

Libya's Future: Constitution, National Dialogue and the Security Challenge

Elham Saudi

Director, Lawyers for Justice in Libya

John Hamilton

Director, Cross-border Information

Chair: Sir Richard Dalton

Associate Fellow, Middle East and North Africa Programme, Chatham House; British Ambassador to Iran (2002-06)

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Sir Richard Dalton

[recording begins mid-sentence] ... bad old days, from 1999 to 2002, in Tripoli. I'm associate fellow of the Middle East and North Africa Programme. The event is being held on the record. Twitterers are free to do so; the hashtag is #CHEvents.

The two speakers will speak for about eight minutes each. I will add some comments perhaps, depending on what they say, emerging from a whole-day working group which we've just finished with a range of Libyan and international experts on Libya, looking at the security issues and the political issues, particularly foreign contributions as partners with the Libyan authorities in trying to make things better.

The context, of course, is that Libya matters – whether it's energy, whether it's ungoverned spaces, whether it's the human rights of between 7 and 8 million people. It's a particularly sensitive and important shore of the Mediterranean for European countries and for international order. It matters too for those countries which contributed to the revolution by military means. We had some responsibility for the success of that revolution and there's extensive responsibility therefore for those countries that partner Libya now to contribute to rebuilding. So these are important issues, not just for Libyans but also for the international community.

To speak about them, we'll start with Elham Saudi on my right, who is the director of Lawyers for Justice in Libya [LFJL]. She is a tireless advocate for the rule of law and for human rights, not just from the vantage point of the United Kingdom but on the ground in Libya. She will tell you about the project she has been engaged in and the advice she is continuing to try to give to all those trying to shape the new order. Elham?

Elham Saudi

Thank you very much for having me. I just wanted to give a little bit of an introduction to what LFJL, the organization I represent, does and what we've been doing on the ground. We're an organization that promotes human rights and the rule of law in Libya. As part of that, we have a constitutional programme called Destoori, which in Arabic means 'my constitution'. The intention behind that programme was to create a sense of ownership in the Libyan constitution by engaging directly with the stakeholders. By stakeholders, we definitely don't mean people in five-star hotels in Tripoli and in big offices in Tripoli and Benghazi, but actually the Libyan population.

So as part of that we had a six-week tour of the country. We stopped at 38 communities, 25 of which we were the first visitors post-conflict to, whether official or non-official visitors. We spoke with over 3,000 people about what they wanted for their constitution. Before I give you what we took away from that, I thought it might be useful to just show you a minute-and-a-half, two-minute clip of some of the discussions that we had about the role of the police and army in the future constitution. We do that in an indirect way of what we call 'games', so you'll see people playing while they express their concerns. Hopefully it will make it more interesting than just listening to me talk about it.

[video clip, in Arabic]

We turned the video into a mini-clip to encourage people to vote responsibly, like it says at the end, in selecting their committee – the Constitutional Drafting Assembly. That brings me very neatly to what I want to talk about, whether the Constitutional Drafting Committee does indeed have any legitimacy in Libya or, if it doesn't, what challenges it faces and what the prospects are for it undergoing this task.

I think one of the problems we have in Libya at the moment is that the constitution is seen as a solution to all our ills. If we have a constitution, somehow the utopia will follow. I think that's a really dangerous myth we're selling ourselves. A constitution at best can be a tool, but it can never be the solution. That's why the process is absolutely vital. What we learned from our tour and from our continuing work on this process is that actually the process is exceptionally flawed at the moment.

The elections – if you look at just pure numbers, 1.1 million registered to vote. That's about a third of those who registered for the GNC [General National Congress] elections, the parliamentary elections in 2012. Of those, only 45 per cent voted. So we have less than half a million people voting for the Constitutional Drafting Assembly.

In addition, out of the 60 seats in the Constitutional Drafting Assembly, 13 haven't been filled yet. Crucially, out of the 13 are the minority representation seats, the saved seats for the Tebu and the Amazigh minorities. We also have a very arbitrary selection of women. We only have six women – six seats were designated for women, and they were specified in certain areas. So not all regions have a woman representing them on the drafting. So not everyone – or indeed if you look at it, really the drafting table in Libya consists primarily of middle-aged men from big cities.

The other problem we have is the trust in the rule of law in general in Libya, and everyone hoping again that the constitution will solve this problem. But if you look at the way the Constitutional Declaration, which is our interim constitution since the revolution, has been used, it's actually been used politically to further certain objectives. So our constitution itself was amended to allow for the political isolation law to be passed with a lower majority than was previously in it. The constitution was amended seven times in two years to deal with what was needed on the ground to further, if you like, the political agenda, which is a very dangerous precedent to be setting when you're about to start drafting the constitution – that it's infinitely amendable and that it's adaptable to that degree on a literally daily basis in Libya.

It also reflects this approach to lawmaking in general. Whenever we criticize or question the drafters on their laws, the answer we always hear is: let's just get this done and we can amend later, or we'll deal with it later. If you're in a situation where you're trying to enshrine the rule of law in a country, knowing that the law is always movable is a very difficult task.

I talked briefly about inclusiveness. The other element as well that is a problem for the legitimacy of this constitutional process is that there seem to be some predetermined elements in it. So we've already had a decree by the GNC stating that Sharia [law] will not be up for consideration in the drafting process; it will be the primary source of law. We've also had, indirectly, a new election law, which is for the upcoming elections this summer, and actually it changes the form of government again, which creates a precedent – at least for when we come to talk about the constitution, what kind of form of government we're looking at. So it's removed the ability to run under a party ticket, for example; you can only run as an independent.

The final element is the suggestion in the February Committee, which is the committee that the GNC selected to come up with recommendations for constitutional amendments, stating that we need to have a presidential election in this period as well. Again, that's predetermining the conversation about form of government before we actually have the debate with the constitution itself. So we've enshrined the source of law; indirectly we've enshrined the form of government before we've even really finished appointing all our drafters.

All this leads to some key challenges. The biggest one we obviously see is buy-in. It's very difficult to see the population, given these circumstances and how little of them physically took part in this, see it as something that represents them. The essential part of a constitution is the ownership. The model we always talk about of a successful constitution is South Africa. South Africa, as a process, worked because of the engagement genuinely by the drafters at a grassroots level over an extended period of time. Unfortunately, Libya, for self-inflicted reasons, we don't have that option. We've given ourselves 120 days to draft the constitution, from the date of the first meeting of the Drafting Assembly. They've declared that they might have their – they're proposing to have their first meeting on the 14th of April, which is next week. This means the clock starts on the 14th of April, for 120 days, despite the fact that the minorities are still not at the table. Over 20 per cent of the population is not represented at the table because those seats haven't been filled yet.

There is also the feasibility of this. I talked about in terms of the timeframe given, but also we seem to be prioritizing expediency over effectiveness in terms of the document we produce. The important thing is getting it done as opposed to what you're getting done.

I think for us the really fundamental part is the process. It really is potentially a genuine – and I think that's the point I really want to make – there is a genuine potential for the process of drafting the constitution to address a lot of the issues of transitional justice that Libyans are talking about. If you can have people at the drafting table discussing reconciliation, discussing the differences, bringing the minorities – not only ethnically but political minorities, religious minorities; the youth is very ill represented in this – into the actual drafting room, then you might have a situation where your constitution not only produces a document that no one feels [does not] represents them, but actually might result in some kind of national dialogue in its own right that might resolve some of our concerns. Because if the final document feels like it represents more people, then it's more likely to be resilient and we won't go down the path of somewhere like Egypt, where you have three constitutions. I think that's a danger, because in Libya you hear this, drafters saying to us: it's fine, look, if it doesn't work, we'll just have another one. That's a really dangerous attitude to go in with.

Then the final thing is, obviously none of this is possible – and I'm sure this is what you'll touch on – if the underlying security situation in Libya is not addressed. We have a very unstable government. We just had our two-week interim prime minister now confirmed to be the prime minister going forward. He's the ex-minister of defence, so a potential criticism of that is that we've had a stealth coup, where we've had our minister of defence appointed instead of him taking over à la Sisi in Egypt. There's also a genuine risk. In Libya there has been, on average, one judge or lawyer assassinated per month for the last year. The drafters of this constitution are putting their lives at risk and very little is being done genuinely by the officials to tell us how they're going to be protected. What's being prioritized again is getting this piece of paper finished instead of ensuring that it's done in a thorough way.

I will stop there, because I'm conscious of time. I have a lot to say so please ask lots of questions. But I want to finish with another short video. So all our videos have been aired by Libyan television quite

regularly. This is the one that no one wanted to show, so it makes it extra-special for me. It's Libyans discussing Sharia. Before I show it, I just wanted to give a bit of context.

In Libya, whether you are a so-called secularist or liberal politician or you're an Islamist politician, Sharia has to be the focal point of your conversation, when it comes to legislating. No one is suggesting the option of potentially lowering the role of Sharia beyond it being a primary source of legislation. They tell us that's because we're all Libyan and that's what everyone in Libya really wants.

On our tour, what was incredibly educational for us is when people were filling in the written surveys – sweepingly, Sharia as a source of law. When we did the games, over 50 per cent removed the word altogether in the game, or put it below international law, or put it below customary law (because we asked them to rank the sources of law) – because they didn't feel like they were being assessed or watched, so they actually had a conversation. It's really dangerous, for me, that that conversation has been bullied out of the process by the GNC, by removing it from the table of conversation. Unfortunately, none of the TV stations, whether they are public or private, were willing to reopen the conversation by showing this video. So in a friendly audience, we will show it.

[video clip, in Arabic]

Sir Richard Dalton

Thank you very much. A challenging business, getting consensus in Libya. John is the director of Cross-border Information, which is a business intelligence and political analysis company. John is a very experienced consultant on North African affairs generally but has specialized in Libya, including its oil and gas industry, for a number of years. John?

John Hamilton

Thank you. First of all, Elham, I thought your film was absolutely fantastic. I want to congratulate you for them.

I'm going to start my comments on Libya by talking about the area which I look at most closely, which is the oil and gas sector, and the event which I imagine most of you have followed very closely over the past month, which was the events surrounding the tanker called the *Morning Glory*. Ibrahim Jadran and the Cyrenaica People's Political Bureau almost succeeded in exporting cargo of oil until that attempt was prevented by US Navy SEALs off-shore Cyprus. Those events I think have forced Jadran back to the table and so we have over the past few days seen this chink of opportunity, with a couple of ports being handed over and the idea that some exports from eastern Libya could restart.

When we were discussing that earlier today, I think there was a great deal of scepticism in fact about whether this was really a deal at all. I think someone said it was more like a step towards a deal. The problem, which I think is a really important one to focus on, is what has Jadran got in return and what are the outstanding questions. Those mentioned were, for instance, where is Jadran going to go if in two or four weeks' time he hands over the other two, more important ports that are still under his control? That question hasn't been answered. What will Tripoli actually give Jadran and his group in return if they agree

to that? Will they really agree to the sort of things they're asking, such as a referendum on a sort of devolved or decentralized type of government in Cyrenaica?

So the need for an all-encompassing political deal still is out there, still unachieved. When we're thinking about what sort of deal that should or could be, it's clear that it has to have really strong buy-in from both sides. The last thing that's needed is a deal under which Jadran or his supporters depart the stage and their place is simply taken by another group who's decided to use the same tactic to gain advantage in the way that he has done.

Alongside that you have to look at what's happening in the west of Libya, where Amazigh groups and groups around Zintan, and then down in the south Tebu, have also been blockading fields and pipelines in various ways, because they've seen what advantage Jadran has secured from that and have decided to do the same thing. So a deal in the east needs to be as well something which could be applied across the country to resolve this situation.

The implications of not securing this deal are incredibly serious. I will talk in a moment about the financial problems which this is causing the country, but I think one thing which is often less looked at – it's not just a question of exporting crude, it's a question of how much domestic refining can go on. At the moment the refinery in the west of Libya is working below capacity; in the east, the refinery isn't working at all, although there's another problem associated with that. But the difficulty you've got is that every month – I saw from Reuters last week that Libya has to spend about \$650 million in order to get the fuel it needs to keep the lights on, to keep people's cars going.

So there's a massive financial problem which the Libyan government is presented with. It's got to pay this money out. It's paying vast wages, huge subsidies. And yet it's got virtually no revenue at the moment. We've discovered that the foreign currency reserves have gone down from \$132 to about \$116 billion. In other words, they've spent \$16 billion of their foreign currency reserves. What would that be – between 10 and 15 per cent of their reserves, just in the past year, on trying to keep the budget on track. They haven't got a new budget for this year because of that. Maybe the newly confirmed prime minister will have some success with that, but they're on a sort of envelope financing basis, month by month. There is very little proper budgeting or control.

This raises the question: how long can Libya go on in this way? There have been some statements which have come out recently expressing really serious concern about the ability of the central bank and the foreign reserves to be available. It's not that the money isn't there. It's really a question of how liquid it is and whether it can be made available where necessary, and also of course whether it's at all wise or acceptable to finance the bogus wages – or the fraudulent wages, the bogus subsidies – using Libya's stored-up historic wealth, which is meant to ensure the future of generations to come.

I believe this is a national tragedy that we're seeing unfolding. In some ways I feel like this is a really obvious point to make, but I feel there's – people talk about the urgency of solving the political problems, of fixing the security. But I think there's a different sort of category of urgency we're looking at here. Libya is faced with the possibility that if it's unable to restart producing oil and fixing this ongoing financial deficit, it's not just that maybe in a year's time the central bank will have trouble supporting the currency and you'll get these short-term problems that will come with devaluing the currency. That's a really serious problem, but you've got a much more fundamental issue, which is that after 40 years of Gaddafi, according to some estimates, Libya has used about half the conventional hydrocarbons that are ever going to be discovered. The really major fields are now entering a period of decline. Of course they may find other fields which are very large in the future, but the expectation is that it's going to be harder and

harder to find really substantial reserves. And yet energy consumption is increasing all the time. Whether it's in a generation, or a generation-and-a-half, or two generations, there is going to come a point – possibly in 2040 or 2050 – when Libya will have to consume all the energy it is capable of producing. By that point, Libya needs to have used the wealth that it's managed to store up to this point, and the future wealth that it's capable of generating, to build the infrastructure, to have developed a non-oil economy, to have transformed itself from the terrible situation we see today into a country that's capable of surviving without the rent that you get from oil.

If we're looking at a situation where instead of putting itself in a position to do that, Libya is simply going to spend its national wealth now, simply on preventing the country from falling to pieces over the next two years, then what we're seeing is the birthright of future generations of Libyans being wiped out in effectively a completely trivial way. When this money has gone, it will never be replaced. The amount of investment which we all recognize has to take place in Libya is absolutely enormous. Gaddafi left it with very little.

So the conclusion of my analysis is that everybody tends to look at Libya's assets and says, this is a fantastically wealthy country because of the reserves it has, the financial reserves and the future hydrocarbons reserves. But I think what you have to do is to understand that there are vast liabilities which stand alongside those assets. If you evaluate it in those terms, Libya is not a wealthy country. Its people cannot consider themselves to be wealthy. They need to resolve these differences over blockades, their political differences, with the utmost urgency if they're going to be able to fix their long-term future.

Sir Richard Dalton

Thank you very much indeed. I'll open the floor.