



Constitutional Stalemate in Libya and Rising Violence

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Since the fall of Colonel Qadhafi in November 2011, Libya has been in chaos. Political transition in Libya is marred by tribal, regional, political, and religious conflicts and its existing politics is so divisive that it is difficult to determine who is fighting whom.

This multi-layered factionalism has stalled the emergence of a constitutional mechanism to begin a political process in the country. In early days of the revolution there were some successful efforts when its National Transitional Council (NTC) made the first constitution declaration in August 13 2011.¹ Later a sixty-member Constitutional Drafting Assembly (CDA) was elected in 2014 which held its first meeting in April, 2014 and first draft of the constitution was adopted in April 2016. But later, CDA had to face numerous crises and in seven years none of its six drafts could achieve consensus.

The authenticity and legitimacy of the CDA was questioned firstly on account of the low turnout in its election (13.8 %) and later due to unfair regional representation. The three prominent geographical zones of Cyrenaica, Fezzan and Tripolitania dominated the CDA and smaller tribal groups like Amazigh and Tebu were deprived of cultural and linguistic representation. The members of the CDA failed to agree on the preamble of the constitution and issues such as federalism, power structure, representation of women, role of religion, decentralization, or distribution of national resources etc remain unresolved.

The absence of a higher judiciary to oversee the working of the government and disagreements over the mechanism for adaptation of the constitution has also led to rifts within the CDA. The House of Representative (HOR) ² wants a referendum over the constitution to be held only in major provinces (Cyrenaica, Fezzan and Tripolitania) while others want a national referendum.³ Due to the ongoing deadlock, many members of the CDA have recommended its dissolution and even the judiciary has questioned its procedures.

Inevitably the existence of two 'de facto' governments⁴ and two strong armed rebel groups (Libya Dawn and Operation Dignity) has delayed the working of the constitution. The Tobruk-based HOR government wants an Islamist constitution while the self-claimed head of the Libyan National Army Colonel Haftar⁵ is opposed to religious based polity. Each faction wants maximalist gains from the constitutional provisions and has failed to move beyond the interest of their region or tribes. Prime Minister Fayed Al-Sarraj tends to favor a provision which would sustain him in power for a long time, while Colonel Haftar wants all those provision to be deleted which would hinder his presidency. Colonel Haftar wants the deletion of the dual citizenship clause because it would not allow him to contest the presidential election since he has US citizenship as well. At present the working of the CDA is reflective of the reality of Libyan divisive politics.

A series of global efforts to reconcile these differences has as yet yielded no outcome. The French President Macron particularly hosted both Colonel Haftar and Prime Minister Serraj in Paris in July 2017 to reach a consensus on the constitution. In May 2018, he again invited both the leaders along with other delegates from twenty countries but nothing moved except verbal pledges from both to hold the election and the referendum on the constitution by December 2018.

Amidst this deadlock, many warlords have carved out their own territory of influence further hampering the evolution of an inclusive political system or an inclusive constitution. The incidents of robbery, looting, kidnapping and assassination and tribal clashes add to the general sense of drift. In August only, a fresh incident of clash erupted between the self-claimed armed brigade, "Seventh Brigade" and rival warlords lading to more than a hundred deaths in south east of Tripoli.

An internal truce of August 28 failed to restrain the warring parties and a UN-led ceasefire of September 4 too could not stop the violence on the streets. The government of PM. Sarraj has declared an emergency and the UN mission in Libya called for a trail of war lords as war criminals. These militias are fighting to control the natural and economic resources of the country and today are in control of many oil refineries, army barracks, and banks.

Given the political division of the country on tribal and regional lines, there seems to be few hopes for the early adoption of the constitution or holding of elections. Many deadlines have passed and last deadline of September 16 to finalize the constitution too could not be met because of the narrow and exclusive political approach of the stake holders. The existence of two governments, the high ambition of all the political actors and entrenched factionalism makes it hard to imagine that Libya would witness an early evolution of inclusive politics to end the current instability.

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Disclaimer: The views expressed are that of the Researcher and not of the Council.*

Endnotes:

¹ Darin E. W. Johnson, Conflict Constitution Making in Libya and Yemen, Penn Law , Legal Scholarship Repository, Vol. 39:2, Accessed at <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1956&context=jil>

² In 2014 a new National Assembly was elected, now known as “House of Representative” (HOR) which replaced 2012-elected GNC. But the fragile security situation forced the HOR to flee to Tobruk in the east in August 2014 effectively forcing the administrative division of the county into two.

³ <http://carnegieendowment.org/sada/72878>

⁴ At present Libya has two warring governments , one is based in the eastern part of Libya in Tabruk while another UN-recognized GNA is in Tripoli

⁵ He was an old Gaddafi loyalist but after his departure he created his own group with high political ambition . He took much of the eastern Libya in a military offensive known as “Operation Dignity”, he launched in June 2014.