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Libyan Parliament's New Election Law: Terms and Implications

Unit for Political Studies

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The Libyan parliament met on Monday 4 October in Tobruk to pass a law on legislative elections, less than one month after passing a law on the election of the head of state. The adoption of the two laws comes two and a half months before the date set by the Libyan Political Dialogue Forum for holding general elections. Similar to the adoption of the Presidential Election Law, the adoption of the Parliamentary Election Law has sparked friction and objections from some who argue that certain articles were tailored to strengthen the position of specific parties.

Terms of the Law

Law No. 2 of 2021 regarding the election of the House of Representatives was adopted on 5 October 2021 by the House of Representatives. The said law included nine chapters and an attached table concerning the electoral districts and their affiliated centers and the division of seats thereon. The nine chapters included 40 articles.

The second chapter of the law, titled “Preliminary Provisions,” included two articles. The first limited the number of members of parliament to 200, while the second stipulated that the election should be “free, direct, anonymous, and transparent.” The third and fourth chapters relate to the right to vote and the conditions that must be met by both the voter and the candidate, and stipulate, in particular, that the minimum age for the voter is set at 18 years and for the candidate at 25, and that the candidate “has a university degree or its equivalent,” and “does not hold the nationality of another country unless he is authorized to do so by the competent authorities in accordance with the applicable laws and regulations.”

With regard to electoral campaigning, Article 11 of Chapter V of the Law affirmed that it is not permissible for candidates to “incite or challenge other candidates or stir up tribal, clan, regional or ethnic strife,” while Article 12 of the same chapter prohibits “propaganda.” The provision of gifts in kind or cash or other benefits for the purpose of buying votes or influencing voters is also prohibited.

Chapter VI of the law is devoted to the “voting system and its procedures,” and article 18 stipulates the adoption of an “individual non-transferable voting system,” with the allocation of sixteen percent of the seats only for women candidates. Article 20 specifies the date for voting to elect members of the House of Representatives to thirty days after the election of the head of state. Article 21 goes back to clarifying what was stated in Article 18 by emphasizing that the election of council members “takes place through each voter casting one ballot in favour of one candidate,” whereby the candidate with the highest votes in the electoral district wins.¹

¹ See: “Law No. 2 of 2021 regarding the election of the House of Representatives,” the Libyan House of Representatives website, 5/10/2021, accessed on 10/10/2021, at: <https://bit.ly/3BtKBhW>.



Reactions to the Passage of the Law

The adoption of the law on the election of the Libyan House of Representatives comes less than one month after the adoption of the law on the election of the head of state,² which sparked similar controversy and quarrels between the various parties in Libya. Some of its articles were considered tailored to pave the way for certain personalities to contest the elections.

The Supreme Council of State based in Tripoli, declared that it “rejects the parliament’s continuous violations of the political agreement included in the constitutional declaration, the latest of which was the passage of the so-called parliamentary election law, without adherence to the text of Article 23 of the political agreement, which obliges the parliament to agree with the Supreme Council of State on this law.” He affirmed his “support of and commitment to the election date on December 24,” and held Parliament and its members “responsible in the event of any postponement or disruption of the election date, due to unilateral actions, and not reliance on the articles of the political agreement to implement electoral laws.”³

The Presidential Council’s position on the disputes remained marked by a degree of ambiguity, and it did not issue a statement. Head of the council, Muhammad Al-Manfi, contented himself with receiving the head of the Electoral Commission to “discuss the mechanisms for implementing the electoral process scheduled for next December, and to prepare the best technical and security path for its success.” He stressed “the need to formulate a legal and constitutional framework for the upcoming electoral process, upon which everyone agrees, in order to contribute to the establishment of free elections, the results of which are accepted by all parties involved in the political process.”⁴ Meanwhile no clear position was stated by the Prime Minister of the National Unity Government, Abdul Hamid Dbeibeh, from whose government parliament withdrew confidence a few days ago.

The Minister of Interior in the former Government of National Accord, Fathi Bashagha; who is expected to run for the upcoming presidential elections, gave his blessing for the election law, and called for “enabling Libyans to exercise their right to go to the polls on December 24th.”⁵

The Taghyeer Party strongly rejected the law, which was passed by the House of Representatives without a quorum, due to the exclusion of the participation of parties and political entities by running for the list system. It argued that this law “will perpetuate tribalism and regionalism at the expense of political projects and programs offered by political parties.” The Justice and Construction Party rejected “the adoption of laws without a valid legal basis, especially those laws that define and

² See: “Law No. (1) of 2021 regarding the election of the head of state and determining his competencies,” the Libyan House of Representatives website, 8/9/2021, accessed on 10/10/2021, at: <https://bit.ly/3ltYya9>.

³ Mohammed Nasser; Spokesperson for the High Council of State in Libya, Twitter, 5/10/2021, accessed on 10/10/2021, at: <https://bit.ly/3AFsyEx>.

⁴ “The Presidential Council discusses with the Head of the High Electoral Commission the latest preparations for 24 December,” Media Office of the President of the Libyan Presidential Council page, Facebook, 6/10/2021, accessed on 10/10/2021, at: <https://bit.ly/30fj9H9>.

⁵ Fathi Bashagha, Twitter, 5/10/2021, accessed on 10/10/2021, at: <https://bit.ly/3ArWa8c>.

outline the features of the next stage,” noting that “the law omitted the party-list system and limited it to the individual system as the only basis on which elections are held, in a move that contradicts the basics of the democratic system.”⁶

A Tailored Law

Most of the objections to the adoption of the Libyan House of Representatives election law are based on four main points: The method of its passage, the upcoming election date, the system of voting for individuals, and the distribution of seats for electoral districts.

The Supreme Council of State and other parties confirmed that the law on the election of the House of Representatives, and the law on the election of the president before it, were not presented to the plenary session. They were passed and referred to the High National Elections Commission and the relevant authorities without the legal quorum as if they were a *fait accompli*, while the House of Representatives, headed by Aguila Saleh, any consultations to reach consensus on them. This contravened the requirements of the Libyan Political Agreement in Skhirat and the roadmap of the Libyan Political Dialogue Forum in Geneva. At the same time, the decision to hold parliamentary elections 30 days after the presidential elections is a violation of the roadmap, which provides for the holding of simultaneous general elections on 24 December 2021. Any postponement would open the door to other abuses that might threaten the entire electoral process.

The spokesman for the House of Representatives justified the delay in the parliamentary elections as “the House of Representatives’ keenness to conduct the election of the president directly by the people, given that the country has undergone the past years in the absence of a president elected by the people.”⁷ However, the statement does not offer any coherent explanation as to why simultaneous parliamentary elections would impede the election of the president. The matter appears to be related to the candidacy of specific personalities for the presidential elections; foremost the retired Major General Khalifa Haftar, whose victory in the presidential elections would impose a *fait accompli*, allowing him to manipulate the electoral mood, influence the results of the House of Representatives elections, and interfere in their conduct.

In the same vein, the introduction of an individual-based voting system is considered another factor weakening program-based political voting. Although a spokesman for parliament stressed that “political parties can participate in the individual system and not on lists,”⁸ voting for individuals in parliamentary elections, in essence, excludes political projects and programs, and opens the

⁶ “Justice and Construction Party Statement No. (12) regarding the Parliamentary Elections Law,” Justice and Construction Party Libya Facebook page, 5/10/2021, accessed on 10/10/2021, at: <https://bit.ly/3aoLrRk>.

⁷ “The highlights of the press briefing of the official spokesman for the House of Representatives for the two sessions of the House this week,” The Libyan House of Representatives website, 5/10/2021, accessed on 11/10/2021, at: <https://bit.ly/3AwjXDX>.

⁸ *Ibid.*



door to voting based on tribal, regional and class affiliations, as has happened in other countries, especially during a transitional phase during which the role of the state is weakening in favour of a reversion to traditional loyalties.

In addition, seat distribution of electoral districts is another main source of tension, as its opponents of the law believe that it was not subject to objective criteria. It is customary that seats are divided among electoral districts on the basis of population proportionality, which does not seem to be the case here. The districts under Haftar's authority and the areas inhabited by tribal forces close to the former regime, in the eastern and southern regions in particular, were granted numbers of seats that exceed their population, at the expense of the circles outside Haftar's authority or known to be hostile to him in the western region. This is evident by making comparisons between centers such as Benghazi, Misrata, Tobruk, Zawiya, Sabha, and Gharyan. For example, the city of Benghazi, under the authority of Haftar, with a population of 80,7255 people, was allocated 20 seats, while the city of Misrata, which has a population of 663,853 people, was allocated 8 seats, so there is one seat for every 40,362 citizens in Benghazi but just one for each 82,981 in Misurata. The city of Sebha, which has a population of just 153,454 people, was allocated 9 seats — a rate of one seat for every 17,050 citizens. Meanwhile the city of Zawiya, which has a population of 351,306 people, was allocated 8 seats; At a rate of one seat for every 43,913 citizens.⁹

These details lead to the belief that the law on the election of parliament, and before it the law on the election of the president, were tailored to pave the way for an upcoming political and institutional scene in which a parliamentary majority is formed from outside the political parties opposed to the Haftar project, with its legitimacy derived from its tribal and social incubators, not united by any political or organizational project, easily bent to the will of the Head of State and the regional forces that support him. This is rejected by the camp opposed to Haftar.

The United Nations Support Mission in Libya and the regional and international powers related to the Libyan scene seem more eager to hold the elections on their scheduled dates than to ensure a climate of national consensus around them. This portends a major crisis during the next stage in light of the escalation of the rhetoric of partition and the imposition of a *fait accompli*.¹⁰

Conclusion

The adoption of the Parliamentary Election Law, and before it the Presidential Election Law, was met with the opposition of the Supreme Council of State and the entire political and party spectrum. Given that the two laws contradict, both procedurally and substantively, the spirit of the agreements reached by the Libyan Political Dialogue Forum, it is likely that the legislative base for elections is

⁹ : "Estimating the population by regions for the year 2020", Bureau of Statistics and Census Libya, accessed on 11/10/2021, at: <https://bit.ly/3FFJ62W>.

¹⁰ See, for example: "Al-Qatrani for Al-Ahrar: Creating a Government in the East is a tangible and Near Option." Libya Al-Ahrar TV, 11/10/2021, accessed on 12/10/2021, at: <https://bit.ly/3oWwuhY>.



being tailored to Haftar in a manner that guarantees a future parliamentary scene under his thumb. These are indicators that may lead to the torpedoing of the entire transition process, especially in light of the escalation of the regional rhetoric and the threat of a return to the chaos that preceded the Libyan Political Dialogue Forum.