorough investigation before trial will be considered or a verdict rendered.

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Yet, despite the rapid progress on paper, shifting the public consciousness to respect transitional justice and due process will take years. For example, the NTC recently bowed to pressure from brigades to protect them from prosecution for war crimes or human rights violations they may have committed during the war by passing Laws 35 and 38 in late April. The laws grant amnesty for any acts “made necessary” by the February 17 Revolution, even if they were nonmilitary in nature. And per Law 38, a list of 330 people was made public in mid-May who can be evicted from their homes and denied the right to challenge the action in a court of law. Also passed was Law 37, criminalizing acts or speech deemed “damaging” to the efforts of the February 17 Revolution, including the “glorification” of Qaddafi or his regime. This legislation has allowed for the confiscation of land and property of those accused of having been associated with the former leader. The laws drew harsh and quick condemnation from rights groups both inside and outside of Libya.

While putting the transitional justice law on the books is one of many steps the NTC has taken toward advancing rule of law since Libya's liberation, it is of little value if no concrete steps are taken to implement or enforce it. In addition to lacking police and court systems capable of administering their detailed measures, the provisions of Laws 35, 37, and 38 effectively negate much of what the transitional justice law is attempting to achieve.

The government has also yet to grapple with the massive problem of claims and counterclaims related to property confiscated and redistributed during

Qaddafi's rule.<sup>12</sup> In the late 1970s, Qaddafi's government undertook a massive land and property "redistribution" program affecting tens of thousands of citizens. These people or their descendants are now brandishing old deeds from the Italian or Ottoman era, clamoring to reclaim their property or using force to evict families from property that they consider once again theirs. The fact that the central records office burned down in the early 1980s has made matters even more complicated. The government has not yet developed an effective approach to this widening problem that affects the lodging and livelihood of thousands of households and the security of many towns and neighborhoods.

## Election Challenges

Elections were automatically slated for June 2012 following the liberation of Tripoli in October 2011, which is a very short preparation period for a country emerging from revolution and civil war, and with no real previous experience with elections. Nevertheless, the NTC and interim government have moved quickly. A draft election law was floated, a Higher National Election Commission (HNEC) was appointed, preparations began for voter registration, and a law for political parties was eventually promulgated as well.

The NTC issued a primary draft of the election law with counsel and technical support from UNSMIL and elections experts, and that original draft was presented to the public for open debate in early January. It proposed a simple first-past-the-post majoritarian electoral system to fill the 200 seats in the Constituent Assembly with a 10 percent women's quota. Various civil society and political groups clamored for the introduction of proportional representation and women's groups protested that the 10 percent women's quota was insufficient.

The commission then issued a revised draft in March that proposed a parallel system in which 120 of the 200 assembly seats would be filled in first-past-the-post, individual-candidate elections, with the remaining 80 seats filled by proportional representation among competing party lists, alternating male and female candidates. The inclusion of proportional representation will allow for the representation of smaller political and civil groups, which may otherwise be sidelined in a strictly majoritarian model. The alternating gender representation on the party lists will boost women's representation from 10 percent to closer to 20 percent.

In terms of districting, the HNEC has divided the 200 total seats into three regions that roughly fall along traditional provincial lines: 106 seats for the western region (Tripolitania), 60 for the eastern region that includes Benghazi (Cyrenaica), and 34 for the south (Fezzan). Those regions are then subdivided into distinct electoral districts, the number of which is high because most of the 120 majoritarian seats are to be elected from single-member districts. In

some towns and regions the districting is obvious and straightforward; but in others, there is contention regarding where the lines are drawn. The challenge is made harder because Libya has not had real electoral districts in half a century and its decentralized structure has been changed dozens of times, so there is no inherited or widely agreed and detailed administrative map.

Managing the electoral process itself will also be a challenge. Libyan officials estimate they need about 45,000 people on the day of the elections to manage the voting and counting process, including judges in key positions as well as civil servants and security personnel. Although training has been proceeding apace with help from the international community, there are certain to be many administrative problems and irregularities on Election Day.

### **Determining Eligibility**

On a more basic level, determining who will be allowed to run and vote in elections for the Constituent Assembly has been a complicated process. Currently, NTC laws bar from running for public office those Libyans who have been proven by judicial order to have been involved in corrupt practices or who were directly affiliated with the “people’s” congresses or committees or the Revolutionary Guard of the former regime (unless they showed support for the February 17 Revolution in its infancy). Current or former members of the NTC, the interim government, HNEC, or heads of local councils are also prohibited from running.

The conditions do not end there. People who have “committed illegal acts against Libyans either domestically or abroad”; those with proven “professional or commercial ties to the former leader, his top officials or his family”; and those who “cooperated with the regime in exchange for employment” cannot run. Given the integration of thousands of the country’s most well-trained and capable Libyans in the Qaddafi state, such loosely defined associations have caused confusion and threaten to exclude a wide cross section of potential candidates that the country needs to successfully transition to a viable state today. Now, a number of cases lodged by candidates disputing their disqualification from running could throw the transition off course, particularly if the NTC is forced to postpone national elections months beyond the summer.

Another prohibition that drew criticism in current circumstances was that related to the national army, whose members are not only prohibited from running—which is common in many democracies—but from voting as well. Meanwhile, armed revolutionaries, whom the interim government is attempting to integrate into the army and other security bodies, remain free to exercise these rights. Needless to say, this logic serves to undercut the state’s militia-demobilization efforts.

In addition, there is controversy over who is and who is not a Libyan, given that Qaddafi granted citizenship to thousands of non-native Libyans, mostly

of sub-Saharan African descent, allegedly so they could enter the country to support and fight for his regime. Another open wound is that of the Tawergha tribe. Their town of 30,000 was violently cleared by Misratan brigades, who accused then-members of the tribe of committing atrocities. Misratans and other rebels oppose the inclusion of Tawergha or any alleged pro-Qaddafi group in the voting process. Moreover, many of these individuals and others the revolutionaries considered to have been allied with the former regime remain in arbitrary detention by militias and are thus excluded from voter registration processes.

Despite these points of contention, the HNEC moved ahead with a vigorous voter registration program, receiving assistance from civil society groups as well as from the EU, UN, and National Democratic Institute. By early June, the HNEC announced that it had registered an impressive 2.7 million voters, or over 70 percent of “eligible” voters. It also announced there were 2,639 individual registered and approved candidates for the first-past-the-post districts and 374 party lists for the proportional-representation races. The number of individual candidates and party lists barred by the HNEC was not announced, but it is clearly high—precisely these barred candidates are the people lodging complaints that have already delayed the elections until July, and could delay them further.

### **Local Elections Could Aid Success of National Poll**

While preparations for national elections have been moving forward, several towns and cities, led by Misrata and others, have recently held their own local elections without coordination with the HNEC or the central authorities. This is both a challenge to the NTC’s authority and a potential benefit in that these localities have prepared voter lists and gained voting management experience. As of this writing, Zawara, Tajoura, Misrata, Benghazi, and al-Abyar have successfully organized elections for local council members, and at least another three are being planned in Derna, Beida, and Tarhouna.

In all cases, processes have been improvised through citizen initiatives. The aim has been not only to establish elected councils but also to have these councils name the town’s representative to the NTC to replace nonelected representatives. The first of these local elections took place in Zawara in the summer of 2011, before the end of the war. It was a rather communal and traditional affair in which a council head was nominated by a group of citizens disapproving of the self-appointed councils that originated at the outset of the war. This council head then appointed additional council members based on local customary procedure. Due to the small size of the town (around 40,000 people) and high level of communal trust, the process took place within two weeks, and although just 3,000 Zwarans voted, the results were generally well received.

As more local elections have been held, there has been an observable trend toward increasingly systematic processes for registering voters and qualifying

candidates. The larger populations in Tajoura, a southern suburb of Tripoli (120,000), and Misrata (270,000), required the process to be more systematic, although these processes originated in much the same way as they first did in Zawara. In both cities, the election committees that set guidelines for organizing and participating in the election were nominated by groups of citizens seeking to replace the original councils formed during the revolution.

Tajoura organized a two-step process: First, candidates from each of the seven districts outlined by the committee were nominated and voters were registered using as references ID cards and the so-called “family book”—a document used during the Qaddafi era to distribute government benefits and rations to households; and second, voting for the approved candidates took place.

In Misrata, a prominent Libyan-American, Mohammed Berween, chair of the Political Science Department at Texas A&M University and a native of Misrata, was called upon to lead the election process. Thanks to Berween’s expertise, Misrata was the first municipality to develop a clearly outlined process. Sixty-five percent of the city’s citizens were registered, and a vetting process was put in place to exclude former regime cronies or others who might be disqualified for legal reasons. All committee meetings were public, and due to the degree of transparency and rigor insisted upon by Berween, the elections were viewed by Misratans and Libyans as highly legitimate. Roughly 50,000, or 59 percent, of those registered had voted. The Misrata success story became a template for other local elections throughout the country and provided momentum for the national elections.

Benghazi held its elections in May and drew on the Misrata example in its preparations, but its large and diverse population (1 million) posed particular challenges. Organizers in Benghazi integrated international help into organizing their election process. The Sweden-based NGO International IDEA trained roughly 500 locals to organize and execute the process in the city’s 135 election

units, and European Union organizations provided ink and ballot boxes. A number of Libyan civil society organizations also engaged in tasks ranging from voter education to election mapping.

Overall, the organization of these local elections is an impressive show of democracy-in-action driven independently by ordinary citizens. If Libyans show the same commitment to national elections as they did to some of their recent local votes, the chances will improve that the Constituent Assembly elections will come off successfully and the majority of the population will accept the results.

However, as electoral preparations proceed apace, the success

or failure of the national elections will ultimately depend—as in most matters in today’s Libya—on the precarious security situation.

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## The Political Party Landscape

After the NTC abolished Qaddafi-era restrictions on political party formation in the wake of the revolution, dozens of potential parties of varying ideologies surfaced. Moderate Islamist, Salafist, nationalist, liberal, and leftist strains formed groups, while other parties reflected local, tribal, or regional power bases. These political parties will play an important role in assembly elections as part of the proportional-representation system. The NTC, however, significantly delayed the issuance of a law governing political parties, which has limited their growth and potential to frame the national debate in the run-up to elections. The political parties law, number 29, was eventually approved on April 24, 2012, but as has been the case with many pieces of legislation issued by the NTC, the law was then amended following pressure from various groups, in this case Islamists.

The first version of the political parties law stated that parties may not discriminate based on tribal, regional, or religious affiliation. This did not prohibit the formation of parties that had these identities at their core, but parties were not allowed to refuse membership to Libyans based on tribal, regional, or religious criteria. A week later, after pressure from Islamist parties that felt they were being targeted, a second draft was promulgated that dropped the antidiscrimination clause.

Otherwise, the law prohibits parties from receiving foreign funding or being “an extension of an external group.” It states that financial support for parties will be provided by the government: 50 percent will be evenly doled out among the parties, and the other 50 percent will be distributed per the party’s proportional representation in the Constituent Assembly, with a 3 percent minimum vote requirement. The state retains the ability to order searches and seizures or suspend party activity by court order—a potentially dubious power given the current dilapidated state of Libya’s courts. The law stipulates that members of the government’s security forces and judiciary are prohibited from participating in party politics but does not disallow members of armed groups from taking part. This echoes the controversial article in the election law that bars the former, yet not the latter, from voting or running for office.

The Muslim Brotherhood with its recently established Justice and Reconstruction Party is the most organized of the political parties.<sup>13</sup> The Libyan Muslim Brotherhood has already announced that it welcomes non-Brotherhood members in the party, and it already shows signs of learning from Ennahda in Tunisia and the Egyptian Brotherhood by embracing the democratic transition, preparing for elections, and moving toward more centrist and pragmatic positions. The Brotherhood’s party is likely to do well by running candidates both in the majoritarian single-member districts as well as in the proportional-representation list system.

The Party of Reform and Development, although similar in name to the Brotherhood's party, has been formed by a group of Muslim scholars in Benghazi who also support a state based on Islamic tenets. Distinct from the Justice and Reconstruction Party, it may also make a strong showing locally if not nationally.

In Tripoli, two prominent personalities, the aforementioned Abdel Hakim Belhadj and the influential Sheikh Ali Sallabi, have joined forces to form another Islamic party: the National Gathering for Freedom, Justice, and Development. This party is likely to have a significant presence in Tripoli and could either be a potential challenger or partner of the Muslim Brotherhood. Sallabi asserts that the aims of the National Gathering are based on a moderate interpretation of the faith and that the party is more nationalist in its intentions than Islamist. Critics charge that its leaders' links to Qatar hide a more conservative sociopolitical agenda.

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Salafism has been a new and quickly growing force in Libya and might produce a surprise electoral result as happened in Egypt. Libyan Salafis participated in the revolution and have clashed with other more moderate or non-Islamist groups and institutions since the fall of the Qaddafi regime. No one dominant Salafi political party has emerged yet, but the Salafi current is strong. Even without a strong party presence, the Salafis can compete for the 120 seats that do not require party registration, and they are likely to win sizeable representation in parliament.

Both the Libyan Muslim Brotherhood and the broader National Front for the Salvation of Libya (NFSL), founded in 1981, organized abroad until the onset of the revolution. As elections near, the NFSL has shown some nationwide appeal but has weaker social roots than its Islamist rivals. The NFSL is loosely connected to the Muslim Brotherhood in that many of the Brotherhood's original members split off in order to form the NFSL.<sup>14</sup>

Other liberal-leaning groups, such as the Libya Democratic Party, Libya Change, and the Libyan Freedom and Democracy Campaign, have also been formed. Although they have limited social roots, they are likely to gain at least a small presence through the proportional-representation vote, and their presence in a future assembly will help ensure that at least some counterbalance to the Islamists, and some attention to women and civil rights issues, is maintained.

While the new assembly is likely to have a strong Islamist contingent, it is also likely to be characterized by local and tribal representation, thus creating a rather disjointed and localist Constituent Assembly. In addition, these parties are largely of interest for the national vote; they have not had a large impact on local council elections, either in their organization and administration or in their outcomes.

## Drafting a Constitution

If the elections come off successfully, the new assembly will have two tasks: appointing a new interim government and, more crucially, appointing a constitutional drafting committee, the size and makeup of which still has not been decided. But simply forming the constitutional drafting committee might be a challenge. The last time Libya drafted a constitution in 1951, the 60-member committee was composed of an equal number of representatives from the three main regions of Libya, and the constitution took twenty-five months to negotiate and complete. Today, many easterners and southerners would like to maintain that equal regional representation and fear that the west, whose population outnumbers the other regions, might try to impose a majority. It is also not agreed whether the committee will be composed of members of the elected assembly or non-assembly experts.

Once formed, the committee still has the daunting task of drafting a constitution in two short months. Although there is considerable consensus about the broad outlines of the constitution—that Libya will be a constitutional democracy respecting human rights and political pluralism—there are a number of issues that will require considerable debate, and others that will simply require time to negotiate and work into final texts. Among the issues that might attract particular debate are the issues of federalism and decentralization, the details of executive authority, and the place of religion.

### Federalism and Decentralization

While leaders from the east and south have generally been pushing for decentralization, or in some cases outright federalism, leaders from Tripoli and the west generally favor building a more centralized state. Indeed, there are several factors that pull Libya in both centralizing and decentralizing directions. Pushing toward decentralization are the country's vast geography, the distinct dynamics and histories of western, eastern, and southern areas; eastern primacy in the revolution; the distribution of oil and gas resources; and the decentralization of military power throughout the country to local militias. Pushing toward centralization are the need to quickly rebuild an effective state; impose national security and authority; create effective financial oversight and governance institutions; establish strong international relations; and boost energy exports.

Regional identities are strong in Libya. Historically, the country was composed of the three separate regions of Tripolitania in the west, Cyreneica in the east, and Fezzan in the south. King Idriss, who ruled Libya when it became an independent state, was initially only interested in being king of Cyreneica and had to be convinced to take on the other two provinces. The monarchy started out as a federal system, thus preserving regional identities, and only later was fused into a united state. Under Qaddafi, there were continuous changes to the



authorities and boundaries of local bodies, to the way those authorities were selected/elected, and to their fiscal autonomy or dependency. Power shifted decidedly to Tripoli and the west and centralized rule was further strengthened. Throughout Qaddafi's rule, the dominance of the west created tensions with Benghazi and the east, leading to unrest and repeated rebellions. It is no surprise that when the winds of the Arab Spring began to blow, the revolution began in Benghazi and the east. Luckily, regional identities are not reinforced by ethnic or sectarian identities, as in some other Arab countries, but regional tensions are certainly a significant part of Libya's current transitional challenges.

Resources also play a considerable role in how power at the national level is distributed, and each region possesses its own tools with which to bargain for power. The south holds the bulk of underground water reserves—an indispensable resource in one of the world's driest countries. The bulk of the country's oil industry is located in the central Sirte Basin and the eastern Benghazi region; the west contains most of Libya's limited gas reserves. While the east holds about 70 percent of the country's oil wealth, in the west, Tripoli's population is equal to that of the entire eastern region. Yet only players in Cyrenaica and Tripolitania are currently able to leverage their resources politically at the national level because of their large populations, ethnic and linguistic similarity, relative tribal solidarity, and strong communal networks. The tribes of Fezzan are far too divided in these respects to influence politics at the national level.

Leaders from Tripoli and the west generally favor building a more centralized state, while parties from the east and south have generally been pushing for decentralization, or in some cases outright federalism. In a meeting of 3,000 tribal and local leaders in Benghazi in early March, the conferees called for federalism and unilaterally announced the creation of the federal region of Barqa, comprising Benghazi and historic Cyrenaica in the east. For good measure they appointed as their representative Ahmed al-Senussi, a descendant of King Idriss. The announcement drew sharp criticism from the NTC and

from other quarters in western and even eastern Libya. The mufti of Libya issued a fatwa against it, and Egypt, Tunisia, the Arab League, and others warned against it as well. In a national opinion poll, 80 percent came out against a federal Libya.<sup>15</sup>

This is not entirely unexpected. The concept of federalism in the Arab world is often associated with national division and disintegration, and the troubled experiment

of Iraq has not helped. But what the Barqa announcement reveals is that even though federalism is not likely to be adopted in the constitution, the debate about decentralization will be serious. It might also be linked to the discussion about having a bicameral system in which the regions can be represented in a senate while a lower house represents the general populace.

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The framers of the new constitution will have to negotiate a balance between the role of the central government, of regional administrations (for example, governorates), and of local authorities (municipalities). They will also have to grapple with the question of Libya's capital, an issue that has been contested for some time. Between 1951 and 1963, Libya had two capitals. The 1963 constitution did not name an official capital, and King Idriss set up government in the small town of Bayda east of Benghazi. Qaddafi also did not announce an official capital but moved the weight of government first to Tripoli then in 1977 to the more central town of Sirte. As the regime reengaged with the international community, Saif al-Islam moved most ministries quietly back to Tripoli. The NTC started off based in Benghazi but moved to Tripoli once it was liberated, making the ambiguous announcement that Benghazi would be the "economic capital."

Part of the solution might be in decentralizing even the organs of the central government by, for instance, basing the central government in neither of the main western or eastern cities, or putting the executive branch in one city and parliament in another. There are various models from Brazil to the European Union that could be used for guidance. But even with precedents to follow, the constitutional debate over the extent and details of decentralization will likely be a complicated and drawn out one.

### **Form and Details of Executive Authority**

Other Arab countries in transition like Tunisia, Egypt, and Yemen have contended with the debate between presidential and parliamentary systems of government. Although the main political parties have not staked out official positions, in workshops organized with political parties and civil society groups, opinion has been divided among three models: a parliamentary model, a full presidential system, and a semi-presidential system.<sup>16</sup>

Proponents of the parliamentary system cite the horrors of concentrated executive power under Qaddafi, although he never declared himself president. They fear that a strong presidency will re-create old patterns of authoritarianism, and they argue that the pluralist nature of the revolution and the groups that brought it about requires a broad power-sharing mechanism that is best represented by a parliamentary system of government.

Proponents of the presidential system argue that what Libya needs most urgently is a clear locus of accountable executive leadership and that can best be ensured through a directly elected president. They argue that the fragmentation of power in the post-revolutionary status quo is precisely Libya's weakness and needs to be overcome through a strong popularly elected executive. They also argue that a presidential system would be the most efficient in making the many decisions and initiatives that need to be undertaken quickly to get the state and economy back on their feet.

Proponents of a semi-presidential system, meanwhile, try to split the difference between the previous two positions. They point to the French model in which a directly elected president shares executive power with a prime minister who is accountable to the parliament as the best mix for post-Qaddafi Libya.

### The Place of Religion

Over 95 percent of the Libyan population is Sunni Muslim and of the Maliki religious school, hence religion is a generally unifying factor. While Salafism is a gathering trend, it is counterbalanced by a wide presence of the more moderate Muslim Brotherhood and a lingering Sufist current. And while there are gradations of conservative and more liberal interpretations of Sunni Islam in Libya, there are no significant religious or sectarian divisions as in the Levant or even

in Egypt. However, there are secular and liberal groups and constituencies, albeit small, that are worried about the strong Islamist trend and would seek to limit references to Islam in the constitution.

The NTC announced in its Constitutional Declaration of August that “Libya is a democratic state, and the people are the source of authority; and Islam is the religion of the state and Sharia is the main source of legislation.” That language is likely to remain in the new constitution, but secular and liberal groups will be eager to prevent refer-

ences to Islam and sharia from expanding further into other parts of the constitution. Civil society and other social groups are particularly concerned, as in other transitioning Arab countries, about the rights and place of women and the freedom of liberal and secular citizens to choose their own lifestyles.

If and when the committee succeeds in creating a draft, the HNEC will then proceed in organizing a national referendum on it. If the constitution is accepted, it becomes law; if it is rejected, the drafting committee will have thirty days to amend the draft and resubmit it to referendum. After the constitution is approved, elections for a new legislative assembly and the new executive authorities will be held within 210 days. If so, Libya will have completed the first phase of its precarious transition.

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## Beyond Transition

If Libya completes its transition road map and makes it beyond this initial phase—holding elections, drafting a constitution, and forming a new government—it will then face several longer-term challenges. Efficient and transparent state institutions capable of delivering quality services and regulation must be built. The process of integrating rebels and reclaiming the state’s monopoly of force must be completed. Libya’s leaders must determine how

to restructure an oil-dependent economy into one that is diversified and can create meaningful employment and income for rising generations. And civil society, which blossomed during the revolution and is key to creating a more sustainably democratic Libyan society, must be nurtured. These issues are of great importance, but they are still beyond the horizon for most Libyans who are concerned with their immediate security needs and livelihood as they seek to move beyond the ambiguity of the transitional period to a more democratic and effective state.

The challenges Libya faces are deep-seated and complex. But in the end, what the outside world can do for Libya is limited. The success or failure of the Libyan transition will depend on decisions made by Libyans themselves—as it should be. The prospect for the development of a sustainable democracy in Libya certainly exists. While the absence of established state institutions has complicated aspects of the transition, it could also be an opportunity to rebuild the state, nation, and economy from a clean slate rather than have to grapple with entrenched institutional powers from the *ancien régime*, as Egypt did.

Still, Libya's transition rests on a knife-edge: The country has a good chance of emerging from one of the world's worst dictatorships and starting down the road of building a democratic and prosperous state. But the pitfalls are many and the mistakes that can be made along the way are numerous. It is up to the Libyan transitional leadership and the Libyan people to navigate their way through the immediate challenges of holding free and fair elections and drafting a new constitution. They can then turn to the longer-term challenges of building a stable, secure, prosperous, and sustainably democratic Libya.



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