

Libyans' longing for a state

By Virginie Collombier

■ Executive summary

Despite the many warnings since the overthrow of Muammar Qaddafi that Libya is about to fracture along regional, tribal and provincial lines – and despite the reality of this possibility – Libyans seem eager to see the process of statebuilding move forward and governmental institutions put in place in their country.

In a general context of poor security and in the absence of concrete measures on major issues such as youth unemployment, however, the slow pace of the transitional process and what increasingly looks like institutional paralysis and factional politics are negatively perceived by the people.

The Libyan General National Congress (GNC) eventually announced on February 6th 2013 that the committee in charge of drafting a new constitution for the country would be chosen through elections. Controversy had raged over the previous eight months over whether the committee's 60 members should be appointed or directly elected, considerably delaying the whole process and causing growing frustration and anger among the people.

Despite the many warnings since Muammar Qaddafi's overthrow that Libya is about to fracture along regional, tribal and provincial lines – and despite the reality of this possibility – Libyans seem eager to see the process of statebuilding move forward and institutions put in place in the country. This is what came out of the author's recent trip to Tripoli and Benghazi.

Even though local has been king since the early days of the Libyan revolution, there seems to be a view that a functioning central state will be key to the future of Libya and the well-being of its citizens, provided that it treats all citizens fairly and equally.

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Growing impatience with the slow pace of the transition

At first sight security conditions have significantly improved in Tripoli over the past months. In December 2012, in contrast with the situation that prevailed only a month earlier, there were no longer any checkpoints in the city during the day, police cars had started patrolling and young armed militia members were not visible in public places, including the international airport. In Benghazi the situation was different, notably at the airport, which was still run by the local militia, and because of the succession of attacks that had hit police stations for months and the assassination of several security officials, not to mention attacks against foreign diplomats. In both cities, however, people insisted that life had returned to normal and that they had no particular sense of insecurity.

Yet despite these claims the overall security situation remained extremely fragile, with a number of gunfights and political killings happening on a regular basis in Libya's main cities (Tripoli, Benghazi and Misrata) and the central government exerting little control over the southern reaches of the country. Furthermore, major issues such as

youth unemployment and regional economic disparities have been left mostly unaddressed so far, causing growing impatience with and criticism of the country's new political leaders.

With the orderly election of the GNC in July 2012, immediately followed by the transfer of authority from the National Transitional Council (NTC) to the freshly elected body in August, Libya's political transition initially seemed to be proceeding smoothly and successfully. Muhammad Maqarif, the head of the National Front Party, was elected president of the GNC on August 9th 2012, receiving 113 votes against 85 votes for his independent rival – yet historical ally – 'Ali Zidan.

From then on, however, delays to the initial schedule have kept happening. The replacement of the interim government, led by Prime Minister al-Kib since November 2011, was delayed for several weeks after Mustafa Abushaqur, initially nominated for the position of prime minister, lost a confidence vote on his choice of ministers. The GNC eventually elected 'Ali Zidan on October 14th 2012 and a new cabinet was subsequently approved on October 31st, even though GNC members still queried the suitability of several ministerial nominees with alleged links to the Qaddafi regime. The next step in the transitional process was to be the formation of a committee tasked with writing a new constitution. Yet this issue has proved to be highly contentious and has led to further delays, while keeping the GNC busy to the detriment of its legislative tasks.

Constitution-writing: a controversial issue

While observers argue that the drafting of the new Libyan constitution will probably raise issues very similar to those addressed by constituent bodies in Tunisia and Egypt (the state's identity, the relationship between religion and the state, and the role of women), controversy about the modalities of the formation of the constitutional committee have already significantly delayed the whole process in Libya.

Based on the Constitutional Declaration issued by the NTC in August 2011, Libyans were initially told that one of the tasks of the GNC elected in July 2012 would be to form a 60-member constitutional committee within 60 days of its election. However, just two days before the July 7th elections, in a then-controversial move, the NTC issued Constitutional Amendment no. 3 of 2012, which provided that the constitutional commission would be directly elected by Libyan voters. Debates about this decision lasted for months until the GNC eventually made a decision in the face of looming nationwide demonstrations planned for the revolution's anniversary on February 15th 2013.

On February 6th the GNC finally decided that the committee in charge of drafting the new Libyan constitution would be elected in a national vote, an option that had gradually come to be favoured by a majority of Libyans.

Libyans are now expected to vote for a 60-member body "similar to the committee of sixty that was established to develop the constitution of the independence of Libya in 1951". It is therefore presumed that the 60-member body will include 20 members from each of the three Libyan regions (Tripolitania, Cyrenaica and Fezzan), which means that the principle of equal representation (rather than proportionality) has eventually been retained. While the future organisation of the state is a matter of intense debate, this choice is significant.

The organisation of the state and federal claims

The organisation of the state (especially the degree and modalities of decentralisation) will constitute a major issue to be addressed in the future constitution. Yet federalism seems to be essentially an administrative and economic problem. On the ground, the mistrust between Tripoli and Benghazi remains very deep, as people from the east complain that the traditional patterns of the control and domination of Tripoli over the rest of the country have already re-emerged and that everything (administrative services, decision-making, etc.) remains centralised in the capital city. Moreover, since Qaddafi's overthrow, various groups in the east and south of the country have been calling for the return of the federal state structure that existed under the 1951 constitution. The first and best known of these groups is the Federal Bloc, which proclaimed the eastern part of Libya a federal region under the name of Cyrenaica in March 2012. Other groups in the al-Wahat, Ghadamis and Kufra regions are also demanding more rights. Yet the issue of the management and distribution of wealth from natural resources in their areas seems central to their claims.

Today, despite the reality of local, tribal, and familial identities and allegiances, Libyans seem eager for a central state to be established that would reorganise the country's life, restore order and security, provide a number of services, and treat all citizens in a fair and equal way.

Against such a background, the current absence of a clear framework and clear rules for the organisation of the state is a source of growing concern. The relationship between central and local authorities in particular needs to be urgently defined, as tensions between local elected councils and the central government have been on the rise over the past months.

The crisis of local elected councils

During the war against Qaddafi local committees were formed in several opposition-held cities in order to provide civic administration and public services. This move was followed over the course of 2012 by the organisation of elections in several of the 52 registered local councils, notably in Zuwara, Misrata, Tajura, Alabyiar and Benghazi. These elections, which were generally considered success-

ful and fair, allowed for the formation at the local level of representative councils that enjoyed genuine democratic legitimacy.

Yet the absence of a clear legal framework to regulate the relationship between these local institutions and institutions at the national level rapidly led to confusion and paralysis. In particular, it has been unclear what – or how extensive – local councils' powers are supposed to be, which areas fall under their direct control, which are reserved for the national government in Tripoli, and which are a mixture of the two. On the ground this had led local councils to complain that the central government had not allocated them the funds they were entitled to, and that they were being perceived as impotent and therefore were gradually losing legitimacy in the eyes of the people.

In November 2012 information was released that the GNC had decided that local council elections would no longer take place until after the permanent constitution had been ratified. Under the provision, any local council that had already been elected would remain in place, but any town or region that had not yet completed election procedures would have them cancelled (this was notably the case in Tripoli).

In this context, rapid enactment of the Local Administration Law is therefore seen as essential. Without a clarification of their relationships with the central state, local municipalities will remain unable to provide the various services that the people expect from the state, either at the national or local level. Yet recent developments at the highest levels of the state have augured ill for rapid moves on this issue.

Struggle for influence between GNC president Maqarif and Prime Minister Zidan

The Constitutional Declaration of August 3rd 2011 has constituted the basis for Libya's provisional legal order. Promulgated by the NTC, the highest governing body after Qaddafi's overthrow, the declaration was to govern the transitional process, outlining the provisional powers and their distribution between institutions, as well as a timeline for the constitution-drafting process. Yet the vagueness of this provisional charter forced both the NTC and later the GNC to issue several legislative decrees over recent months to try and close the gaps that exist.

One major issue so far has been that the Constitutional Declaration has not clearly drawn the line between the work of the GNC and the government, which has resulted in an unclear distribution of responsibilities and attributions between the two. This has had increasingly negative consequences on the overall political process, as GNC president Maqarif and Prime Minister Zidan have engaged in a battle for influence over the definition of the country's new institutions. In what is seen as a power vacuum, each is trying to assert his control and shape the new political structures in accordance with his own views and interests.

As the head of the GNC, Muhammad Maqarif has, for instance, tended to see himself and act as if he were the president of the country, a view contested by Prime Minister Zidan, who considers that Maqarif is no more than the GNC speaker. This has recently proved a factor of institutional confusion and could lead to paralysis. This was made clear in December 2012, when Maqarif took the initiative – apparently without either co-ordination with the government or consultation with the armed forces – to temporarily close Libya's southern borders and declare the south a "closed military zone", just two days after 'Ali Zidan had secured agreements on border security with neighbouring countries.

Eruption of conflict within the GNC

Parallel to the crisis between the two major figures at the head of the state, conflict has also erupted within the GNC itself. On January 6th 2013 Mahmud Jibril's National Forces Alliance (NFA), Libya's largest parliamentary bloc, announced its decision to boycott the GNC and walked out of its meetings (only to rejoin the assembly a few days later). In addition to criticisms related to the constitution-drafting process, NFA members cited the failure to adopt rules governing parliamentary proceedings, the lack of security for members of parliament and unilateral decisions by Maqarif as reasons for their withdrawal.

As Muhammad Maqarif's behaviour and his attempts to completely control the assembly's agenda have been regularly criticised over the past weeks, Libyan politics in general is seen as increasingly fractious, with competing factions in power trying to take advantage of the weakness of the state to assert their influence over it. For most Libyans this constitutes a serious impediment to the construction of the state and its institutions at a time when they consider this should be the priority.

As a consequence, citizens have already started to question the credibility and legitimacy of the new political elite. They complain that the real revolutionaries – those who actually made the revolution – have been marginalised, while self-interested politicians are taking advantage of the new context for their own benefit. They argue that corruption remains as deep a problem as it was under Qaddafi and that nothing has been done by the new political leadership to address their most pressing concerns, such as security, youth unemployment and reconstruction.

With the constitution-drafting process now on track and the GNC therefore being allowed to concentrate on passing legislation in support of the government's work, there is hope that the statebuilding process will progress. Yet the prospect of new elections for the constitutional committee and the expected debates in that forum on the identity and organisation of the state and the distribution of oil wealth may well make the process slower than is hoped. ■

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