



Policy Alternatives, 27 November 2017

Stage One of the UN Libya Action Plan: The Likelihood of Failure and the Need for Review

→ Azza Kamel Maghur



Ghassan Salamé, UN Special Envoy to Libya, at a press conference August 2017 © Maurizio Brambatti / EPA



Arab Reform Initiative

Nearly two years ago, representatives from Libya's rival factions met in Skhirat, Morocco, and signed on 17 December 2015 a UN-brokered agreement, the Libyan Political Agreement (LPA), to form a national unity government. This agreement was welcomed by the international community but was long jeopardized by internal disputes, especially over Article 8 of its additional provisions. Article 8 transfers all power, as well as the appointment of all military ranks, to a Presidential Council,¹ the creation of which was detailed in the agreement. The House of Representatives (HoR) opposed Article 8. The provisions of Article 8 also faced opposition on the ground from the Libyan National Army headed by Khalifa Haftar.

This led to a stalling in political negotiations. A few months after his appointment as the new UN Envoy to Libya, Dr. Ghassan Salamé, presented an Action Plan to push beyond this standstill with a view to seeking a solution to the political crisis in the country.

The [Action Plan](#), presented in New York in September 2017, is divided into three stages.

1. **Stage One:** To amend LPA, based on Article 12, by way of compromise between the House of Representatives (HoR)² and the High State Council (HSC).³
2. **Stage Two:** To hold a National Conference under UN auspices.
3. **Stage Three:** To adopt a Constitution and hold presidential and parliamentary elections.

In September and October 2017, the implementation of Stage One started in line with the application of Article 12. To this end, Dr. Salamé convened a drafting committee of eight representatives from each of the HoR and HSC, which met during a month at the headquarters of UN Support Mission in Libya (UNSMIL) in Tunis. The meetings were ineffective and did not result in a draft of the intended amendments to the LPA, nothing was voted, and no amendments were made to the Constitution.

Although there are still ongoing attempts to reach a compromise on the specific articles of the LPA to be amended, it is obvious that it will be difficult for the HoR

2 [Stage One of the UN Libya Action Plan: The Likelihood of Failure and the Need for Review](#)



and the HCS to come to any agreement. If this Stage One does not materialize, it is expected that the plan will move to Stage Two, which is to hold a National Conference. The exact structure and objectives of the Conference are still unclear as it is still being planned. Considering these circumstances and the inability of the two institutions to reach an agreement on the amendments to the PLA, it is important to look beyond moving to Stage Two of the Action Plan.

Stage One: Chances of Failure

1. It is important to expect the failure of Stage One. It is equally important to recognize this failure and face the inability of both HoR and the HSC to come to an agreement on the amendments of the LPA. The LPA is built primarily on agreement between these institutions. So, the transition period will not progress into something more permanent unless the two entities are able to reach a compromise and settle their differences over the draft laws on a referendum on the Constitution, and on elections.
2. Under the LPA the HSC is considered an advisory body. However, the HSC retains many important responsibilities, making it more of a partner to the HoR. The LPA actually took away executive responsibilities from the HoR and gave them to the new executive authority, the Government of National Accord, which includes the presidential council and a number of ministers. The agreement also limits the HoR's legislative powers, meaning the HoR cannot get anything done without agreement from the HSC. Thus, the backbone of the political agreement is a strong relationship and solid cooperation between the HoR and the HSC.
3. By examining Articles 10, 15, 19(2), 22(2), 23(1-2), 50, 52, 4, 5 and 13 of the additional provisions, it is clear the LPA envisioned cooperation between the HoR and HCS as essential for Libya to continue on a path towards democracy and security.
4. Thus, the failure of the two entities to agree on amendments to the LPA is a warning sign for what may come. This impasse must be solved before proceeding to the stage of a National Conference. This failure should also inform the objectives and the expected outcomes of the National Conference.



The failure of Stage One is a strong indication that there will be no room to implement the LPA using the agreement mechanisms the HoR and the HSC have so clearly failed to apply even to the simplest matters during this first stage. This ability to cooperate was discussed in an earlier [paper](#). It is essential that these failures are examined, and the HoR and the HSC be held responsible for their inaction. It is imperative that they find a way to settle their differences as they enter Stage Two of the UN Action Plan.

Stage One: Consequences of Failure

Revising the LPA is necessary and urgent. The LPA is full of articles that place too much emphasis on cooperation between the HoR and the HSC. As the agreement stands now, without this cooperation, Libya will not reach the end of this transitional phase and move to holding presidential and parliamentary elections. Furthermore, the measure of the success of the Action Plan itself depends on the promulgation of a Constitution for the country within a year, after its submission to a referendum, and the holding of elections based on the future Constitution. Therefore, it is assumed that both the HoR and the HSC would conform to all the procedures, in particular the legislation that meets this stage.

As the first test for both the HoR and the HSC to work together failed to date, this is a clear indication of the failure of the process of consensus in the application of the provisions of the LPA. It is clear that the implementation of the LPA will not take place and the expected institutional convergence between the HoR and HSC will not happen. Therefore, it is important that the LPA be revised to ensure success even if these two entities are unable to cooperate.

Stage Two: The National Congress and the Writing the Constitution

I have previously argued that it is impossible to make progress without first reforming the HoR and the HSC. In an interview, Dr. Ghassan Salamé said the HoR and the HSC have been hijacked and need to be freed. The presidency of both HoR and HSC has become the subject of open political bargaining to reach higher



Arab Reform Initiative

positions in exchange for the amendments required by Stage One.

The HoR and the HSC have both failed to reform internally. The HoR is crippled and unable to produce any results. It has not been able to reach the required quorum in its sessions and its representatives are alienated from their constituents. The HSC, on the other hand, was doomed from the start because it was formed illegally and in contravention of the procedures outlined in the LPA. This exposes the HSC to challenges before the Constitutional Court at any point. This failure makes it impossible to progress along Salamé's Action Plan.

Additionally, neither institution is working with good intentions or a willingness to cooperate for the country's sake. There is nothing preventing the HoR and the HSC to meet – as per Article 12 of the additional provisions – without an invitation from the UN delegation. With good intentions, and a willingness to cooperate for the national good, they could have continued to meet until a solution is found to save Libya, especially as it is teetering close to bankruptcy.⁴

Such stubborn positions are a harbinger of the difficulty in applying the principle of consensus required by the LPA. It is therefore important to reform these two institutions, by including those who boycott them, amending their internal regulations, and holding elections for their presidencies before starting work in earnest. This also entails a revision of the plan for Stage Two without relying completely on these two institutions and a review of the mandate of each of them based on the LPA.

We, therefore, suggest the following:

- Expand participation in the National Conference while limiting the role of the HoR and the HSC, unless they rapidly reform, hold fair and transparent elections, and show signs of real cooperation.
- Define the terms of reference for the National Conference and its work, publicize and widely consult on them, and set up the necessary criteria for representation at the Conference and ensure that everyone recognizes its importance
- Libya should establish a committee of Libyan experts, chosen for their competence, independence and impartiality rather than based on political



quotas. This committee should operate under the supervision of UNSMIL and should closely monitor the National Conference but not directly take part in it. By the end of the conference, either the original LPA should be amended, or a new national charter should be put in place. If the latter, the charter should be put before a popular referendum, and if endorsed, be adopted as a Constitution for the coming transitional period.

- The National Conference, if needed, should pressure the HoR to allow the Libyan Constitution Committee to continue their work according to Article 30(12) of the [Libyan Constitutional Project](#).⁵

Recommendations

1. Failure at Stage One should not be ignored or dismissed. Instead, the House of Representatives and the High State Council should be held responsible for their (in)actions. Should Stage One fail, UNSMIL should use this as a lesson and rethink the subsequent stages to avoid similar mistakes. Importantly, subsequent stages should take into account the inability of these two institutions to reform or cooperate, which makes them unreliable actors in the Action Plan.
2. Should Stage One fail, then particular attention needs to be paid to the National Conference in Stage Two, especially with regard to representation, competence, consultation and the participation of people with expertise. There should be sincere efforts to ensure that the LPA is grounded in the main principles of constitutional systems. It is vital that any decisions that come out of the National Conference be transparent, participatory and subject to a popular referendum.
3. The National Conference must be used as an opportunity to reassess and amend the LPA to address any shortcomings and additional provisions. Otherwise, the LPA will fail.⁶
4. National reconciliation should be publicly declared a primary objective and outcome of the National Conference. It is important that the National Conference does not devolve into a forum to distribute positions in government. This is partly why Stage One has yet to be completed.
5. The National Conference should be held in Libya to maximize the

⁶ Stage One of the UN Libya Action Plan: The Likelihood of Failure and the Need for Review



legitimacy needed to drive real reform.

6. It is important in the next stage to deal seriously with the draft Constitution as one of the key outcomes of the transitional period and to involve members of the National Constitutional Committee. The National Conference must examine and accept the draft Constitution to garner more cooperation and support for the draft Constitution.



Endnotes

1. The Presidential Council is part of the national unity government and alongside the HoR, represents the legislative branch. This council is comprised of eight-member ministers, who have still not received a vote of confidence from parliament.
2. The Libyan HoR is the main legislative body and was voted in on 4 June 2016. The HoR was not recognized by Libya's previous legislative body, Libyan National Congress. The National Congress proposed the idea of a parliament and put in place the legislation, but then refused to transfer power to parliament and refused to allow elections. The HoR is temporarily located in Tobruk.
3. The High State Council was born out of the Skhirat Agreement as a way of resurrecting the former National Congress. It is made of 145 ministers who refused to hand over power to the HoR, in addition to 11 other members who were previously on the electoral list. On 4 May 2016, the members of the National Congress formed the High State Council and elected its president. Most experts believed that this went against the LPA and that the High State Council was not established in the correct manner. The Council of State is based in Tripoli, Libya's capital.
4. In a televised interview on 5 November 2017, Dr. Salamé stated that Libya would go bankrupt within 19 months. See also, "Libye: Le cri d'alarme de Ghassan Salamé " 5 November 2017, available at <http://www.france-irak-actualite.com/2017/11/libye-le-cri-d-alarme-de-ghassan-salame.html>
5. The Libyan Constitutional Committee is a body elected in 2014. Article 30 line 11 states that the Constitution should be subject to a referendum before it can be officially declared as the Constitution. If the Constitution does not pass the referendum, the committee would issue a revised version which would also be subject to a further referendum.
6. Azza Kamel Maghur, "Proposal to Resume the Democratic Process", (in Arabic) *Libya al-Moustakbal* 8 July 2017m available at <http://www.libya-al-mostakbal.org/95/27400/xxxxxxxx-xxxxxxxx-xxxxxxxx-xxxxxxxx.html>



About the author



Azza Kamel Maghur

Libyan lawyer and member of the Libyan Council for Human Rights.

About Arab Reform Initiative

The Arab Reform Initiative is the leading independent Arab think tank working with expert partners in the Middle East and North Africa and beyond to articulate a home-grown agenda for democratic change. It conducts research and policy analysis and provides a platform for inspirational voices based on the principles of diversity, impartiality and social justice.

- We produce original research informed by local experiences and partner with institutions to achieve impact across the Arab world and globally
- We empower individuals and institutions to develop their own concept of policy solutions
- We mobilize stakeholders to build coalitions for positive change

Our aim is to see vibrant democratic societies emerge and grow in the region.

Founded in 2005, the Arab Reform Initiative is governed by a Plenary of its members and an Executive Committee.

arab-reform.net

contact@arab-reform.net



© 2017 by the Arab Reform Initiative.

To view a copy of this licence, [click here](#)