



Steering Libya Past Another Perilous Crossroads

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What's new? Elections – a critical step in Libya's transition away from years of autocratic rule under Muammar al-Qadhafi and subsequent political division – were scheduled for December 2021. But authorities postponed the polls indefinitely amid unremitting disputes. Now a new feud between rival governments, each claiming to be legitimate, is escalating.

Why does it matter? Without consensus on a way forward, Libya's long-awaited transition could come to a premature halt, with the country once again divided between two rival governments. While a return to conflict does not seem imminent, renewed violence is possible if the rift between political camps keeps growing.

What should be done? Libyan politicians should pause one camp's initiative to instal a new government and seek a consensual way forward. With encouragement from outside powers, they should return to the negotiating table and either agree on a new cabinet or, with the UN's assistance, chart a new electoral roadmap.

I. Overview

More than a decade after Muammar al-Qadhafi fell, Libya has entered yet another uncertain phase with political factions at odds on the way forward. On 24 December 2021, the country was to hold milestone presidential and parliamentary elections – a key step on the way to a more stable democracy. But the national elections commission, citing political and legal obstacles, delayed the votes indefinitely. Libya's main political camps have put in motion conflicting strategies for getting out of the impasse. One wants to instal a new government led by former Interior Minister Fathi Bashagha, who won a controversial parliamentary confidence vote on 1 March, and then to turn to constitution drafting while putting off elections. The other rejects the Bashagha government and wants current interim Prime Minister Abdulhamid Dabaiba to remain in place while parliamentary elections proceed – all before turning to constitutional reform and presidential selection. With support from outside powers, the rivals should either come to a consensual deal on a cabinet that both support, or negotiate a new electoral roadmap.

Libya's new political fracture risks breaking apart the unified interim government that formed in the months after a ceasefire declared in October 2020. That government brought together Libya's rival power centres, one based in Tripoli and the other

in Tobruk, which formed after contested parliamentary elections cleaved the country in two in 2014. Before the 24 December balloting was delayed, there was broad consensus on the way forward. The parties had agreed on holding presidential and parliamentary elections simultaneously on the basis of existing electoral laws and without an approved constitution. But the delay prompted some of them to reconsider.

The political landscape is now dominated by two camps. One group supports the new Bashagha-led government and a roadmap adopted by the House of Representatives, the parliament elected in 2014 and based in the country's east, that prioritises constitution drafting. The other advocates sticking with the Dabaiba government, pushing ahead with parliamentary elections and keeping both the constitutional track and presidential polls on hold. Outside actors have struggled to orient themselves to the emerging dynamics. The UN special adviser favoured holding elections but did not in principle oppose installation of the new government. But after legal disputes clouded the House's 1 March confidence vote in Bashagha, UN Secretary-General António Guterres expressed his reservations about the appointment. While it is not the UN's role to officially recognise a new government, its criticism of the confidence vote had a domino effect on UN member states' approach to the matter. To this point, with the exception of Russia, no other foreign state has welcomed the new government.

For both Libyan insiders and outside powers, the choice is whether to support an elite pact to guide the transition at least a bit further or to turn immediately to popular participation through elections. There are strong forces pulling in both directions. The House of Representatives threw down a gauntlet of sorts when it decided to ignore the controversies surrounding the 1 March confidence vote and swore in Bashagha's 39-person government, tasking him to take Dabaiba's place as interim premier. For his part, Dabaiba, backed by the Tripoli-based consultative body, the High State Council, rejected this move. Bashagha and his ministers have thus far remained in the east of the country, but they vow to take office in the capital Tripoli soon.

Worries that the impasse will lead to a return to conflict are understandable. Each side can call upon loyalists under arms: the east-based House of Representatives and the new government have the support of Field Marshal Khalifa Haftar, commander of the forces that laid siege to Tripoli in 2019, and of other armed groups that endorse Bashagha. Dabaiba and his allies have the backing of the rest of the Libyan military in western Libya. But there is little appetite in the country for spilling blood over a political feud, and Libya's foreign partners appear unwilling for now to underwrite renewed violence.

That said, there are risks. While Bashagha has vowed not to use force to assert himself as premier, growing political confrontation could prompt armed groups allied with him to mobilise to dislodge the Dabaiba government and instal the new one. Moreover, even if it does not trigger open conflict, an unresolved political schism in Libya could plant the seeds of deep crisis. The economy would suffer, as would people's livelihoods. Attempts to unify the military could founder, with political rivals leaning on armed loyalists as their private militias. The unstable equilibrium between foreign states with a military presence in Libya could dissolve.

Rather than stick to maximalist positions and hope that the other side yields, Libya's political factions need to come back to the table and forge a consensus path forward. The House of Representatives should take note of the reservations that for-

foreign capitals have voiced regarding the appointment of the new government and refrain from pushing the new cabinet from taking further action aimed at ensconcing itself in Tripoli. Instead, it should accept a return to UN-backed negotiations, which the parliament has rejected thus far, to arrive at a new roadmap that has broad political support.

In practical terms, negotiations would be for the purpose of settling on one of two options. Under the first, talks would aim at forging another elite deal on a new cabinet that Libya's rival factions would vow to support. Should efforts to reach such a pact fail, the other option would be to turn to discussions of a new electoral roadmap. On the issue of which elections (parliamentary or presidential) should be held and in what sequence, public opinion and political factions remain polarised and the chances of finding a solution agreeable to all are low. In today's post-conflict environment, in which a winner-take-all mentality still prevails, a stand-alone presidential ballot remains a hazardous choice. Interposing constitution drafting prior to elections also risks a drawn-out process that cements the status quo. A more logical choice, albeit not the most popular one, would be to opt for parliamentary elections to renew the legislature and allow this new body to appoint a new government.

That said, there is no right or wrong way out of this standoff. The priority right now is for Libya's rival factions to come to a consensual way forward. Moreover, whichever of these two options Libyans choose, it is essential that foreign capitals remain united in supporting their decision. The parties should not allow the botched 24 December polls to become the pretext for emplacing a new government that, promising to finish healing old scars, ends up opening new wounds.

II. The Road to Botched Elections

The elections imbroglio has its origins in the deal that ended the deadly eighteen-month war between forces backing two parallel governments that each ruled part of the country from 2014 to 2020.¹ The two governments, one in the east of the country and backed by the Tobruk-based parliament (but with no international recognition) and the other in Tripoli (with international recognition), had been intermittently at war since 2014. But the conflict escalated in April 2019 when forces led by Field Marshal Haftar launched an offensive to capture Tripoli.²

On 23 October 2020, representatives of the rival coalitions signed a ceasefire agreement and kickstarted political talks that were to have culminated in Libya's first-ever presidential election. In November 2020, the country's political factions agreed on presidential and parliamentary elections, the centrepiece of a UN-sponsored roadmap.³ UN-mediated talks in February 2021 led to the appointment of an interim unity government, headed by Prime Minister Dabaiba. It had a mandate to unify

¹ On Libya's 2014 political crisis and the emergence of parallel governments, see Crisis Group Middle East and North Africa Report N°170, *The Libyan Political Agreement: Time for a Reset*, 4 November 2016.

² On the 2019 conflict in Tripoli, see Crisis Group Alert, "Averting a Full-blown War in Libya", 10 April 2019; and Crisis Group Middle East and North Africa Briefing N°69, *Stopping the War for Tripoli*, 23 May 2019.

³ "Roadmap for 'The Preparatory Phase for a Comprehensive Solution'", 16 November 2020.

Libya's divided institutions, including the parallel governments, and prepare the country for simultaneous presidential and parliamentary polls set to take place on 24 December 2021.⁴

Two main considerations informed the decision to hold presidential and parliamentary elections before taking other key transition steps, like drafting a constitution. The first consideration was that Libyans wanted to choose their new leaders, including (for the first time) a president, believing that a strong executive would be best able to put the country back on track after years of institutional chaos. Most delegates at the UN-hosted talks throughout 2020 underscored this point, as did the majority of parliament members. Participants in those talks saw certain risks. A UN election adviser involved in the talks said: "The choice to have a presidential election, which is essentially winner-take-all, in a country that is just coming out of a conflict is admittedly hazardous. But the majority of political delegates attending the November [2020] talks pushed for them, with just a few people warning against them".⁵

The second reason was that those delegates also believed that the country needed legitimate institutions backed by a popular mandate instead of the interim arrangements based on the divisions that prevailed prior to the ceasefire.⁶ UN officials were of the same opinion.⁷

From the outset, however, the plan to hold the vote was a dangerous gamble. Libya has had a troubled relationship with elections since 2011: a dispute over the 2014 legislative ballot was what split the country in two rival administrations. Seven years later, conditions were still not conducive to holding elections, with a deeply polarised electorate and entrenched rivalries among political factions, each with its own allied military forces. The judiciary, which was supposed to vet candidates and adjudicate any contestation of results, is hardly impartial.⁸

Other problems surfaced. Libya's factions failed to reach consensus on the electoral framework or the eligibility criteria for presidential candidates. In setting 24 December 2021 as the date for simultaneous parliamentary and presidential polls,

⁴ For background, see Crisis Group Middle East and North Africa Report N°222, *Libya Turns the Page*, 21 May 2021.

⁵ Crisis Group interview, UN election adviser, Tripoli, November 2021.

⁶ Crisis Group interviews, Libyan politicians and attendees at the UN-hosted political talks, Tunis and Tripoli, November 2020 and March 2021.

⁷ In March 2018, the UN special representative of the secretary-general for Libya, Ghassan Salamé, told the UN Security Council: "The present institutions are based on shallow legitimacy. They are built on tenuous mandates or are divided into competing bodies. To lead and unify the people and take difficult decisions for their own good, the government must come from the people. This means elections". Ghassan Salamé, Special Representative of the Secretary-General, briefing to the UN Security Council, 21 March 2018. The emphasis on elections has been a pillar of the UN's engagement with Libya ever since, including under Salamé's successors, Stephanie Williams and Ján Kubiš. Crisis Group interviews, UN officials, Tripoli and Rome, 2018-2021.

⁸ One problem that undermined proper judicial review of presidential candidates was that by law, only courts in the three cities where candidates could submit registration papers – Benghazi, Sebha and Tripoli – could examine a complaint or an appeal. A candidate registered to run in Benghazi could be challenged only in a Benghazi court, a Sebha candidate only in Sebha and a Tripoli candidate only in Tripoli. But no judge would rule to disbar candidates in such challenges for fear of public outcry or even reprisal. Libyan lawyers said judges who did not want to become accomplices to political manoeuvrings recused themselves from appeals. Crisis Group telephone interviews, judges and lawyers, November and December 2022.

the UN-backed roadmap required rival politicians to hammer out election rules. Yet in negotiations between May and July 2021, the Libyan Political Dialogue Forum, a group of 74 negotiators representing the country's parallel assemblies and various constituencies, was divided between one group that wanted presidential and parliamentary elections to take place at the same time and another group that wanted only legislative contests. The latter alleged that a presidential election would be too divisive and risked handing Libya back to a dictator. They argued that a president with a popular mandate but (in the absence of a constitution or law regulating the powers of the president) subject to no clear checks and balances could open the door to authoritarian rule.⁹

Breaking the impasse, the House of Representatives passed legislation in September that regulated presidential elections and, the next month, a measure governing parliamentary elections as well.¹⁰ The UN and foreign capitals gave this initiative their blessing, likely because the prospect of consensus was dim and they were anxious to make sure that the elections took place on time.¹¹ But the Tripoli-based assembly, the High State Council, opposed it, as did other Tripoli-based politicians who accused the parliament of adopting election laws unilaterally without consulting them.

Even though they paved the way for elections, the two electoral laws complicated the situation, partly because the House approved them without a plenary vote and without a qualified majority – a procedural flaw.¹² There were substantive problems as well. For example, the legislation provided for the parliamentary ballot to take place months after the presidential vote, rather than simultaneously, as the UN roadmap had prescribed. Some Tripoli-based factions opposed to a presidential election rejected this sequencing because they feared an elected president might call off the parliamentary elections or suspend the legislative authority altogether, thus enabling a return to authoritarian rule. Such fears were compounded by the fact that the legislation vested considerable powers in the new president, including the powers to appoint the prime minister, assume the role of armed forces commander-in-chief and declare a state of emergency – all without checks and balances.

⁹ Crisis Group telephone interviews, Libyan Political Dialogue Forum members, political activists, May–July 2021.

¹⁰ Law 1/2021, “On the Election of the Head of State and His Prerogatives”, 8 September 2021; and Law 2/2021, “On the Election of the House of Representatives”, 6 October 2021.

¹¹ The UN Secretary-General’s special envoy for Libya, Ján Kubiš, has never explained why he agreed to support the House’s decision to unilaterally draft electoral laws. Close aides and diplomats claim that Kubiš believed that negotiating formats (in particular the Libyan Political Dialogue Forum) had reached a dead end and that House laws were the only way to ensure that elections would happen on time. Once the House adopted the laws, his aides say, Kubiš did not want to raise public objections to the questionable legal procedures, saying they were “internal Libyan matters”. Crisis Group telephone interviews, UN officials and Western diplomats, September–December 2021.

¹² The House speaker, Aghila Saleh, adopted the laws without a qualified majority and, in the case of the parliamentary electoral law, without a formal vote. House members said the laws’ adoption is valid on the basis of the institution’s internal regulations, but their opponents claimed it was procedurally flawed and vowed to challenge both laws in court. Crisis Group telephone interviews, Tripoli-based politicians opposed to the laws, September–October 2021; House of Representatives members, September–October 2021. The High State Council denounced the adoption of a “flawed election law” as a violation of “the internal system of the House of Representatives itself ... aimed at obstructing the upcoming elections”. “The Supreme Council of State Rejects the Unilateral Measures Taken by House of Representatives Speaker Aghila Saleh”, High State Council, 9 September 2021.

Finally, the eligibility criteria for presidential candidates were worded vaguely (and subsequently modified through ad hoc decrees), which opened the door to conflicting interpretations as to who would be allowed to run.¹³

Neither the House nor the elections commission considered these problems grave enough to halt the election preparations. Both bodies brushed aside objections to the electoral laws and rebuffed Libyan requests to postpone the balloting so as to have time to adjust the legal framework governing who would be allowed to run.¹⁴ Most parliamentarians and the head of the elections commission sharply disagreed with the notion of delay. Some election officials and House members went so far as to warn that war could break out if the elections did not take place as scheduled, adding to the sense of urgency.¹⁵ In mid-November, the elections commission called on candidates to submit applications for the presidential and parliamentary races.

In early December, however, things started to unravel. Some 98 candidates had submitted papers to run for president, and disputes emerged over three controversial personalities. One was Field Marshal Haftar, who drew strong opposition from those in western Libya who had helped fight off his 2019 siege of Tripoli. The second contentious candidate was Saif al-Islam al-Qadhafi, the second son of the late dictator. He had some popular support, but both Haftar and Tripoli-based factions wanted him out of the race. Finally, interim Prime Minister Dabaiba aroused the ire of almost all the other candidates, who felt he had an unfair advantage as sitting prime minister. They also said his candidacy violated his previous pledge not to run, which he had made during negotiations before his prime ministerial appointment.¹⁶

Clashing interpretations of the presidential electoral law led various factions to believe that their foes would be disqualified. Haftar's critics thought he would be barred because of his alleged dual nationality. The first version of the law says candidates must have only Libyan citizenship; Haftar is alleged to have U.S. citizenship but no documentary evidence has so far emerged.¹⁷ Qadhafi's opponents were sure he would be thrown out of the race because a court had sentenced him to death in absentia. The law states that no candidate can have received "a final sentence" from a court.¹⁸

¹³ Eligibility criteria for the presidency were outlined in Article 10-12 of Law 1/2021. Subsequently, however, the House unilaterally issued Law 3/2021 and other decrees amending articles of the electoral law, including the eligibility criteria. With these changes, the minimum age of presidential candidates was lowered from 40 to 35; and the requirement that candidates not have foreign citizenship was amended so that those with a second nationality "authorised by competent authorities" could run.

¹⁴ Crisis Group interview, Imad al-Sayeh, High National Elections Commission Chairman, Tripoli, 9 November 2021; and Crisis Group telephone interview, House of Representatives legal drafting committee member, November 2021.

¹⁵ Crisis Group interview, election official, Tripoli, late November 2021.

¹⁶ Crisis Group interviews, politicians, activists, presidential candidates and close acquaintances of presidential candidates, Tripoli and Rome, December 2021.

¹⁷ Crisis Group interviews, Libyan politicians opposed to Haftar, November-December 2021. In the months leading up to the presidential ballot, a number of anti-Haftar activists tried to obtain documentary evidence of his U.S. citizenship. One group even filed a case against Haftar in U.S. courts, in hopes that the proceedings would yield confirmation that he is a dual national. But their attempts failed to produce concrete evidence. The court case revealed only that Haftar has a Social Security number, which is not proof of U.S. citizenship. The activists say no physical evidence of his double citizenship has come to light.

¹⁸ Libyan law does not seem to consider in absentia sentences to be "final". Crisis Group telephone interviews, Libyan judges, December 2021.

Dabaiba's adversaries believed he would be excluded for two reasons: an article in the law required candidates to suspend professional activities three months before election day, which Dabaiba did not do; and they claimed he had forged the university degree certificate he submitted to the elections commission.¹⁹

Yet, after two rounds of court appeals, judges had not disqualified anyone, leaving all 98 candidates able to stand in the election.²⁰ Imad al-Sayeh, the High National Elections Commission chairman, refused to accept this outcome; according to a Western diplomat, he was particularly troubled by the fact that judges had cleared Qadhafi.²¹ Other diplomats suggest that some presidential candidates indicated in private they wanted to stop the electoral preparations once they realised that they could lose. These included Haftar, House of Representatives Chairman Aghila Saleh and Bashagha, all of whom had vocally supported the process until then, believing victory within reach. They may have put pressure on the elections commission to delay the vote.²²

These developments brought the preparations to a grinding halt. Just two weeks before the slated vote, the elections commission's head declared "force majeure", suggesting that circumstances beyond his control had prevented him from performing his duties, and refused to validate the final presidential candidate list.²³ Without that list – which officials needed to print ballots – it became evident that elections could not be held on schedule. Yet it was not until 22 December that the commission announced its decision.²⁴ At first, it proposed delaying the vote by a month, until 24 January 2022, but soon the postponement became open-ended.

¹⁹ Crisis Group telephone interviews, lawyers, activists and politicians, December 2021. See also the letter from five members of the Libyan Political Dialogue Forum addressed to Libya's attorney general dated 16 December 2021, published on social media, including in a tweet by *al-Anoud al-Libiyya* newspaper, @Anoud_Libyan, 5:59am, 16 December 2021.

²⁰ The candidate review had two stages: in the first, the elections commission declared which candidates could run; in the second, candidates disqualified by the commission or those who wanted to file a motion to bar another candidate cleared to run could make a court appeal. Al-Qadhafi was disbarred in the first stage, but he appealed in a Sebha court and won. As for Haftar, the elections commission cleared him, but opponents filed motions against him in a Zawiya court; the court declared these inadmissible. Dabaiba was cleared to run by the elections commission, but a group of his opponents, including Bashagha (who, in March 2022, became prime minister of a new government backed by the parliament, in defiance of Dabaiba who refused to hand over power), filed a motion against him in a Tripoli court, which they lost. Crisis Group review of relevant court documents, December 2021.

²¹ Crisis Group interview, Western diplomat, Tripoli, December 2021.

²² Diplomats who met al-Sayeh in early December say he was under "tremendous pressure" to call off the ballot. They cite people in the pro-Haftar camp, as well as Saleh himself and people lobbying on behalf of Bashagha, as having pressed him to halt the elections. Crisis Group telephone interviews, Western diplomats and UN officials, December 2021 and January 2022.

²³ "Concerning the Latest Developments in the Electoral Process for the Election of the Head of State", High National Elections Commission, 11 December 2021.

²⁴ "Concerning Setting the Polling Day (for the First Round) of the Presidential Elections", High National Elections Commission, 22 December 2021.

III. **Conflicting Visions and Points of Contention**

Libyan politicians have deflected responsibility for the fracas. Elections Commission Chairman al-Sayeh criticised the judiciary for allowing presidential candidates to run who did not meet the eligibility criteria.²⁵ The judiciary rejected the accusation, arguing that it had applied the law to the letter, and that the problem was with the election law's vague and self-contradictory wording. House lawmakers, in turn, insisted that both measures were sound. In public, they blamed the failed ballot on the elections commission, saying it had refused to lift the "force majeure" suspension. In private, however, several parliamentarians pointed the finger at either Dabaiba or Saif al-Islam al-Qadhafi (depending on the political faction to which they belonged) for throwing a hat in the ring. Some politicians accused the U.S. of vetoing al-Qadhafi's participation and pressing the elections commission to halt the vote, an allegation that U.S. officials dismissed as a "conspiracy theory".²⁶

In hindsight, the vote's cancellation was not entirely bad news. Had it gone ahead, it would most likely have led to more legal disputes, boycotts and contested results. If any of the three controversial presidential candidates had passed out of the first round, opponents likely would have declared the ballot illegal, triggering lengthy court battles. The same could have happened if any of them had failed to progress to a run-off.

Still, the country has entered a new period of political uncertainty. A small number of politicians and activists are still calling for simultaneous presidential and parliamentary elections, but they are outnumbered by the voices of two opposing camps, each of which is pushing its own political proposal and its own government.

A. *Option #1: A New Government and Constitution First*

The first group wants to see a new government in place and elections postponed indefinitely. Members of the House of Representatives and others opposed to Prime Minister Dabaiba staying in power support this option. Backing them are Haftar, Saleh and Bashagha; the last has gone from being the former two's enemy to becoming their candidate for prime minister (though his own ambition was to become president).

On 10 February, the House of Representatives appointed Bashagha as prime minister-designate and tasked him with forming a government.²⁷ On 1 March, the House

²⁵ In a 17 January 2022 parliamentary hearing, al-Sayeh stated that he referred the papers of twelve of the 98 candidates to the Public Prosecutor's Office on grounds of alleged fraud (such as fake university degrees or endorsement signatures), but the judges avoided applying the law in a series of questionable appeals. Live broadcast of the House of Representatives session in Tobruk, 17 January 2022, available through the Al-Marsad Facebook page.

²⁶ Crisis Group telephone interviews, Libyan politicians and analysts, December 2021; and Crisis Group correspondence, U.S. official in Washington, 17 December 2021.

²⁷ In late January, the House announced its intention to replace the prime minister and called for applications. On 7 February, the parliament speaker announced that he had disqualified five of the seven applicants because they did not meet the eligibility criteria. Only Bashagha and a little-known civil servant, Khaled Baibas, passed the initial screening. Subsequently, the speaker announced that Baibas had pulled out. House of Representatives broadcast sessions on Al-Marsad Facebook page, 7 and 10 February 2022; and Media Centre for the Speaker of House of Representatives' Facebook page, 10 February 2021.

voted to endorse the 39-person cabinet headed by Bashagha, giving him the green light to take over from the sitting prime minister, Dabaiba. But the vote of confidence was controversial because the number of legislators in attendance was below the total number of votes of endorsement the House speaker said had been cast, and it remained unclear how many members of the parliament had actually voted in favour of the new government.²⁸ The existing government in Tripoli did not recognise the confidence vote. The UN expressed reservations about it and, with the exception of Russia, foreign capitals appear so far to be refraining from recognising it.

Bashagha manoeuvred his way into his premiership in part by reaching out to former enemies. He had been making overtures to Haftar for months, wanting to secure a deal prior to the scheduled elections. According to a senior Libyan politician close to both parties, they agreed that should Haftar make it to a presidential runoff, he would back Bashagha as prime minister; if, instead, Bashagha made it to the final stage (and Haftar did not), Haftar would endorse him in exchange for the promise of ministerial positions for allies. They also agreed that, if elections did not take place, Haftar would support Bashagha as head of a new government in return for concessions in the cabinet lineup and on the condition that Bashagha increase funds allocated to Haftar-led military forces.²⁹

Bashagha's appointment as prime minister is part of a controversial arrangement ratified by the House in February 2022 that purported to create a new roadmap for Libya.³⁰ By this plan, the House and the Tripoli-based High State Council will task a committee of 24 experts with amending the draft constitution completed in 2017 but never adopted; if at least two thirds of its members agree on the proposed amendments, the new draft will be put to a referendum.³¹ Supporters of this proposal, who include the majority of House members and some High State Council members, believe these steps must precede elections. But the timeline for the steps is open-ended, prompting influential Libyans to denounce the plan as unrealistic, and one Libyan constitutional expert to decry it as "a mere exchange of favours between [rival politicians] who get to stay in power indefinitely in exchange for their support for Bashagha".³² The fact that House members approved the roadmap unanimously hours

²⁸ On the controversies surrounding the vote of confidence, see Crisis Group Statement, "International Unity is Needed to Prevent a Divided Libya", 3 March 2022.

²⁹ Crisis Group interviews, Libyan politicians, Rome, September 2021; Tripoli, December 2021. Crisis Group telephone interviews, pro-Haftar politicians, December 2021.

³⁰ The House adopted the roadmap as Constitutional Amendment 12 on 10 February 2022, but as of mid-March the law had yet to appear in the *Jarida Rasmiyya*, the country's official gazette where laws are published. The fact that the text was not published has led some Libyan politicians to question whether the amendment can be considered formally adopted. House members, however, insist that it is. Crisis Group telephone interviews, Libyan politicians, lawmakers, Tripoli and Tobruk, February and March 2022.

³¹ A 60-person Constitution Drafting Assembly elected in 2014 completed a draft charter in July 2017 and approved it by a two-thirds majority. The Assembly passed it to the House of Representatives, which was supposed to submit it to a referendum. But the referendum has yet to take place, leaving the draft in limbo.

³² Crisis Group telephone interviews, Libyan politicians, mid-February 2022; Constitution Drafting Assembly member, mid-February 2022.

after it had been drafted and minutes before Bashagha's nomination seemed to confirm that it was a pre-cooked elite deal.³³

The document is also confusing, poorly drafted and at times self-contradictory. A careful reading reveals that many of the procedures it envisages – such as the region-based approval criteria for the referendum it introduces or the second review by the Constitution Drafting Assembly (a 60-person body elected in 2014) it proposes – are politically and legally controversial.

The voting criteria for the referendum contemplate that it will be approved if 50 per cent plus one of the voters in each of Libya's three regions approve it. But Libya does not have a law charting the boundaries of its three historical regions (Tripolitania in the west, Cyrenaica in the east and Fezzan in the south). As such, these are merely aspirational geographical areas rather than proper administrative territories with legal force. Delineating these boundaries is politically sensitive; should legislators try to do so, they might ignite feuds that could postpone the electoral process.

Similarly, the decision to mandate the Constitution Drafting Assembly to review the draft constitution should it fail to be endorsed in the first referendum is controversial. Many members of the Assembly, who believe that the existing draft constitution should be put to a referendum in its current form and not be revised, have not agreed to this step. Because of these and other red flags, the implementation of this roadmap would likely spark new feuds that would make it impossible to complete the constitutional review, thereby delaying elections indefinitely.³⁴

B. Option #2: Parliamentary Elections First

The second group wants Dabaiba's interim government to remain in place, followed by parliamentary elections, and not to hold a presidential ballot or reopen deliberations on the constitution at this time. They believe that the House of Representatives is the main source of Libya's woes and point to the controversies over the election laws the House passed in 2021 and the 1 March vote of confidence to support their position. They want to entrust the next parliament with appointing a new government and resolving Libya's constitutional conundrum. This camp includes western Libyan politicians who led the revolt against Muammar al-Qadhafi, as well as, in an unexpected twist, the late dictator's son Saif al-Islam. In all other respects, Saif al-Islam is at odds with those who helped depose his father, but his camp supports this option mainly out of aversion for the Haftar-Bashagha deal, which they think would instal a government that will never allow elections to take place. Not surprisingly, Dabaiba also gives full-throated support to this course of action.

This second option has both advantages and disadvantages. Postponing the presidential ballot would allow Libyans to sidestep the thorny legal problems that helped scuttle the December vote and remove the winner-take-all dynamic from Libyan electoral politics. It would also allow legislative elections to move ahead without a new constitution first. Yet the House may oppose this path, as most of its members

³³ The vote took place by show of hands (and without a proper count), after which the House speaker announced that the measure had passed unanimously. The speaker's media office later stated that the amendment had passed with 126 votes from among the 147 delegates present. Media Centre for the Speaker of the House of Representatives Facebook page, 10 February 2022.

³⁴ See Appendix A as well as the chart published with this briefing.

favour having an elected president first. Like many Libyans, they deride calls for stand-alone parliamentary polls as an Islamist ploy fearing that Islamists, who oppose a presidential system, might win control of the next parliament and then do away with presidential elections entirely.

External actors such as Egypt, which has a centralised presidential system of government with strong links to the military and aspires to see the same in Libya, also believe that parliamentary elections would be an unacceptable concession to Islamists, whom Cairo opposes.³⁵ According to other Libyans with ties to Egyptian officials, Cairo's position is more the result of practical considerations than of ideology. They say Egypt maintains good relations with Parliament Speaker Saleh that it does not want to imperil.³⁶

Regardless of what is driving Cairo's position, France and the U.S. appear to have followed Egypt's lead on this matter, with one diplomat explaining it is "simply impossible" to get Cairo on board with parliamentary elections in Libya.³⁷ Other countries with stakes in Libya and no apparent reason to take their cue from Cairo, such as Turkey and Russia, have nonetheless refrained from proposing alternatives, in large part because the UN had also embraced simultaneous presidential and parliamentary elections as the way forward, making them the centrepiece of its mediation. All of this explains why, thus far, foreign states have not given much consideration to roadmaps that prioritise parliamentary elections.

To gain traction, supporters of stand-alone parliamentary elections would need to change perceptions that this option is an Islamist ruse and convince a wider swathe of the Libyan public that it is a valid approach given the impasse over the presidential election. With the public on their side, they might be able to pressure the House to adopt a new electoral law scrapping the presidential ballot or find a way to circumvent the body. Prime Minister Dabaiba suggested in mid-February that his cabinet would draft a new electoral law that he would somehow enforce himself should the legislature oppose adopting it.³⁸ Before that, some western Libyan politicians were

³⁵ Crisis Group telephone interviews, House of Representatives members, November 2021 and February 2022; and Crisis Group interviews, Western diplomats, Rome, January and February 2022.

³⁶ Crisis Group telephone interview, Libyan with close ties to Egyptian officials, 2 March 2022.

³⁷ Crisis Group telephone interview, French diplomat, Paris, February 2022. Diplomats from other Western countries explained that in the consultations among foreign powers, Cairo's opposition to holding parliamentary elections first amounted to a veto. UN officials confirmed this report. Crisis Group telephone interviews, U.S. and European diplomats, UN officials, Tripoli, Rome, Brussels, May 2021-March 2022.

³⁸ In a cabinet meeting on 14 February, Dabaiba announced that he had tasked his justice minister with forming a committee to select a legal team to draft an electoral law. He explained: "This is for the launch of the electoral process next June, with God's help. Drafting laws is an existing competence of the Council of Ministers". He promised he would provide details on "the path of approving this [electoral] law" at a later date. Abdelhamid Dabaiba's speech at cabinet meeting, broadcast on Facebook, 14 February 2022. In a 21 February televised address, he explained the process further, saying the Council of Ministers would submit the draft electoral law to the High State Council (in accordance with the 2015 Libyan Political Agreement) and then refer it to the House of Representatives for approval within two weeks. "If this is not possible as a result of a conflict of interests, it shall be referred to the Libyan Political Dialogue Forum for approval", he said, referring to the UN-backed forum of 74 delegates that selected him as prime minister in February 2021. Abdelhamid Dabaiba, "Return of Trust to the People", speech, 21 February 2022, available on the government's Hakomitna Facebook page (Arabic).

calling on people to take to the streets to demand the House's dissolution.³⁹ It is unclear if such appeals will generate momentum. Many ordinary citizens are disillusioned with formal politics and have little motivation to protest, believing that their opinions will not change the trajectory set by a handful of self-interested elites. They are also fearful that armed groups with political connections would mobilise against them or that they could lose their jobs.⁴⁰

C. *Main Points of Contention*

1. Technical dispute

The question of whether the House's confidence vote met legal requirements is a point of contention. In early February, Saleh, the House speaker, suggested ambiguously in meetings with diplomats that he would accept a vote result based on a simple majority (50 per cent plus one) of the members present. But the institution's internal rules state that such a vote requires approval from 50 per cent plus one of all House members – not just those in attendance.⁴¹ Saleh eventually agreed to hold the vote based on the total number of House members, but he never clarified how many members the House has and hence how many were needed for a quorum. Many of the original 200 members elected in 2014 either had resigned or were boycotting; some had been replaced, but the total number of deputies was nonetheless uncertain. Legislators gave the UN and foreign diplomats conflicting estimates of the remaining number of parliamentarians, ranging from 164 to 188. As a result, estimates of the quorum for a valid confidence vote varied between 82 and 94. Only after the vote took place did Saleh state that the quorum is 82.⁴²

The UN special adviser, Stephanie Williams, held a different view on the requirements for the vote. First, she agreed that a simple majority of House members suffices to pass a vote of confidence but added that the High State Council would also need to back the new government to ensure consensus between the rival assemblies (both of which were required in the 2015 UN-backed Libyan Political Agreement).⁴³

³⁹ Crisis Group telephone interviews, Libyan politicians lobbying for parliamentary elections, February 2022.

⁴⁰ Libyan activists and analysts concur that most people have little appetite for protest, citing apathy toward political feuds as well as fear of reprisal. Crisis Group telephone interviews, January and February 2022. A senior UN official agreed that there is little chance of protests erupting throughout Libya, saying: "Tripoli is no Khartoum", in reference to Sudan's capital where a popular uprising in 2019 led to President Omar al-Bashir's ouster. Video conference with foreign and Libyan analysts, UN official, mid-January 2022.

⁴¹ Law 4/2014, "On Adopting the Rules of Internal Procedures", 30 October 2014.

⁴² House of Representatives broadcast session, 3 March 2022. According to Saleh's broadcast remarks, the total number of parliamentarians was 166. But because three members of parliament had been appointed as ministers in the Bashagha-led cabinet, they were excused from the vote. The total thus came down to 163, meaning, in Saleh's view, that the quorum for the vote of confidence was 82.

⁴³ Crisis Group interview, UN official, Rome, February 2022. The 2015 Libyan Political Agreement is a UN-backed document that was supposed to resolve the dispute between the House of Representatives and its associated government in al-Bayda, and the General National Congress (whose members later formed the High State Council) and the government in Tripoli, but it was implemented only selectively. Article 4 of the accord states that when the post of prime minister becomes vacant for whatever reason, "the House of Representatives shall consult with the State Council in order to reach consensus on a replacement within a date no later than ten (10) days of the date on

Secondly, she told the House speaker that in order for the new government to have the UN's blessing, the confidence vote should be transparent and meet legal requirements, suggesting that the vote be broadcast on television and that members be required to visibly say the word "confidence" (*thiqqa*) aloud in order to register an affirmative vote for the new government. This procedure had been adopted for the vote of confidence in Dabaiba's government and the UN wanted to replicate it to avoid the risk of a contested outcome.⁴⁴

But the 1 March 2022 confidence vote wound up igniting controversies that had been on the back burner until then. That day, the House speaker counted 101 members in attendance, with 92 voting in favour. This number was close to or higher than the earlier quorum estimates. But video footage showed fewer attendees than 101, and only 88 names were read out during the roll call for the vote. The number of parliamentarians who pronounced the word *thiqqa* was unclear because they did not speak into microphones.⁴⁵

Things only got more confusing. On 2 March, parliament clarified that the discrepancy in numbers came about because eight lawmakers had dialled in from remote locations for security or health reasons, while others preferred to cast their votes anonymously after receiving threats from pro-Dabaiba armed groups. The House also changed the total number of those in favour of the new government to 96, adding to the confusion.⁴⁶ Bashagha said the ballot was "clear and transparent" and vowed to take office in Tripoli in "a peaceful manner".⁴⁷ The next day, however, Dabaiba called the vote a "coup" attempted through fraud.⁴⁸ The UN also weighed in on the matter. On 2 March, the UN secretary-general's spokesperson said the vote "fell short of the expected standards of transparency and procedures and included acts of intimidation prior to the session".⁴⁹

Amid these developments and the ensuing controversies, only a few Libyans, primarily less prominent presidential candidates and civil society activists, are still publicly calling for simultaneous presidential and parliamentary elections as a matter of priority. Their hopes were dampened by the House's sudden change of direction on the elections and its attempts to appoint a new government. They were also taken aback when foreign powers first seemed to offer support to the parliament's plan to instal a new executive and then abruptly became ambivalent toward the electoral track, as discussed in Section IV below.⁵⁰

which the post became vacant. This selection shall be endorsed by the House of Representatives". Libyan Political Agreement, 17 December 2015. See Crisis Group Report, *The Libyan Political Agreement: Time for a Reset*, op. cit.

⁴⁴ Crisis Group telephone interview, UN Special Adviser Stephanie Williams, late February 2022.

⁴⁵ House of Representatives broadcast session, 1 March 2022, available on the Libya al-Ahrar television network Facebook page.

⁴⁶ Statement titled "Minutes of the meeting of House of Representatives observers office", 1 March 2022, available on the Ajl Benghazi al-Asliya Facebook page.

⁴⁷ Televised speech of Fathi Bashagha, 1 March 2022, available on his Facebook page.

⁴⁸ Televised speech of Abdulhamid Dabaiba, 1 March 2022, available on the government's Hako-mitna Facebook page.

⁴⁹ "Statement attributable to the Spokesperson for the UN Secretary General – On Libya", 2 March 2022.

⁵⁰ Crisis Group telephone interviews, former presidential candidates and political analysts, February 2022.

2. Two groups at loggerheads

The Libyan group supporting installation of the Bashagha government and a constitutional track remains at loggerheads with the group that backs Dabaiba and proceeding with parliamentary elections. As noted, Saleh and his supporters in the House went ahead with swearing in Bashagha as prime minister. Dabaiba, still acting prime minister, denounced the move as illegitimate, saying he will hand over power to a new government only following elections.⁵¹

Politicians in Misrata, hometown of both Bashagha and Dabaiba, say the city is divided.⁵² Both sides have the support of military factions. Misratan armed groups allied to Dabaiba on 2 March detained two of Bashagha's cabinet ministers, who were subsequently released. Bashagha seems adamant about going to Tripoli and, on 10 March, reportedly moved toward the capital in a convoy of several hundred technical vehicles belonging to allied armed groups. The next day, they pulled back, however.

Whether the House is empowered to replace Dabaiba was from the outset a matter of debate. Saleh contends that the House has this prerogative, and that Dabaiba's mandate expired on 24 December. According to this view, the election delay cannot justify extending the government's life. Saleh appears to derive this position from his interpretation of the UN-backed roadmap.⁵³

Others, including pro-Haftar officials and anti-Dabaiba constituencies in western Libya, also support the prime minister's removal. They allege that he violated his pledge not to stand in elections and misused public funds by allocating them to family members.⁵⁴ The chief prosecutor, a member of this group, ordered the arrest of two cabinet ministers on fraud charges, respectively in late 2021 and January 2022.⁵⁵ In an open letter addressed to the UN, 93 members of parliament stated that appointing a new government was not an end in itself, but rather a means of "stop[ping] the waste and great depletion of the state's funds, which has exceeded traditional levels

⁵¹ Statements made during Dabaiba's broadcast interview with Libya al-Ahrar, 10 February 2022, available on the channel's Facebook page.

⁵² Crisis Group telephone interviews, politicians from Misrata, February 2022.

⁵³ The UN-backed roadmap stated that the interim arrangements (which include the executive) "shall end within a maximum of eighteen months provided that presidential and parliamentary elections are held – according to the constitutional basis – on 24 December 2021". The roadmap implied that the interim government would be replaced by a new executive after the vote. It does not stipulate that the prime minister must step down on the scheduled election day, which the House of Representatives designed to be the first in three months' worth of electoral exercises. Faced with these objections, Saleh claimed that the House voted confidence in the Dabaiba cabinet to govern only until 24 December. Crisis Group interview, Western diplomat who met Saleh, Rome, early February 2022. On the UN-backed roadmap, see "Roadmap for 'The Preparatory Phase for a Comprehensive Solution'", op. cit.

⁵⁴ Crisis Group telephone interviews, politicians and political analysts, January and February 2022.

⁵⁵ Crisis Group telephone interviews, Libyan politicians and Western diplomats, February 2022. Bashagha and Attorney-General Siddiq al-Sur are close friends who are often spotted having coffee together in a well-known Misrata hotel on weekends. On the arrest of government ministers, see "Libya minister arrested over lack of school textbooks", *Arab News*, 21 December 2021; and "Libya health minister arrested over graft probe into Covid oxygen imports", *The Arab Weekly*, 27 January 2022.

of corruption”, in addition to restoring confidence between rival factions and creating the conditions for elections to be held.⁵⁶

But Dabaiba’s supporters say the House has no right to sack the prime minister and appoint a new government, given that the interim executive was chosen through UN-backed negotiations.⁵⁷ They say Saleh’s push to oust Dabaiba may have a personal element, as he lost out to the latter in those talks. They also say the animosity toward him is nothing but payback for his efforts to deny certain politicians access to state funds.⁵⁸

Dabaiba has a good working relationship with the head of the Central Bank of Libya, Siddiq El-Kebir, and has been able to tap into state funds for government operations and investments even in the absence of an approved budget law. (The House refused to pass such a law in April, following disputes with the prime minister on proposed investments he had to fund.) El-Kebir’s loyalty to Dabaiba is not set in stone, but legal problems surrounding the 1 March vote of confidence are likely to push the Bank’s governor to remain by the interim premier’s side for the time being. Without access to state funds, the new parliament-backed government will eventually have difficulty operating. If Bashagha manages to enter Tripoli and try governing from there, the Bank head could change his approach.⁵⁹

IV. External Actors’ Diverging Approaches

As the dispute has unfolded, divisions among foreign actors have mirrored Libya’s cleavages. From 2014 until 2019, several countries intervened heavily in Libya’s divided politics, with two de facto coalitions backing the opposing governments and military factions. The United Arab Emirates (UAE) and Egypt supported the east-based government and Haftar, while Turkey and Qatar stood with the government in Tripoli. France, which had security cooperation programs with the UAE and Egypt and was angry with the Tripoli authorities over their alleged failure to curb trans-Mediterranean migration, was also embroiled – as, to a lesser extent, were other European countries and the U.S. (officially on Tripoli’s side, but at times greenlighting Haftar’s moves) and Russia (on Haftar’s side). Tensions among these external

⁵⁶ “A memorandum attributed to 93 members of the House of Representatives addressed to the UN adviser, Stephanie Williams, rejecting her initiative to form a joint committee with the State Council to establish a constitutional rule”, 6 March 2022, available on the Libya al-Ahrar television channel’s Facebook page.

⁵⁷ Crisis Group telephone interviews, politicians who support Dabaiba’s continued tenure, January and February 2022.

⁵⁸ One of his supporters said: “The only reason why members of parliament and others want to kick Dabaiba out is because he put an end to their practices of tapping into state funds in one way or another. He cut them off, and now they are angry”. Crisis Group telephone interview, Libyan politician, February 2022.

⁵⁹ Western diplomats who met the Central Bank governor in February, prior to the vote of confidence, say he backs Dabaiba, but people close to the parliament speaker say that the governor reached out to parliamentarians prior to the vote, possibly to reach an understanding with them should parliament instal a new government. Crisis Group telephone interviews, February and March 2022. In 2014, the governor sided with those who decried the newly elected House of Representatives as illegitimate.

actors were high at times, but over the past two years, they have opened diplomatic channels to help manage the fragile stabilisation effort that is under way.

The de-escalation among foreign actors helped enable the rapprochement in Libya in 2020-2021, and it has also contributed to these countries' muted responses first to the disputes surrounding the failed elections and later to the quarrels over the legitimacy of the new parliament-backed government. For the moment, they appear to have little appetite for deepening the divisions or igniting renewed confrontation between their allies.

Nevertheless, foreign capitals have preferences for what ought to come next. Or rather, they had preferences prior to the controversial vote of confidence, but made quick recalculations after the vote.

Cairo had given its initial blessing to the House's efforts to instal a new government, seemingly believing that Libya would benefit from an alliance among former enemies like Bashagha and Haftar. Beginning in early 2022, Egyptian officials actively supported reaching an understanding between the two and proceeding with the plan based on their deal.⁶⁰

Paris appeared to be following Cairo's lead in supporting a deal between Haftar and Bashagha, in a U-turn from its lobbying in 2021, including among EU member states, for presidential and parliamentary elections.⁶¹

Western diplomats say Doha also supported Bashagha's bid, with some suggesting it is lending him financial support.⁶² Libyan politicians close to Qatar insist that it is staying neutral in the feud.⁶³

The same cannot be said for the UAE. Abu Dhabi previously bankrolled Haftar, also providing military equipment for his 2019 war on Tripoli. For now, however, it is pushing for Dabaiba to remain in power. Emirati officials oppose Bashagha due to his alleged responsibility in authorising the bombing of al-Jufra military base during the 2019 war, which killed a handful of Emirati pilots stationed there (allegedly to operate UAE-funded attack drones).⁶⁴ The UAE also has financial ties to the Dabaiba

⁶⁰ Crisis Group telephone interviews, Western and Arab diplomats, February 2022.

⁶¹ It is unclear what triggered the change: whether they were genuinely persuaded that an agreement between Bashagha and Haftar was the best way forward, given the impasse over the elections, or whether Egypt's endorsement of this option played a role. Over the years, France's position on Libya has tended to dovetail with Egypt's, so it is possible that Paris has once again embraced Cairo's stance as its own. A French official denied that Paris had supported the formation of a new Bashagha-led government, claiming that it remained neutral awaiting the outcome of the House vote. But Western diplomats say France actively (but unsuccessfully) lobbied to persuade other European countries and the U.S. to issue a joint statement supporting Bashagha when he was appointed prime minister-designate. Crisis Group telephone interviews, February 2022.

⁶² Crisis Group telephone interviews, Arab politician with ties to Qatari officials and Western diplomat, February 2022. It is unclear what is driving Qatar's financial support to Bashagha, if it exists. One Western diplomat suggested that Qatar might simply have turned to Bashagha as a reaction to the fact that the UAE, its Gulf competitor in Libya, supports Dabaiba.

⁶³ Crisis Group interview, UN official, Rome, February 2022; Crisis Group telephone interview, Libyan politician with ties to Qatar, February 2022.

⁶⁴ Crisis Group interview, Libyan politician with ties to Emirati officials, Rome, January 2021; Crisis Group telephone interviews, Western diplomats and UN officials, January-March 2021.

family, which might provide another reason for its inclination toward the interim premier.⁶⁵

Russia and Turkey have been ambivalent about the way forward. Some Libyans suggest the two are not particularly supportive of the Haftar-Bashagha deal.⁶⁶ That stance would be surprising in light of some historical facts. During the 2019-2020 war in Tripoli, Moscow was close to Haftar in opposition to Bashagha and Ankara was allied with Bashagha against Haftar. Private contractors from the Kremlin-backed Wagner Group have operated alongside Haftar-led forces, while Bashagha played a prominent role in securing Turkey's military intervention on Tripoli's side in 2020.

But it appears that Turkey reacted coldly to Bashagha's overtures to Haftar.⁶⁷ At the tail end of his first visit to the UAE since the two countries' relations warmed in 2021, Turkish President Recep Tayyip Erdoğan said he prefers that Dabaiba stay in power until elections, echoing Abu Dhabi's position.⁶⁸

For its part, the Russian foreign ministry blessed Bashagha's bid for the premiership, but some Libyan politicians argue that, despite such statements, Russia remains wary of the deal, at least in part because Bashagha and Haftar seem to concur on the need to get rid of the Russian contractors as a way of obtaining U.S. support.⁶⁹ The Kremlin's confrontation with the West over Ukraine makes its strategy in Libya unpredictable.

The U.S. and European positions have been hard to discern. Generally speaking, Libya is not a priority file for Washington and its policy position is often the result of broader calculations vis-à-vis its other regional allies. Prior to December 2021, U.S. diplomats were vocal in their support of simultaneous presidential and parliamentary polls, at one point threatening to slap sanctions on spoilers. Today, Washington seems to prefer to watch politics play out on the ground.⁷⁰ (Prior to the vote of confidence, however, Bashagha told Libyan interlocutors that he had Washington's support.⁷¹)

⁶⁵ Crisis Group interviews, Western diplomats and UN officials, Rome, February 2022; Crisis Group telephone interviews, Libyan politicians and Western diplomats, January and February 2022.

⁶⁶ Crisis Group telephone interviews, Libyan politicians and political analysts, February 2022.

⁶⁷ An Arab politician informed of Turkey's reactions said: "Turkish officials really did not appreciate Bashagha's transformation into a Haftar mouthpiece". Crisis Group telephone interview, early February 2022.

⁶⁸ In remarks to the press following his visit to the UAE, Erdoğan said the attempt to remove Dabaiba from power was "regrettable", adding that supporting the establishment of a new government was not "the right approach for Libya". See "Last minute: Flash message from President Erdoğan on his return from the UAE", CNN Türk, 16 February 2022 (Turkish).

⁶⁹ Russian Foreign Ministry Spokeswoman Maria Zakharova said outside parties should respect the House vote for Bashagha to form a government but cautioned that conflict is possible. She called for the "existing contradictions" to be resolved via talks and by "reaching compromises". "Russia: Libyan lawmakers' choice of Bashagha should be respected and disagreements resolved via talks", Alwasat, 14 February 2022. Crisis Group telephone interviews, Libyan politicians and Western diplomats, January and February 2022.

⁷⁰ According to Western diplomats, the U.S. has taken no firm position on the feuds: it would prefer in principle to see elections take place but has adopted a wait-and-see attitude toward Bashagha's attempts to form a government. Crisis Group interviews, Western diplomats and UN officials, Rome, February 2022. A comment from the U.S. embassy reflects the ambiguity: "As Libyan institutions make determinations as to the immediate future of the country's leadership, we continue to urge all Libyan leaders to de-escalate tensions that could lead to violence and not lose sight of the

Other European countries, including Italy, also seem to be watching developments and preserving some flexibility. That said, a Western diplomat confirms that there was a general understanding among European capitals, Washington and London that should the Libyan parliament proceed with a vote of confidence that showed overwhelming support for a new executive and complied with the UN's requirements, they would recognise it.⁷²

But that did not happen. After the UN voiced reservations on the vote of confidence, no country, with the notable exception of Russia, officially recognised the new government. France, Germany, Italy, the United Kingdom and the U.S. issued a joint statement "taking note" of the UN's position and calling on "all actors to refrain from actions that could undermine stability in Libya".⁷³ Egypt and Saudi Arabia in a joint statement affirmed their support for a "Libyan-Libyan political process", a reference to negotiations that had taken place between the House of Representatives and the High State Council, and reiterated their backing for the east-based legislative body.⁷⁴ None made explicit mention of the parliament-backed prime minister, which was perceived to mean that they did not recognise his appointment. Tellingly, Bashagha's request to hold a videoconference with foreign ambassadors accredited to Libya on 6 March fell through when he asked to be addressed as prime minister.⁷⁵

Foreign countries are thus not doing much to help find an exit to the Libyan impasse, but by taking a united stance in calling for negotiations and calling on Libyans to refrain from violence for now at least they are not making the situation worse. Their attitudes toward the issue may not become significantly clearer any time soon, as the Russian invasion of Ukraine seems certain to dominate their attention for some time to come.

V. The Way Forward

All the manoeuvring of the last several months boils down to a single question: whether an elite pact is the best way forward for a country that emerged from years of civil war only eighteen months ago or whether elections should take precedence. There are legitimate arguments for both options. An elite deal, enshrining an alliance between rival factions, could provide a degree of stability and lessen the chance

will of the majority of Libyan people who want to choose their leadership in free and fair elections". Tweet by U.S. Embassy in Libya, @USEmbassyLibya, 9:42am, 14 February 2022.

⁷¹ Crisis Group telephone interviews, politician and businessman from Misrata, mid-February 2022.

⁷² Crisis Group telephone interview, European diplomat, 7 March 2022.

⁷³ "P3+2 Statement on Libya", Italian Foreign Ministry, 4 March 2022.

⁷⁴ "Joint Egyptian Saudi statement on the occasion of the visit of President Abdelfattah al-Sisi to the Kingdom of Saudi Arabia", 8 March 2022, available on the Facebook page of the Spokesperson of the Egyptian Presidency. The statement underscored that the House of Representatives was "the elected legislative body, expression of the Libyan people, and entrusted with enacting laws, granting legitimacy to the executive authority, and exercising its oversight role". This wording, in particular the reference to its authority to grant legitimacy to the executive, made some Libyans believe that the two countries were recognising the Bashagha-led government. Yet the statement made no such official endorsement. Crisis Group telephone interviews, Libyan politicians and foreign diplomats, 8 March 2022.

⁷⁵ Crisis Group telephone interview, ambassador in Tripoli, 8 March 2022.

es of a relapse into violence. Yet elections could mark a clean break from years of bad governance and restore legitimacy to Libya's state institutions.

Both options also have drawbacks. An elite deal would empower actors with an interest in postponing elections indefinitely and anger the constituencies who are left out. Organising elections, on the other hand, would require resolving the many political and legal problems that led the elections commission to suspend the ballot in the first place. In addition, parties might contest election results, possibly giving rise to renewed violence.

Equally polarising are the arguments concerning the constitutional track. Its supporters say a new constitution is needed to define state institutions' powers and responsibilities prior to elections. Its opponents argue that these negotiations will lead to a dead end and are just a ruse on the part of elites looking to stay in power.

While there is no obvious way forward, the stalemate is dangerous. The immediate priority should be to prevent institutional collapse. In practical terms, the parties need to kickstart political negotiations to avoid a scenario in which the rival governments once again turn the country into a patchwork of territories under the control of one administration or the other. In that scenario, the parties could re-enter a tug of war over the control of state institutions, especially the National Oil Corporation and the Central Bank, which respectively hold the key to generating and distributing state funds to the population.

For now, the House of Representatives, which backs the Bashagha government, has refused to take part in negotiations with the rival Tripoli-based High State Council – notwithstanding the offer from the UN special adviser, Stephanie Williams, to convene such talks. Only the High State Council has replied favourably. House members argue that as far as they are concerned, the new government is legitimate and the parliament has already endorsed a new political roadmap setting out procedures to review the constitution draft prior to elections.⁷⁶ For them, there is no need to start negotiations anew. They are banking on the belief that Bashagha will be able to enter Tripoli, persuading armed groups in the capital to side with him and the Dabaiba government to eventually leave. Should the situation pan out this way, which at the moment seems highly improbable, there is no doubt that there will be even fewer incentives for this camp to enter negotiations.

But the situation could well evolve in a different direction – either because of a deadlock between the two governments inside Tripoli or because the Bashagha-led government and its military allies prove unable to enter the capital or remain without international recognition and access to Central Bank funds. In that case, the Bashagha group's calculations might change, and negotiations might seem more appealing. Diplomats are hopeful that this scenario may be in the offing. They say they are already receiving private messages from Bashagha, and House Speaker Saleh, signalling willingness to embark on talks.⁷⁷ These reports contrast with the parliament's official statement on the matter.

The question then becomes what the talks should be about. For now, foreign stakeholders are ambiguous about the matter. The UN special adviser offered to mediate discussions of how to reach a "constitutional basis" for holding elections as soon as

⁷⁶ Media Centre for the Speaker of the House of Representatives Facebook page, 7 March 2022.

⁷⁷ Crisis Group telephone interviews, Western diplomats, mid-March 2022.

possible.⁷⁸ This wording could imply anything from a full-fledged constitutional track aimed at reaching a final, approved draft constitution, after which elections will be held, to simply drafting a temporary legal framework to allow a ballot to take place.

On top of these options, diplomats suggest that some Libyans are still interested in trying to forge an elite deal on a new government. They believe that by changing some of the ministers in Bashagha's proposed cabinet and opening up the deal to those supporting the Tripoli-based government, they might stand a chance of securing a sufficiently broad level of support for a grand bargain of sorts.⁷⁹

Consultations between rival factions aimed at forging another elite deal on a new cabinet at this stage should be given a chance, even if they are highly unlikely to bear fruit. This latest attempt to instal a new government has deepened divisions between supporters of the rival prime ministers and the respective assemblies backing them, so the likelihood of their representatives agreeing on a new power-sharing agreement is low. The UN special adviser could in principle encourage these talks to take place, but she is unlikely to host them given the transactional nature of forming a new government in Libya. That said, should a new power-sharing agreement come about within the next few weeks and should rival factions commit to supporting a new government, it is essential that the parliamentary vote of confidence of the new executive be transparent and in accordance with legal procedures. A rerun of the problems attending the 1 March vote would mar the outcome's legitimacy and serve no one.

Should these efforts fail, the next option would be to open UN-backed negotiations on a new electoral roadmap. The UN can and is willing to host these. On the issue of which elections should be held and in what sequence, the debate is wide open, as public opinion and political factions remain polarised on the matter. That said, some lessons learned from the problems of the past months can be distilled. The first is that Libyan politics remains dominated by a winner-take-all mentality and legal controversies over presidential candidates are unlikely to be resolved in a manner acceptable to all factions. As a result, a presidential ballot remains a hazardous choice that risks hitting a dead end, yet again. The second lesson is that embarking on a review of the draft constitution and going to a referendum could very well turn into an endless process that merely cements the status quo rather than enabling elections.

A more logical choice, albeit not currently the most popular one, might be in the first instance to opt for parliamentary elections to replace the legislature elected in 2014 and allow this new body to appoint a new government. In such an arrangement, the new parliament would also be tasked with deciding how to clear the pending hurdles for the draft constitution and subsequent presidential ballot, if the approved constitution so allows. As mentioned, this option has important drawbacks. Libyans by and large see stand-alone parliamentary elections as a concession to Islamists whom they fear will rob them of their legitimate right to elect a president. Current legislators are also likely to oppose this path because it means they will lose their seats. Egyptian officials, who have actively opposed this option in the past, are also likely to lobby external actors and their Libyan allies to stage a boycott.

⁷⁸ On 4 March 2022, Williams sent letters to the rival assemblies "inviting them to nominate six delegates from each chamber to form a joint committee dedicated to developing a consensual constitutional basis". Tweet by Stephanie Williams, @SASGonLibya, 8:44am, 4 March 2022.

⁷⁹ Crisis Group telephone interviews, Western diplomats and Libyan politicians, mid-March 2022.

To make this option feasible, supporters of stand-alone parliamentary elections would at the very least need to swing public opinion in their favour and dispel fears that their preferred course of action is an Islamist ploy. They would need to reassure the Libyan electorate that, should the to-be-approved constitution prescribe a presidential system of governance, they will not oppose that system. In that vein, they will need to vow to hold a presidential election in a second stage after legislative contests. They would also need to persuade the parliament to cooperate in order to secure passage of parliamentary election laws. Should the latter prove impossible, they will need to find ways either to circumvent the legislature or to persuade foreign partners to pressure their friends in the House to work toward this roadmap.

The UN and Western chanceries, which have thus far been under the influence of Egypt's de facto veto on this course of action, should at the very least consider the option of parliamentary elections in greater detail than they have thus far to gauge its feasibility. While there is no guarantee of its success, this option does contain at least some contours of a workable roadmap toward elections. But whatever option Libyan negotiators choose, it is essential that foreign capitals remain united in supporting the way forward.

VI. Conclusion

A return to war appears to be off the table for now, in large part because foreign backers of Libya's rival factions have stepped back from the conflict and are distracted by Ukraine, and because Libyans themselves appear to be averse to more fighting. But this moment of calm could prove evanescent. Growing political rivalries throughout Libya could prompt armed groups to mobilise against the Dabaiba government in favour of a replacement. Even if they pull off that move without bloodshed, a legal and political battle would follow, with both Dabaiba and his putative successor claiming the premiership and vying for international recognition.

Rather than installing a new government at all costs – at the risk of dangerously deepening a nationwide rift and splitting the country once again in two – finding a consensual way forward should be the priority for all concerned. There is no right or wrong way out of Libya's political impasse. Both of the main options – a new power-sharing deal and an electoral roadmap – deserve consideration. Negotiations to flesh out either a new interim government with broad consensus and uncontested parliamentary endorsement or a new and workable roadmap to elections would, without a doubt, be the best path for preserving a peaceful, united Libya.

Tripoli/Rome/Brussels, 18 March 2022

Appendix A: Libya's New Political Roadmap

Following postponement of the 24 December 2021 elections, Libya's House of Representatives endorsed a new political roadmap that charts a path toward a constitutional referendum followed by elections. Called Constitutional Amendment Number 12 and approved by 126 of the 148 House members in Tobruk on 10 February 2022, the plan is politically divisive and legally controversial. A close reading of this document reveals that the steps outlined therein could lead to an open-ended political transition that would never see elections.

Among Libyan politicians, opinion about the plan is split roughly in two. At first, the roadmap committees of the House and its Tripoli-based rival, the High State Council, agreed on the plan, but the majority of State Council members subsequently voted against it. House members, for their part, continue to consider it valid.

According to the roadmap, the House and State Council will first task a Committee of 24 experts to amend the 2017 draft constitution within 45 days. If the Committee of 24 does not agree on the amendments, the roadmap envisages the creation of a new committee appointed by the two assemblies to draft a temporary constitutional framework and election laws. On the other hand, if at least two thirds of the Committee's members agree on the proposed amendments, the new draft will be put to a popular referendum prior to elections. If it wins popular approval, the House will adopt it and plan elections according to the format outlined by the new constitution. That format could include legislative and presidential elections, and possibly also a ballot for a second chamber, the Senate.

If the new draft fails to be approved in the referendum, the Constitutional Drafting Assembly – a 55-member body elected in 2014 – will step in in lieu of the Committee of 24 to review the new draft (already amended by the Committee of 24) before putting it to a second referendum. If the new changes still do not yield popular approval, the roadmap states that the two assemblies themselves will draft a temporary legal framework and election laws.

Crisis Group has identified eight red flags in the roadmap, highlighting points at which the process could fail.

Red flag #1: The plan states that the referendum will be approved if 50 per cent of voters plus one in each of Libya's three historical regions (Tripolitania in the west, Cyrenaica in the east and Fezzan in the south) support the draft constitution. As of yet, however, there is no law charting the boundaries of these three regions. As such, these are merely aspirational geographical areas rather than proper administrative territories sanctioned by law. Drawing these boundaries is politically sensitive; should lawmakers attempt it, the resulting tensions could postpone the electoral process indefinitely.

Red flag #2: The roadmap states that the High National Elections Commission needs to be "reconstituted" before a referendum or elections are held. This clause is also controversial. For example, just the appointment of a new Commission board is likely to spark tensions, because there is no consensus on what body is in charge of the Commission. Whether the House must appoint the board alone, or in agreement with the State Council (in accordance with a 2015 UN-backed agreement) has been a source of controversy since 2015.

Red flag #3: The decision to mandate the Constitution Drafting Assembly to conduct the second review should the first referendum not pass poses major problems. The Assembly was elected by popular mandate in 2014; it drafted and approved a constitution in 2017, which it wanted put to a referendum, but the plebiscite never took place amid political controversies. The Assembly has not reconvened since, nor has it issued a statement on its involvement in the new roadmap; some of its members have said they oppose the new plan.

Red flag #4: The roadmap does not state what the approval criteria are for the Constitution Drafting Assembly's amendments: will they require a simple majority or a two-thirds supermajority of the Assembly's 55 members? Nor does the roadmap indicate whether other criteria should apply.

Red flag #5: It is unclear what should happen after the constitution is approved in a popular referendum. There are no timelines for the House to adopt new election laws based on the approved constitution, or to hold elections. This process could become open-ended.

Red flag #6: If the Committee of 24 fails to meet the quorum needed to amend the draft constitution (seventeen votes), the roadmap states that the House and State Council must form another committee to draft a temporary constitutional framework and election laws. But it does not indicate how this new committee should be formed, or what the rules for the approval of these laws are.

Red flag #7: Should the Constitution Drafting Assembly fail to agree on amendments, the roadmap vaguely states that the House and State Council will adopt both a temporary constitutional framework and election laws. It does not clarify if the two houses should appoint another committee or if, as a literal reading of the text would suggest, the two houses would need to adopt a temporary constitutional framework and election laws themselves. In both cases, the vague wording could make the process open-ended.

Red flag #8: There are no timelines for the House's adoption of election laws or to hold the elections if the popular referendum fails but the two rival assemblies agree at least on a temporary constitutional framework to govern elections.



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