

The Role of Law in Libya's National Reconciliation (RoLLNaR)

**Report on Phase 3 | Decentralization |
April to October 2019**



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Colophon

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Suliman Ibrahim, Leiden, 5 February 2020

Executive summary

Current debates in Libya over decentralization have their roots in Libya's history. The country witnessed many changes to its administrative division since its independence. Key developments in the current debate on decentralization are the constitutional developments of 1951 and 1963. After independence, Libya became a federal monarchy, consisting of three provinces with their own parliaments, ministries and bureaucracies. This changed with the constitutional amendment of 1963, which turned Libya into a unitary state consisting of 10 governorates. Gaddafi seized power in 1969 and although he preached decentralization, his regime was highly centralized and oppressive in reality. During his time in power, he changed the government system continuously. Moreover, Gaddafi privileged certain groups while others were marginalized, most notably groups and tribes in the East. Not surprisingly, demands for decentralization were heard even before the regime was defeated, most loudly from federalists in the East.

Demands for decentralization in Libya are emotionally charged, both positively and negatively. Disagreement over decentralization did not arise over whether or not Libya should opt for decentralization, but rather what form it should take. Three key issues discussed in this report are: (1) the levels and units of subnational governance; (2) the composition of subnational governments – election or appointment; and (3) the distribution of powers between the central and the subnational governments.

With regards to the levels and units of subnational governance, there are, within Libya, two main positions taken. On the one hand there are those who call for a federation with three subnational levels, consisting of provinces (wilayat), governorates (muhafazat) and municipalities (baladiyat). Whereas some proponents of this want to go back to the federal system with three provinces enshrined in the Constitution of 1951, others do not reject the inclusion of other provinces. On the other hand there are proponents of a unitary system with two subnational levels, with governorates (muhafazat) and municipalities (baladiyat).

There is also controversy about how to select subnational councils and their leaders. Whereas some prefer election, because it is more democratic and decentralized, others prefer appointment to ensure an effective chain of command, and to ensure capable political leadership. Some prefer a combination of election and appointment for composing local councils.

The powers granted to subnational governance entities is a highly contentious topic in Libya. There are those who prefer a federal system, in which political, administrative and financial powers are shared between the central authority and subnational governance entities. On the other hand, there are those who prefer a unified system that centralizes political power at the national level, but who could accept having administrative and financial powers transferred to the subnational level to create a decentralized system.

Libya's transitional governments have attempted to respond to demands for decentralization. The National Transitional Council issued a Constitutional Declaration (CD) in 2011 to begin

reconstructing the state. Other significant initiatives include the Draft Constitution of 2017 (DC 2017), Law No. 59 of 2012 'Concerning the Local Administration System' (Law 59/2012) along with its amendments and executive regulations, and the Libyan Political Agreement (LPA) of 2015.

While the CD only mentions decentralization briefly, subsequent amendments shaped the Constitution Drafting Assembly into a 60-member assembly with an equal number of representatives from Libya's three historical regions: Tripoli, Fezzan and Cyrenaica. This prevented domination of the CDA by the West, which was supposed to oppose federalism. Moreover, the CDA was made independent of the General National Congress, which had initially been entrusted to appoint CDA-members and to ratify the draft constitution. This change increased the chances that the CDA would be sympathetic to federalist ideas. However, after the CDA produced a draft that federalists considered flawed, the CD was amended to include a requirement that the draft be approved in a referendum by a majority of voters in each of the three historical regions, whereas before only a two-thirds of voters nationwide had been required. The measure makes approval of a draft constitution unlikely, especially in light of the largely unjustified negative publicity about its position on decentralization.

The Draft Constitution of 2017 (DC 2017) call for a broadly decentralized, unitary system, with governorates and municipalities with elected councils and broad powers. CD 2017 allocates them both central and locally generated resources. However, critical details were referred to a future local governance law. In addition, DC 2017 provides for a bi-cameral parliament with a House of Representatives and a Senate. The latter will have balanced representation from the three historical provinces – with Tripolitania getting 32, Cyrenaica 26 and Fezzan 20 of the 78 seats. The chambers are tasked with jointly legislating decentralization, and are required to agree on any new law on local governance. While this is a positive development, there are numerous controversial issues and extreme political care is needed to avoid protracted disagreement and stagnation.

If fully implemented, Law 59/2012 could answer the immediate need for decentralization. It provides for governorates and municipalities run by elected councils that receive percentages of locally generated revenues, as well as subsidies from the centre. Governorates control the public utilities within their borders, and are also intended to receive the powers now held by ministries, with the exception of those powers deemed to be of special or national nature. Municipalities similarly enjoy broad powers with respect to public services.

However, Law 59/2012 left key details to future legislation. Although it called for establishing governorates, details on their number, boundaries and seats were referred to the future law. Instead, Law 9/2013 indefinitely postponed the establishment of governorates and transferred most of their powers to municipalities. The Council of Ministers determines the powers which are to be transferred from ministries to subnational entities, as well as those that cannot be transferred because they are of special or national nature. However, how powers are to be transferred to municipalities awaits determination in future legislation. Resource allocation also must wait for legislation that defines 'local revenues'. Meanwhile, ministries and other

central institutions charged with providing basic services through their local directorates and offices are under-performing.

This situation has challenged municipal councils, and they have done their best to coordinate with municipal directorates and sectoral offices in order to provide services to their constituencies. The current status quo has forced municipalities to develop alternative solutions in order to obtain additional revenues to provide basic services, including those that are supposed to be provided by the central state. Moreover, in Eastern Libya, the military governor appointed mayors to replace elected councils and empowered them to supervise the directorates and sectoral offices within their boundaries.

In 2019, the Government of National Accord (GNA) decided to transfer powers from the Ministries of Economy and Industry, Communication and Health to municipalities in the area it controls. Although this can be seen as a positive development, municipalities will need to receive enough funding and resources to exercise their new power, and this may prove difficult due to the very large number of municipalities.

The Libyan Political Agreement (LPA) says little about decentralization. It attempts to remedy municipal council's difficulties with the sectoral directorates and offices of the central government by establishing a 'Supreme Council for Local Administration' to promote their cooperation and coordination in accordance with Law 59/2012. The three historical regions are acknowledged through representation on a Presidential Council but that is hardly enough. Although decentralization is key to resolving Libya's chaos, it apparently was not part of the LPA negotiations.

Despite credible legislation being in place, it is not always appreciated. This is because of a lack of awareness, but also cultural problems related to decentralization, including unrealistic views and expectations. We consider it crucial for Libyans to be aware of all the available options so they can take informed decisions. A national dialogue on decentralization is needed, and ensuring well-informed dialogue necessitates awareness-raising campaigns involving formal and informal actors. Initiatives to replace the LPA also should pay heed to the need for decentralization. Preferences Libyans express in the national dialogue should be the basis for any future initiative, including possibly ratifying the Draft Constitution.

1. Introduction: Decentralization and the role of law in Libya's National Reconciliation¹

1.1. State-building, conflict, division and decentralization

Since the 2011 uprising in Libya and the fall of Muammar Gaddafi's regime, serious efforts have been made to reconstruct the state and reshape national identity. National and local elections were held in 2012 and 2014, and successive governments followed constructive policies and passed many laws. Useful multilateral and bilateral assistance was received and last but not least, a process to draft a constitution was held between 2014 and 2017. However, despite initial successes, these efforts have been thwarted by local, regional and national conflicts.

In 2014, these conflicts led to a dramatic bifurcation of state power, with rival governments and legislatures in the East and West. In April 2019, Khalifa Haftar's Libyan National Army (LNA) launched a military attack on Tripoli to gain control of the capital and national power. As we write – in early December 2019 – the Government of National Accord (GNA), formally recognized by the international community, has thus far repelled the LNA attack.

Decentralization in Libya is impacted by the current conflict in several ways.

Firstly, the concept of decentralization (*lamarkazia*) presupposes the presence of a centre, from where a state – or other entity – is governed. However, when the whole country lacks an effective government centre, the fundamental question is: 'Decentralization of *what?*'

Secondly, the 2019 attack on Tripoli, which amounts to a civil war, has damaged the national identity that had been developing since 2011 and reinforced regional identities in the East and the West, as well as local and ethnic identities. Instead of strengthening the Libyan national identity by incorporating these other identities, as we discussed in our previous report on national identity,² the renewed fighting has deepened cleavages and created the image of 'enemy' Libyans.

Various frames are used to describe the war in the East. One frame emphasizes the 'war on Islamist terrorists' and another describes the 'extremist' militias that rule over greater Tripoli. Yet Eastern support for the war is also justified by 'decades of oppression and marginalization by those in Tripoli'. This raises the question whether particular types of decentralization are better suited to respond to these grievances than others. Addressing historical grievances may require renewed efforts at transitional justice, which will be discussed in our next report.³

¹ This English language report presupposes an international readership; it is based on a longer, more detailed report in Arabic.

² Suliman Ibrahim et al. "Report on Phase 1, National Identity, April 2018 to October 2018." (Benghazi and Leiden: Centre for Law and Society Studies and Van Vollenhoven Institute for Law, Governance and Society, 2018).

³ We expect to complete our research phase on Transitional Justice in April 2020.

Thirdly, as we argue in our previous study, national governance suffers from six interrelated crises of state-building: national identity, legitimacy, penetration, participation, distribution and integration.⁴

In addition, national governance also faces major challenges, with the country's rentier economy and rampant corruption paramount.

These crises and challenges not only affect the central government in Tripoli but have also played out in lower government institutions throughout the country. At present the stability and effectiveness of central-local relations is undermined by the crisis of *national identity*. While Libyan citizens' sense of belonging to their nation-state has not been destroyed, it is jeopardized by exaggerated regional, local and ethnic identities. The crisis of *legitimacy* is manifest in the lack of a shared general perception that *the* Libyan state and its policies and institutions are just. That can only be overcome by restoring public confidence in the state, which requires an appropriate form of decentralization because such confidence is created at the local interface of state and society.

However, Libya is also suffering from a crisis of *penetration*, meaning that the state is unable to control the periphery: It is unable to establish public order and implement and coordinate basic policies through rational administration. This, too, can only be done by a properly decentralized government, which also has to manage the crisis of *distribution*. One of a state's critical functions is to fairly redistribute revenues and deliver goods and services to its citizens. Unfortunately, over the years, the Libyan rentier state has uncoupled 'income' from 'work performance' and created many opportunities for corruption. If decentralization could create local accountability, it could help reduce the crisis of distribution. Privatization, which can be seen as a form of decentralization, could also mitigate the crisis of distribution and make being part of the state apparatus less attractive for those who seek personal enrichment through political power.

National and local elections held after 2011 raised expectations of real democracy in which local administrators are accountable to their constituencies. However, with parliaments divided and dysfunctional, and armed groups effectively ruling various parts of the country, there still is a lack of political *participation*. Decentralization implies establishing local and regional councils that can become petri dishes for democratic decision-making.

Finally, local and regional demands are not just about local and regional offices. The crisis of *integration* is the lack of national inclusion: Social sectors, regions and strata do not equally share positions and benefits in the national government. Integration is about sharing central power, with rules of allocation that equalize the shares. The ongoing divide and war have fostered an exclusionary and adversarial political culture.

4 The idea of these crises is described by Stein Rokkan. See Stein Rokkan, "Models and Methods in the Comparative Study of Nation-Building," *Acta Sociologica* 12, no. 2 (1969): 53-73.

Decentralization is not simply about transferring tasks, legal powers and resources from A to B. It is part and parcel of the process of state-building, which has to deal with these crises. The first step is reaching a cease-fire to end the civil war and restart a national political dialogue.⁵

Once that happens, decentralization will be on the negotiating agenda, with discussion of various modalities, ranging from federalism to limited and expanded decentralization (*markazia muwasa'*). In fact, this process has been underway since 2011, with extensive debates about the modalities that are consecrated in laws and draft constitutions.

1.2. The Role of Law in Libya's National Reconciliation

This study on decentralization is part of a research project on the role of law in Libyan reconciliation⁶ that examines five areas. Research and reports on national identity and national governance have been completed. This report concerns decentralization. We are also researching transitional justice, and will begin to study security forces in spring 2020.

Decentralization is central to national reconciliation because of its ability to address both political and socio-economic marginalization and historical grievances. However, Libya has had little experience with local or provincial governments. Especially under Gaddafi and the many changes he made in public administration and subnational institutions, along with the state's securitization, Libya's subnational institutions in particular have deteriorated.

Post-2011 debates on decentralization in Libya have included different positions on key aspects. This report focuses on three of them: (1) Which levels and units should constitute subnational governance? (2) Should subnational governments – councils and their heads – be elected or appointed? (3) Which powers should subnational governments have? These three contentious aspects are central to any debate on decentralization. This report devotes a chapter to each of them.

1.3. Major post-2011 legislative initiatives

We start this report by mentioning four legislative initiatives that are central to our analysis.

1. The Constitution Declaration (CD) issued in 2011 by the National Transitional Council (NTC) has been serving as an actual constitution during the current 'transitional period'. It calls for a Constitutional Drafting Assembly (CDA) to be elected to draft a permanent constitution that would then be put to a general referendum. No permanent constitution has yet been put in place: Instead, the CD has been amended.

⁵ In the framework of our research on decentralization, an academic study about the causes of the 2011 Libyan civil war has been conducted by economist Fathi Ali (2019). In line with the greed vs. grievance theories advanced by Paul Collier and criticized by David Keen, among others, Ali discusses their relevance to Libya and presents a detailed history of how and why longstanding Eastern discontent has led to calls for federalism and subsequent support for the present civil war. See Paul Collier and Anke Hoefler, *Greed and Grievance in Civil War* (World Bank Policy Research Working Paper No. 2355, 2016) Accessed online: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=630727 [last accessed 11 Dec. 2019] and David Keen, "Greed and Grievance in Civil War," *International Affairs* 88, no. 4 (July 2012): 757-777.

⁶ This research project is conducted by the Centre for Law and Society Studies of Benghazi University and the Van Vollenhoven Institute of Leiden University for Law, Governance and Society.

In 2012, under pressure from federalists in the East, the NTC amended the CD twice. The first was to create the CDA with 60 members, 20 from each of the three historical regions, similar to the assembly that drafted the 1951 Constitution and the federal system. This amendment did not satisfy the federalists because it meant the CDA would still be composed and controlled by the GNC, a legislative assembly controlled by a Western majority, who supposedly rejected federalism. With the risk that a federal system would be eliminated in the new constitution, the federalists again pressured the NTC and threatened to boycott the GNC election. The NTC then amended the CD a second time to make the CDA an elected assembly largely independent of the GNC, whose role was limited to issuing the referendum law.

The House of Representatives (HoR) also amended the CD on 28 November 2018 with regard to the referendum to be held on the draft constitution. While Article 30 of the CD required a two-thirds majority of the voters for ratification, the amendment splits Libya into three voting regions (Cyrenaica, Tripolitania and Fezzan) and requires a 50 + 1 per cent majority in each of them— in addition to the country-wide two-thirds majority.⁷ The amendment thus increases the regions' influence over the ratification of the constitution. Since most Libyans live in the West (Tripolitania), if regional majorities were not needed, Tripolitarians would have greater say than people in the East (Cyrenaica) and the South (Fezzan). Both the HoR amendment of 2018 and Referendum Law No. 6 of 2018 (Law 6/2018) were highly contested, and the latter was brought before the Supreme Court in Tripoli. The amendment was criticized for being passed although there was no voting quorum (120 members present). Beyond flaunting legal procedure, the amendment does not recognize the rights of minorities such as the Amazigh⁸ and includes legal irregularities.⁹ It is also said to violate the Libyan Political Agreement (LPA).¹⁰

2. We have examined the LPA, which was concluded in 2015 to overcome the bifurcation of 2014. The LPA provides a framework for the main national bodies – the GNA, the HoR, the High State Council (HSC) and the CDA – and was supposed to be incorporated into the CD. The LPA contains a preamble, 32 governing principles, 67 articles, 15 additional provisions and 6 annexes. While it does not go into detail on decentralization and local governance, the LPA clearly envisages a decentralized system within a unitary state.

3. In 2014, the CDA started working on a Draft Constitution (DC),¹¹ which has now appeared in several versions. The latest, issued in July 2017, consists of 12 chapters and 197 articles and contains several provisions regarding decentralization. Chapter 6 deals with local governance levels and units, councils, competences, funding and oversight. The DC calls for a decentralized

⁷ See for example Abdulkader Assad, "Libya's parliament passes referendum law, amends constitutional declaration," *Libya Observer*, September 24, 2018. Accessed online: <https://www.libyaobserver.ly/news/libya-parliament-passes-referendum-law-amends-constitutional-declaration> [last accessed 11 Dec. 2019].

⁸ "HoR, CDA challenge referendum law before Supreme Court," *218 News*, 27 December 2018. Accessed online: <https://en.218tv.net/2018/12/27/946/> [last accessed 11 Dec. 2019].

⁹ Safa Alharathy, "HCS rejects HoR's amendments on referendum law," *Libya Observer*, December 13, 2018. Accessed online: <https://www.libyaobserver.ly/news/hcs-rejects-hors-amendments-referendum-law> [last accessed 11 Dec. 2019].

¹⁰ "Challenge referendum law."

¹¹ English version online: <https://security-legislation.ly/node/35174> [last accessed 11 Dec. 2019]

unitary state. It also contains multiple provisions on natural resources, which are an important aspect of local governance.

4. The last important legislative initiative that should be mentioned here is Law No. 59 on local administration (Law 59/2012),¹² issued in 2012 by the NTC. Its seven chapters and 81 articles lay out the framework for decentralization and local governance. It calls for a decentralized system within a unitary state, with governorates and municipalities as the main subnational entities. Provisions cover the structure and composition of local administrations, the finances and budgets of local councils, oversight and implementation, and rights and obligations. In 2013, the Cabinet issued via its Decree No. 130 Executive Regulation (ER/2013).¹³ Many provisions of Law 59/2013 have not yet been fully enforced, and although it calls for the creation of both governorates and municipalities, only the latter have been established. Law No. 9 of 2013 (Law 9/2013) subsequently postponed the creation of governorates and many of their intended responsibilities have instead become the responsibility of municipalities.

1.4. Research Questions and Methodology

This research project aims to answer a number of questions concerning Libya's body of law and its implementation. We broadly ask: (1) Has law been used to address controversial issues regarding decentralization that have been obstacles to reconciliation and state-building? (2) To what extent has legislation on decentralization been effective in overcoming these obstacles? (3) If it has not been effective, how can it be adapted to achieve these goals?

To answer these questions, the research team adopted a socio-legal approach that combines interviews and focus group discussions with stakeholders from six governance arenas¹⁴ with analysis of key legislation and desk research on literature in English and Arabic.

The research team consists of project leader Dr. Suliman Ibrahim and five principal researchers, Ms. Lujain Elaujalli, Dr. Jazieh Shayteer, Dr. Hala Elatrash, Mr. Ali Abu Raas and Mr. Otman Elkaf, and an assistant researcher, Ms. Nienke van Heek. They have been accompanied, guided and supported by four senior experts, Prof. Zahi Mogherbi, Prof. Nagib Husadi, Prof. Koni Abuda and Prof. Jan Michiel Otto. Academic specialists Prof. Mansour el Babour, Mr Hamdi Herwis, Dr. Fathi Majberi, Dr. Issa Ali, Dr. Anas Buera and Dr. Abir Imneina were requested to write on topics related to decentralization.

1.5. Grasping the elusive concept of decentralization

The term 'decentralization' (*lamarkazia*) is a common term, which sometimes appears in composite concepts like 'expanded decentralization' (*markazia muwasa'*) and 'political' or

¹² English version online: <https://security-legislation.ly/node/31807> [last accessed 11 Dec. 2019]

¹³ The Executive Regulation is available in English translation within the DCAF: Geneva Centre for Security Sector Reform legal database, see: <https://security-legislation.ly/node/32090> [last accessed 11 Dec. 2019].

¹⁴ The concept of 'arenas of governance' is based on the study by Goran Hyden et al. The arenas refer to the government, political society, economic society, bureaucracy, civil society and the judiciary as spaces where governance interactions take place. See Goran Hyden, Julius Court and Kenneth Mease. *Making sense of governance: empirical evidence from sixteen developing countries* (Boulder London: Lynne Rienner Publishers, 2004).

‘administrative’ decentralization. However, there is little consensus about what decentralization and its composite terms actually mean – either inside or outside Libya. Nor is there a precise understanding of ‘federal’ as opposed to ‘unitary’.

The lack of terminological consensus about ‘decentralization’ and ‘federal/unitary’ creates a serious risk of misunderstanding and further conflict. We therefore provide definitions for this research project.

Firstly, decentralization entails a transfer of ‘things’ away from the centre (of government). ‘When all the power for decision-making rests at a single point in the organization – ultimately in the hands of a single individual – we shall call this structure centralized; to the extent that the power is dispersed among many individuals, we shall call the structure decentralized,’ writes Mintzberg (1979). Schneider (2013) similarly defines decentralization as ‘the transfer of power and resources away from the central government’.

Secondly, the issue of decentralization crucially concerns *what* is being transferred. We view decentralization as meaning the transfer and dispersal of one or more of: tasks (responsibilities), formal legal powers, resources and political power. Transfers can be made of all, a few or just one of the above – creating more or less ‘complete’ decentralization.

- (1) The transfer of tasks can be broad or narrow. Certain types of decentralization involve a broad set of governmental responsibilities, such as for security, economic planning, infrastructure, social services and so on. Other types are limited to only one or a few sectors.
- (2) The constitution of both unitary and federal states usually outlines the essence of a decentralized political system. In a federal state constitution, the division of responsibilities between the federal ‘union’ and its ‘provinces’ is somewhat rigidly defined, which has advantages and disadvantages. Unitary states usually have one or more decentralization laws that regulate the composition, responsibilities, powers, resource base and oversight of subnational government entities.
- (3) A state’s resources are human, material and financial. In countries rich in natural resources, the power to manage, exploit and/or financially benefit from them may be a key aspect of the decentralization arrangement.
- (4) Political power can either be exercised within a formal legal framework or informally. In formal political systems, decentralized power may be democratically elected governing bodies that make local policies and regulations and are accountable to their constituencies. Informal political systems may have ‘real power holders’ who informally control the formal decision-makers. In authoritarian and failing states the central authority or local warlords often hold power.

Thirdly, decentralization is often understood as a vertical transfer from a higher to a lower governmental level, with clear territorial dimensions, such as from the central to the provincial or municipal governments. Our focus is on *vertical* territorial decentralization, but it can also

occur horizontally. For example, central government tasks can be transferred to a specialized agency outside the line ministries, such as the central bank or a national company. This is called 'functional' decentralization.¹⁵ Another important type of horizontal decentralization transfers from the state to the private sector, or 'privatization'.

Vertical territorial decentralization has three distinct manifestations:¹⁶

The first involves transfers from within a central government hierarchy to 'branches' or 'field offices' in localities, municipalities and provinces. Branches locally exercise central government functions, with officials accountable 'upwards' to the ministry: It involves no transfer of political power. This type of decentralization is a managerial technique often termed 'deconcentration' (*'adam al-tarkiz al-idariyya*), 'administrative decentralization' (*al-lamarkaziyya al-idariyya*) or 'local administration' (*idarit mahalliyya*). This is found worldwide.

The second concerns transfers from a central government to autonomous 'local government' entities (*al-hukm al mahalli*), that is, to a municipality, district, province or region that is made responsible for a broad range of sectors. These subnational entities usually have elected bodies (councils) that exercise political power within the territory: They make and implement policies and regulations, and are accountable to local constituencies. The central government's role is limited to oversight. This type of decentralization is commonly referred to as 'devolution' (*naql*), as well as 'democratic' or 'political' decentralization. Devolution is found in both unitary and federal states, and has long been practiced in many Western countries.

The third manifestation, often referred to as 'delegation' (*tafwid*), has elements of both deconcentration and devolution. Responsibility for entire sectors and their associated powers and resources are transferred from the central government to subnational entities, such as municipalities and provinces. These are then tasked to help locally implement central government policy and laws. The central government has a substantive supervisory role.

Decentralization is found along a very broad spectrum of possible combinations in virtually all governments: horizontal transfers of some responsibilities, powers and resources, and vertical transfers of elements of devolution, deconcentration, delegation and so forth. However, political debates about decentralization are often conducted in binary fashion, as if a country must choose either devolution or deconcentration.

These binary views often come with assumptions that one or the other type is 'closer to the people'. Some people assume that a federal state implicitly provides more autonomy, democracy and development than a unitary state, despite conflicting evidence: The federal system of Austria allows its provinces little autonomy, the Russian federation is not overly democratic, and the Pakistani federation is disappointingly under-developed. In contrast, the

¹⁵ In literature on development, administration is also referred to as 'delegation'. See Rondinelli, Nellis and Cheema (1984).

¹⁶ UNDP, *Lībā, al-taqrīr al-waṭanī li-tanmīat al-bashrīa* (Tripoli: Al-Hi'a al-Wantaniyya li-al-mu'alumat wa al-tawthiq, 2002) and Rondinelli et al. (1984).

unitary system of the Netherlands allows municipalities and provinces considerable autonomy to contribute to citizens' socio-economic development. These are just a few examples.

It suffices to say that it is hard to make a clear-cut distinction between 'federalism' and 'decentralization'. With regard to Libya, Marcus Böckenforde and Meyer-Resende¹⁷ highlight the dangers of debates that make a binary distinction between federal and decentralized systems. We focus on what Böckenforde, Mansur Al-Babour and Tarek Megerisi¹⁸ have called substantive and functional aspects of decentralization.

Finally, we note that decentralization can be defined as the *process* of transferring X – as well as the resulting *state* of being decentralized. The process of decentralizing a public administration refers to a reform and the state of decentralization to a structure.¹⁹ In our report, whether decentralization refers to a process or a structure will be clear from the context.

2. The history of administrative divisions in Libya (1951-2011)

In the period from 1951 to 2011, Libya witnessed some 15 changes to its administrative division, which are listed in Table 1 (below). Here we address the two constitutional developments in 1951 and 1963, which are particularly significant to the current debate about decentralization.

On 21 November 1949, the UN General Assembly decided that Libya – composed of the regions of Cyrenaica, Tripolitania and Fezzan – would become an independent state by 1 January 1952. To help write the constitution and form a national government, the UN appointed an envoy, who was assisted by a council of representatives from Cyrenaica, Tripolitania, Fezzan, Libyan minorities as well as from Egypt, Pakistan, Britain, France, United States and Italy. A Libyan committee with 21 members, seven from each of the three regions, was also formed to determine how to compose a national constituent assembly to write the constitution. The committee decided that 60 members – 20 from each region – would be appointed.

Among the key issues the constituent assembly had to decide was whether the state would be federal or unitary. That decision proved difficult: Cyrenaica and Fezzan insisted on a federal system for fear that a unitary one would result in the dominance of Tripolitania, the most populated province.²⁰ Tripolitania, however, opted for a unitary state, arguing that a federal system would be costly and complicated in a country with a small population like Libya.

¹⁷ Markus Böckenforde and Michael Myer-Resende. "Federalism's Image Problem: Why Constitution-Makers Should Work with Decentralization." In: *Annual Review of Constitution-Building Processes*: (Strombörg: IDEA, 2016). <https://www.idea.int/sites/default/files/publications/annual-review-of-constitution-building-processes-2016.pdf> [last accessed 7 Aug. 2019].

¹⁸ Markus Böckenforde et al. "Decentralisation in Libya," *Democracy Reporting International*. http://democracy-reporting.org/wp-content/uploads/2016/03/dri-ly-rpt_en_decentralisation_in_libya.pdf [last accessed 11 Dec. 2019].

¹⁹ Hans Dubois and Giovanni Fattore, "Definitions and Typologies in Public Administration Research: The Case of Decentralization," *International Journal of Public Administration* 32, no. 8 (July 2009): 707.

²⁰ Majid Khadduri, *Modern Libya, a study in political development* (Baltimore: The John Hopkins Press, 1963): 168, 169.

Tripolitarians even depicted federalism as a means for Britain and France to maintain their influence in Cyrenaica and Fezzan; they called federalism incompatible with Islam and pointed out that it was not used in any other Arab country.²¹ In the end, however, the constituent assembly opted for the federal system. The representatives of Tripolitania accepted it, hoping it would be a step towards a unitary system.²² The assembly also decided Libya should be a monarchy.

According to the Constitution issued by the assembly on 7 October 1951, 'Libya is a State having a hereditary monarchy, its form is federal and its system of government is representative. Its name is "the United Kingdom of Libya"' (Article 2) 'and [Libya] consists of the Provinces of Cyrenaica, Tripolitania and the Fezzan' (Article 3). Some analysts pointed out²³ that while the Constitution did not allow for amending specific provisions such as those related to the monarchy (Article 197), it left the door open to amending provisions related to the federal system (Articles 198 and 199).

The constitution specified the powers of the federal government in Articles 36 and 38, and left all other powers to the three provinces in Articles 39 and 176. The federal government had two types of power. The first included its exclusive powers, such as diplomatic, consular and commercial representation; affairs of war and peace; the conclusion and implementation of treaties and agreements with other countries; the regulation of commercial exchange with other countries; the issuance of visas and passports; migration to and from Libya; affairs of nationality; all other matters related to foreign affairs; and the defence industries and facilities of the Libyan air, land and sea forces (Article 36).

The second type of powers were shared between the federal government (legislative) and the provinces (executive): companies; banks; import and export regulation; income tax; sub-soil wealth, excavation and mining; ships and maritime navigation; aircrafts and aviation, establishment of airports, regulation of airplane movement and airport administration; establishment of the general judicial system; civil and commercial laws, the penal code, codes of civil and criminal procedure, and the legal profession; workers' affairs and social security; the general education system; public health and the coordination of related affairs; quarantine and quarantine stations; and licensing requirements for the medical profession and other health professions (Article 38).

To enable the provinces to exercise their powers in all sectors not granted to the federal government, the Constitution entitled each to have its own governor (Article 179), and legislative and executive councils in accordance with a basic law to be enacted by each province (Article 184), along with local provincial courts (Article 185). Federal tax could only be imposed after consultation with the provinces (Article 175).

²¹ Ibid.

²² Ibid, 168.

²³ Mohammad Yusif Al-Mugraif, "Libīā bayna al-māḍī wa al-ḥāḍir: ṣafḥāt min al-tārīkh al-sīāsī (Cairo: Maktaba Wahba, 2006), 260.

The Constitution also provided for power-sharing at the national level. The federal legislative assembly had two chambers: the Senate and the House of Representatives (Article 93), the former with 24 members, eight from each province (Article 94). It also provided for two capitals: Tripoli and Benghazi (Article 188).

The federal system lasted until 1963, when it was replaced by a unitary system. Various reasons were given for changing: the costs of maintaining a federal system; conflicts between the federal government and the provinces; the influence of oil companies that preferred to deal with one entity instead of both federal and provincial ones; the federal system had developed a national consciousness and caused the decline (but not demise) of regional sentiment; and it was the King's attempt to find a solution for his succession.²⁴

The federal system was not ended all at once. On 7 December 1962, the federal government submitted a bill to parliament that included amending the constitution to transfer some provincial powers to the federal government, abolishing provincial executive councils and transferring their powers to provincial governors who would no longer be responsible to the King, but to the provisional legislative assembly instead. Parliament approved the bill that same day and the King issued a decree to that effect on 8 December 1962. On 14 April 1963, the federal government submitted a bill amending the Constitution to abolish the federal system, which the HoR approved the next day – and Senate the day after. The provincial legislative assemblies then ratified the amendments: Cyrenaica on 20 April 1963, Fezzan on 21 April 1963 and Tripolitania on 22 April 1963. Finally, the King issued Decree No. 1/1963 ending Libya's federal system.

²⁴ Reasons for the change that related to the federal system's impact on the economy were listed in a World Bank report of April 1960 based on an economic survey in Libya requested by the Libyan Government: 'The mission is convinced that, if the economic development of Libya is to be carried out with speed and efficiency, it is necessary to avoid the confusion caused by having three or four different policies or procedures in respect of such vital matters as trade, income tax, banking and audit arrangements. The confusion of functions and [...] the delays that take place because the centre and the provinces are unable to agree on action are not conducive to rapid economic progress. [...] Quite apart from anything else, [the federal system] is an extremely costly system for the Libyan taxpayer to support—and it is he who in the last resort must foot the bill. World Bank, *The Economic Development of Libya* (Baltimore: The John Hopkins Press, 1960), 11-12. Accessed online via: <http://documents.worldbank.org/curated/en/573751468757209997/pdf/multi-page.pdf> [last accessed 11 Dec. 2019].

Table 1. Administrative divisions in Libya: 1951-2011²⁵

YEAR	MAIN DIVISIONS	NO.	SUB-DIVISIONS	
1951	<i>wilayat</i> (provinces)	3	<i>mutasarrifiyat</i> (province, Ottoman term)	<i>mudiriyyat</i> (directorates)
1963	<i>muqata'at/muhafazat</i> (governorates) ²⁶	10	<i>mutasarrifiyat</i>	<i>mudiriyyat</i>
1970	<i>muhafazat</i>	10	<i>mutasarrifiyat</i>	<i>mudiriyyat</i>
1972 ²⁷	<i>muhafazat</i>	10	<i>baladiyat</i> (municipalities)	<i>sub-baladiyat</i> (sub-municipalities)
1975	<i>baladiyat</i> (municipalities)	46	<i>sub-baladiyat</i> (sub-municipalities)	<i>mahallat</i> (localities)
1979	<i>baladiyat</i>	44	<i>sub-baladiyat</i>	<i>mahallat</i>
1980	<i>baladiyat</i>	25	<i>sub-baladiyat</i>	<i>mahallat</i>
1984	<i>baladiyat</i>	24	<i>sub-baladiyat</i>	<i>mahallat</i>
1986	<i>baladiyat</i>	13	<i>sub-baladiyat</i>	<i>mahallat</i>
1990	<i>baladiyat</i>	7	<i>sub-baladiyat</i>	<i>mahallat</i>
1992	<i>mu'atamarat</i> (Basic Popular Congresses) ²⁸	1455	-	<i>mahallat</i>
1995	<i>manatiq</i> (areas)	13	<i>mu'atamarat</i>	<i>mahallat</i>

²⁵ This is an update of a table published by the Center for Research and Consultancy in *Mashrū' dirāsa al-taqṣīmāt al-idāriyya fī jamāhīriyya* (Benghazi, 2006).

²⁶ The Resolution of the Council of Minister No. 13 of 1963 divided Libya into 10 *muqata'at* (sections), each divided into *mutasarrifiyat* (Ottoman term for province) and then *mudiriyyat* (directorates) The name *muqata'at* was changed to *muhafazat* in Law No. 8/1964 on Local Administration, which kept *mutasarrifiyat* and *mudiriyyat*, and allowed for municipal councils to be established in some cities.

²⁷ In 1972, *mutasarrifiyat* were replaced by *baladiyat* and *sub-baladiyat*.

²⁸ The General Popular Committee's Resolution No. 75 of 1992 replaced *baladiyat* and *sub-baladiyat* by *mu'atamarat* (Basic Popular Congresses).

1998	<i>sha'abiyat</i> ²⁹	26	<i>mu'atamarat</i>	<i>mahallat</i>
2000	<i>sha'abiyat</i>	27	<i>mu'atamarat</i>	<i>mahallat</i>
2005	<i>sha'abiyat</i>	33	<i>mu'atamarat</i>	<i>mahallat</i>
2007-2011	<i>sha'abiyat</i>	22	<i>mu'atamarat</i>	<i>mahallat</i>

²⁹ The UNDP (p. 4, 2015) states, '*Sha'abiya* (plural: *shaabiyat*) is a neologism exclusive to Libya that appeared under Gaddafi's rule and meant 'governorate'. It was the only sub-national administrative division prior to the 2011 revolution.'

3. A common motivation for demanding decentralization: Marginalization

Our interviewees and focus group discussions revealed that demands for decentralization are often mainly motivated by a sense of marginalization.

This sense of marginalization must be investigated to determine whether it is justified, merely perceived – or exaggerated. This is important for national reconciliation because all regions and population segments complain of being marginalized, including those accused by others of *practicing* marginalization. Moreover, some believe that marginalization is not caused by the centralized system but by financial and political corruption, the poor performance of state institutions and the central authority's inadequate provision of goods and services.

The first problem here is the term marginalization, which has no clear, agreed definition.¹ Also unclear is whether marginalization is solely economic, political, tribal or regional – or a combination of them. We understand marginalization as the deliberate preferential treatment of those close to the centre and the deliberate neglect of the needs of those at the periphery.

3.1. Marginalization affects everyone

Regardless of the exact meaning of marginalization, some opinion leaders and members of executive and legislative bodies deny that certain areas of the country are affected. Some see it in all Libyan cities and regions, while others believe that the feeling of injustice, especially economic injustice, is not due to marginalization by the centre, but rather economic and administrative corruption, which also happens at lower levels. This point was revealed in a series of interviews.

The mayor of the municipality of Shahat confirms that the East does not suffer from marginalization but rather corruption: 'There are large monitored budgets, and then they disappear without a trace, and the reason for this is corruption.' Writer and political analyst Salem al-Awkali echoes this view, telling about a huge budget allocated for constructing a new hospital in the city of Derna that was exhausted without building any hospital. The entire budget was spent without improving the health sector for residents. Othman Salem Al-Shaibani, Director of the Agricultural Bank in Beni Walid, attributes economic injustice to faulty policies, rather than marginalization. Clear differences exist between cities in terms of infrastructure and public utilities because no objective criteria are used to create municipalities.

¹ An article by Joan G. Mowat that attempts to conceptualize marginalization provides important clues for defining it. The article poses two main questions: What does it mean to be marginalized, and what are people marginalized from? Mowat states that marginalization is often used interchangeably with exclusion, and uses a definition by Razer et al. that it is a 'state in which individuals or groups lack effective participation in key activities or benefits of the society in which they live'. Moreover, several important observations can be drawn from her article: (1) Marginalization can take many forms; (2) it is subjective in nature, that is, we can distinguish between the experience and recognition of marginalization; (3) it not only signifies a state, but also feelings about that state. See Joan G. Mowat, "Towards a New Conceptualisation of Marginalization." *European Educational Research Journal* 14, no. 5 (2015): 454-476, esp. pp. 455-458.

Some municipalities lack the necessary human and material resources. Fawzia al-Ferjani, head of the Libyan Business Council of Benghazi, says that marginalization is widespread, even in Tripoli: Many businessmen are even migrating from Tripoli to Benghazi, in the East, which has long been plagued by perceived marginalization.

In an explicit affirmation of the role of culture, Abdel Moneim al-Saity, Chairman of the Benghazi Chamber of Commerce and Industry, said he supported federalism but discovered that 'The culture of the people is the secret to success of any administrative system, and our Libyan culture is flawed. The institutions are there, but unless you belong to a certain tribe, your chances of obtaining a high position are slim.' For this reason, he does not blame people in the west for appropriating sovereign institutions 'because the mentality is the same; if the government moved to Benghazi, the people of this city would marginalize the other regions.'

Some observers do not completely deny that marginalization exists but who question the allegations of marginalization made by people in certain regions. According to these observers, the sense of marginalization is due to a variety of urban, economic and political reasons – and even their mood. Moreover, some cities in a region feel marginalized but not others.

Mansour al-Babour, Professor of Geography at the University of Benghazi, says that the perception of marginalization stems from the way certain cities, especially Tripoli and Benghazi, control most of the economic and service activities and infrastructure. In recent decades, distribution patterns have been neglected when determining administrative divisions in urban centres: Size, spacing and functional roles are all that is taken into account. Al-Babour believes that reducing the exaggerated importance of the capital and major cities would allow smaller urban centres to develop their economic bases and no longer feel – or be – marginalized: All the various parts of the urban system would function better – together.

Mohamed Abdeljalil Bousnina, Professor of Economy at the University of Benghazi and Consultant at the Central Bank of Libya, stresses the need to restructure the economy, which is suffering from poor distribution, mismanagement and the inability to exploit resources. 'There is no way to solve the country's economic problems without relying on alternative resources besides oil,' he says. 'The rentier mentality is the real reason why Libyans are suffering. Only a small number of citizens contribute to oil-related activities, not more than two per cent of the population. It is managed only by a few – in the government – and there is no way to distribute the management of oil to the regions, as it must be managed centrally. If we focus on spatial development, invest in free trade zones and develop tourism, we will create jobs and end centralization.'

According to al-Sanousi al-Taher, an activist interested in public affairs, during the previous regime's era all areas of the country were marginalized. 'There was no plan to marginalize one region and not another. But, depending on its whims, the regime marginalized one city and paid

attention to another. This is what happened, for example, after the plot of al-Muhaishi.¹ Gaddafi strengthened the town of Beni Walid at the expense of Misrata. Then, when he became angry at the tribe of Warfallah, the inhabitants of Beni Walid, he turned back to Misrata. 'To verify this view, we have to look at the difference between the al-Hadba and al-Andalus neighbourhoods in Tripoli and the al-Kish and al-Majouri neighbourhoods in Benghazi. There is no difference in economic, social or educational development,' al-Taher says. 'They were all "beaten by the same stick".'²

Bil'ad Taher Barghouti, Professor of Sociology at the University of Zaytuna, believes that marginalization occurred in various periods but argues that Cyrenaica was not targeted. He cites a list of the prime ministers in the regimes of December (1951), September (1969) and February (2011) to show that the Cyrenaica and Misrata received the lion's share of positions, while cities in Tripolitania like Tarhuna and Zliten were never given any presidential or ministerial offices throughout the history of the Libyan state although they are more populous than Misrata.

3.2. *Marginalization affects some*

There are also those who state that marginalization is real, that the feeling is justified and that the national budget is distributed to favour certain regions over others. However, we have not found agreement about which areas are marginalized or by whom. People in the east, which many prefer to call 'Cyrenaica' (Arabic: *Barqa*), are usually the loudest to complain about their marginalization, which they generally blame on westerners, and especially people in Tripoli. They are followed by people in the region known as 'the forgotten South': Although they talk less about their concealed marginalization, many consider that they suffer at least as much marginalization as Easterners. Third, there is the marginalization of the *defeated* in the cities like Bani Walid, Tawergha and Ghat that are seen as Gaddafi loyalists and were thus defeated in the 2011 February Revolution, which are marginalized by 'victorious' cities such as Misrata, Zintan and Zawiyaa. Fourth, various cultural groups suffer *ethnic* marginalization.

3.3. *Marginalization of Cyrenaica*

In the East³ we find those who see themselves marginalized by Westerners as shown in the high numbers of Westerners who travel abroad, at the expense of the state, – for work, study or medical treatment – as Amal Bouqaiqis, a human and civil-rights activist among our respondents complained. Abdul Jalil Al-Mansuri, a Professor of Management Science at Benghazi University, cites the large disparity between the east and the west in the number of ambassadors, senior state officials and research centres, as well as sovereign institutions and facilities: Benghazi airport has

¹ A member of the Free Officers' Movement that planned a coup that took power on September 1, 1969. In August 1975, he took part in a coup that failed then fled the country.

² A local expression used to indicate that people suffered the same abuse.

³ Or Barqa, Cyrenaica, as its people would prefer to call it – perhaps because of the association with the region's historical struggle.

not been renovated for decades, and the iron and steel factory in Tokra (in the east) was moved to Misrata (in the west). Finally, the budget of the Chamber of Commerce in Benghazi is less than half a million dinars, while Tripoli's is seven million. Journalist and activist Issa Abdul Qayyum referred to the 2017 Audit Bureau report that states that Tripoli is home to 85 per cent of those who draw two salaries.

In an interview with the Al-Hurra television channel, aired on 2 July 2012, Ali al-Rishi, a former Minister of Immigration under Gaddafi, described the position of those who question the idea of Cyrenaica's marginalization and who oppose the federal system as 'lacking practical wisdom – or lacking goodwill'.

3.4. Marginalization of the South

Real marginalization, according to CDA member Hadi Buhamra is taking place in the south. Saif al-Nasr Abd al-Salam, a former member of the NTC, states that marginalization of the South is visible in the village of Tazerbo, 'which does not have a commercial bank, and cash is only available twice a year, fuel is sold on the black market, and unemployment is widespread in spite of the vicinity of the oil installations and the Man-Made River Project'. In his view, this led to young people smuggling drugs and fuel and trafficking migrants.¹

Our interviews found members of executive authorities local, ethnic and tribal councils among those who confirm that the South is marginalized. Southerners have not just been subjected to marginalization since February 2011: They also were marginalized during the era of Gaddafi and before that, during the monarchy.

Surprisingly, a Libyan opinion poll on the constitution, conducted in 2013 by the University of Benghazi's Center for Research and Consultation, revealed that a good percentage of Southerners (37%) preferred a centralized system to a decentralized system. In comparison, only 20 per cent of Cyrenaicans (in the West) held that opinion. This is because many people in the South feel that domination by Tripoli is easier to bear than domination by tribes in the region.

3.5. Marginalization of the defeated

Some believe that since February 2011, victorious cities have been marginalizing defeated ones. Mohamed Khalil Salem, a former member of the local council of Beni Walid, says, 'The cities of Misrata, Zintan and Zawiyah took all the weapons and formed military and security battalions that kept them secure and stable while they disarmed cities they believed had not taken part in the February Revolution – leaving those cities insecure and without any functioning state institutions. As a result, state property was looted and the state no longer provided any services. Administrative bodies had no workers, and government buildings and properties had no equipment. This is exactly what happened in Beni Walid, Tawergha and most cities and villages in the South. Rebels entered

¹ It must be noted that while it is considered part of Cyrenaica, Tazerbo is located in the South.

Beni Walid twice, for example. Both times, after the troops withdrew, outlaws took over. Talk of decentralization and the fair distribution of resources makes no sense in the absence of state power, and when only certain cities are armed.'

According to Abdullah Mohammed Belkhair, member of the HSC, victorious cities are the main beneficiaries because they have the power to decide. He believes that even if defeated cities receive allocations, they are of little benefit because qualified people have migrated and there is no security. Victorious cities now control ports, fuel and electricity – and have occasionally deprived defeated cities of them. Although the South and the East have oil and water, this is not much help.

3.6. Ethnic marginalization

There are definitely ethnic minorities in Libya who complain they are marginalized because of their ethnicity. In this section, we focus on complaints by the Tabu and Tuareg. In an interview, Abdulla Mardaki, head of an area of the city of Kufra called 'Shura' that was exclusively Tabu, stated that the IG Prime Minister issued a decision establishing an administrative zone with three localities for Tabu besides the already existing municipality of Kufra dominated by Zawiyya, an Arab tribe. After that, everything in the city, including cemeteries, was divided. Even the two secondary schools were divided, one for Tabu and the other for Arabs. Primary schools were segregated, while mosques in the border areas were closed. There is not a single Tabu school headmaster, but because the university was located in Shura, that remained under Tabu authority. Zawiyya had a public hospital, while Tabu had only a health clinic. The situation is aggravated by the fact that Tabu areas are separated by areas inhabited by Zawiyya.

Mardaki says that marginalization is real and has an ethnic aspect. Although the Shura area was included in the urban plan of 1979, it has not yet received a single square meter of asphalt. The water network that is located in Zawiyya areas – 85 per cent of the city's total – was completed, while the rest, located in Tabu areas, remains to be done. More than 40 power stations were built in Arab areas while in Shura, only two of six planned power stations have been finished. This is because with the Zawiyya controlling key positions in Kufra, when deciding the areas to be serviced, the head of utilities and electricity chose to the Zawiyya area, that of his tribe. When apportioning secretariats (*amanat*) in Kufra, only one position was given to a Tabu. But a Tabu was put in charge of the office of marine wealth – a ludicrous office for a city located in the desert.

However, federalism would not be good for Tabu, a minority in Cyrenaica that federalism would separate from Tabu in the rest of Libya, e.g., the Tabu of Murzaq which would become part of Fezzan.

Mawlay Qudeidi, Head of the Supreme Council of the Tuareg in Libya, says Tuareg are marginalized, too: 'There is no development in their areas and no services. Nor do they hold any positions in state institutions.' One only becomes a minister or a deputy minister because he is

nominated by others, a political party for example – not by Tuareg. That person has to follow the orders of those who nominated him rather than serve his community of Tuareg. ‘What made us feel more marginalized is that we are in the South – living on a lake of oil but not benefitting from it,’ Qudeidi added. ‘The proportion of our children who are specialists and graduates of oil institutes is very limited, while there are hundreds from the East and West of Libya.’

3.7. Marginalization of the Marginalizer (Tripoli)

Surprisingly, people in areas accused of marginalizing, especially the West, also complain of being marginalized. ‘Today, the people of Tripoli are suffering the most from power and water cuts,’ says Ali Dowi, a law professor at Tripoli University. The entire Western Mountain range is deprived of basic services. Many decision-makers in areas that allegedly practice marginalization also belong to marginalized areas. This is confirmed by Salem Kerir, a member of the High Institute of the Judiciary in Tripoli, who asks, ‘How can Benghazi be marginalized after having had the lion’s share of sovereign posts [ministerial positions, for example], and specifically controlling the Secretariat of Justice and Interior under the previous regime – with many secretaries of the People’s Committees from that region?’ In a similar vein, Azza Maghour, lawyer and human and civil-rights activist, points to the way the Darawnah [people from the city of Derna] controlled the Ministries of Foreign Affairs and Justice during the Monarchy era.

Abdul Raouf Bait al-Mal, the Mayor of Tripoli Municipality, points out that many municipalities such as Misrata and Zintan are better serviced than Tripoli, although Zintan has fewer than 30,000 inhabitants. Moreover, the allowances given to Tripoli for displaced persons are well below those for Zuwara, Nalut and Jadu – which have hardly any displaced persons. He considers that the allocations are unfairly distributed, with some areas receiving the largest shares only because they control key positions in state institutions.

There is no agreement regarding marginalization: whether it exists or how widespread it is, the most effective ways to eliminate it or that it results from deliberate acts of central authorities. This lack of consensus obliges research and study, with surveys and polls to verify or deny the allegations. This is especially needed because the renewed conflict in Tripoli has been fuelling regional and separatist strife, reducing the chances of national reconciliation, to which we wish to contribute, and the long-term chances for building the Libyan nation.

4. Levels of subnational governance and number of units

4.1. Positions

There are many views in Libya regarding how subnational governance should be structured. Differences about the number and nature of governmental levels can be roughly categorized into two main positions.¹

The first position calls for three subnational levels, the highest of which are provinces (*wilayat*²) in a federation; the middle level consists of governorates (*muhafazat*), with municipalities (*baladiyat*) the third.

The second position focuses on two subnational levels: governorates (*muhafazat*) at the first level of local governance and municipalities (*baladiyat*) at the second.³

The discussions do not just concern the number of governance levels and units, but also their powers and resources. Other levels of subnational governance such as sub-municipalities and localities are also generally accepted.

Advocates of the first position are proponents of federalism. While passionately advocating this position, they do not elaborate on what a federal system would entail in terms of the powers and resources attributed to provinces and governorates. Some advocates call for the federal system enshrined in the Constitution of 1951 to be restored. They want to see the re-establishment of three provinces (*wilayat*) enshrined in that constitution: Cyrenaica (East), Tripolitania (West) and Fezzan (South). They reject creating more provinces, such as one in the Middle (Misrata) because, once they claim that once the historical division of three regions is ignored, it would be difficult to limit the number of provinces.⁴ The system, like that in the 1950s, would have three full-fledged provinces, each with ministries and sizeable bureaucracies and three parliaments.

Other advocates of federalism, however, are not so clear. Some do not object to the creation of new provinces in view of the development that has taken place since the 1950s. Others are receptive to having governorates (*muhafazat*) instead of provinces – as long as the governorates are granted the same powers the 1951 Constitution gave provinces. In their view, the authorities granted matter more than the names.⁵ Some have called this position ‘federalism of the

¹ These positions are derived from focus group discussions, in-depth interviews and literature. See also Section 1.4 on research questions and methodology.

² The word *wilaya* is strongly connected to federalism and was used in the 1951 Constitution.

³ Hussein Mahmoud Bou Darweisha, Mayor of Shahat Municipality, in-depth interview on 8 July 2019; Abd al-Ra’uf Beit al-Mal, mayor of Tripoli Municipality, in-depth interview on 21 August 2019; Sa’ad Al-Saiti, former local councilor and president of a civil society organization, in-depth interview on 16 July 2019; Mansur Al-Kikhia, in-depth interview on 14 July 2019; Abd Al-Mun’eim al-Wahishi, a member of the former General National Congress on 15 July 2019; and an in-depth meeting with Mawlay Qudeidi, Head Supreme Council for Tuareg on 28 July 2019.

⁴ Benghazi focus group.

⁵ Abd Al-Qadar Qadura, CDA Member, 2 July 2019

governorates'¹ – which others reject because they see it circumventing the historical division of three provinces.² One could wonder about how much autonomy such province-like governorates would enjoy.

The second position holds that governorates should be the first governance level and municipalities the second: The governorate should be responsible for coordinating between the municipalities and the central government, as well as projects too large for a single municipality to carry out and projects involving multiple municipalities.

The municipality should be responsible for providing daily services within its boundaries, such as water, environmental sanitation, communication, local roads and electricity. The municipalities would have budgets to fulfil these tasks drafted by the municipal council and submitted to the governorate.

Members of this group have various views regarding the ideal number of governorates. Some evoke past experiences to support their ideas, especially the system of 10 governorates adopted in 1963.³ It is argued that geographical, demographic, economic and historical considerations make 10 the optimal number of governorates. In light of the large demographic changes since 1963, the number might need to be slightly increased.⁴

Some proponents of this position recognize how hard it is to apply this two-tier system. When Law 59/2012 was introduced, some cities refused to be municipalities in a governorate whose seat was in another city, and the governorate tier was never created: Only municipalities were established. In fact, the refusal of a governorate seems to motivate some to advocate having only a municipality tier, as the Mayor of the Municipality of Zintan argued. He claimed that after the notion of governorates was abandoned, municipalities showed that governorates were not needed.⁵ Municipalities can capably exercise such powers on their own. The mayor acknowledges that governorates may be needed to coordinate certain municipalities but maintains that this is limited to closely linked municipalities like those in Tripoli. Cities like Benghazi and Misrata no longer need this because they are municipalities, while the large size of Zintan (about 100,000 km²) means it also does not need a governorate to coordinate with other neighbouring municipalities.⁶

4.2. Responses

¹ Benghazi focus group

² Interview with Ibtisam Bahih, CDA Member, 2 July 2019

³ See Section 2 on the History of Administrative Divisions.

⁴ Mansur Al-Kikhia, in-depth meeting on 14 July 2019 and Ahmad al-Abbar, in-depth meeting on 25 July 2019

⁵ Interview with Mustafa Al-Baruni, Mayor of Zintan, on 29 August 2019.

⁶ In-depth meeting on 29 August 2019. On the contrary, in an in-depth meeting on 21 August 2019, the former local government minister said, 'I consider transferring the powers of the Governor to the mayor under the provisions of Law No. 9 of 2013 as a catastrophic act. How can a mayor supposed to be responsible for a few thousand suddenly be a governor?'

Post-Gaddafi legislative responses and proposals regarding subnational governance levels and numbers have varied. The 2011 Constitutional Declaration does not define them although the composition of the National Transitional Council itself was in part based on the number of local councils.¹

The Draft Constitution has presented different positions in different drafts. The CDA's Thematic Committee for Local Government submitted two proposals: The first provided for three provinces, Cyrenaica, Tripoli and Fezzan, with governorates and municipalities, while the second divided the country into 29 governorates.

The first proposal of the Working Committee enshrined a system of provinces (*wilayat*) but distinguished them from provinces as defined in the 1951 Constitution: Provinces would be part of a unitary system, have no independent legislative or executive councils and no legislative power besides making bylaws or regulations (*tashri'at la'ihia*).

The CDA rejected restoration of the 10 governorates system as enshrined in the 1963 Amended Constitution, arguing that it included cities separated by vast distances, such as Ghadames and Gharyan, Misrata and Sirte, Derna and Tobruk, in the same governorate.² Besides, circumstances have changed significantly since the 1960s.

The latest Draft Constitution of 2017 (DC 2017) adopts 'expanded decentralization', which divides subnational levels into governorates and municipalities, but allows for other administrative units to be established. It says nothing about determining the number of units of these levels because the CDA could not agree³ and sets criteria for parliament to determine the number, namely: national security requirements and an appropriate balance between population, geographic size and unity, economic and historical factors, social justice, societal harmony and efficient and effective development.

According to Hadi Buhamra, a key CDA member, this proposal opens the door to a system of asymmetric decentralization. It allows other units besides governorates and municipalities to be established if they were needed to maintain societal peace, and would accord special administrative status to some cities like Tripoli and Benghazi.⁴

While DC 2017 leaves important details to parliament, it does provide special safeguards: The composition of the House of Representatives, largely based on population size, with the Senate's makeup generally based on location, will ensure balanced – albeit unequal – representation for

1 According to Article 18, 'The National Transitional Council shall consist of representatives of the local councils. In determining the number of representatives of each council the population density and the geographic context of the represented city or region shall be taken into account. The Council shall have the right to add ten (10) members for reasons of national interest. The members shall be proposed and chosen by the Council.'

2 Al-Hadi Ali Buhamra, *Al-musār al-dustūrī al-Lībī* (Benghazi: Dār al-Kutub al-Waṭani), pp. 236, 237

Ibid., p. 237

4 Buhamra, *Musār*, 238

the three historical regions. Any new local government laws would require Senate approval. DC 2017 seeks to prevent any single region being able to decide important issues. Balanced representation makes it possible for the three regions to approve or decline legislation.

Article 4 of Law 59/2012 creates four levels of subnational governance: ‘governorates’ (*muhafazat*) established by law, ‘municipalities’ (*baladiyat*) established by the Council of Ministers, sub-municipalities (*fura’a baladiya*) established for particularly big municipalities, if needed, by the Council of Ministers and ‘localities’ (*mahallat*) established by the Minister of Local Government. In 2013, however, Law 9 – postponing the establishment of governorates and transferring most of their powers to municipalities – was passed.

The 2015 Libyan Political Agreement did not deal much with the issue of decentralization. That may have been, as a participant in the dialogue leading to the Agreement said, because the issue was not on the table.¹ So it is not surprising that the LPA merely included ‘activating the decentralized system’ within its governing principles (Principle No. 29), along with forming a Higher Council of Local Administration whose task is ‘promoting cooperation and coordination between municipal councils and the relevant competent executive authorities according to Law 59/2012 on the system of local administration [...] supporting the implementation of confidence building mechanisms stipulated in this Agreement and setting the foundation of local administration’. (Article 53) The LPA is satisfied with Law 59/2012 so it should come as no surprise that it does not address the tiers of subnational governance.

4.3. Assessment

We assessed legislation to see how much it responds to stakeholder concerns, how it is received by stakeholders, regulations enacted to implement legislation, its effectiveness, and existing and proposed alternatives.

The position of DC 2017 does not meet federalist demands for the province (*wilayat*) system as defined in the 1951 Constitution to be restored; it makes governorates the highest subnational level. Nevertheless, the draft establishes systems based on the three historical provinces of 1951, with the creation of a Senate in which these ‘provinces’ – or ‘electoral districts’ as it calls them – are represented. We assess this approach when studying the powers of the subnational governance units.

Here we focus on what DC 2017 does not say about the number of subnational governance units: governorates and municipalities. It is understandable that the draft only states the criteria for establishing them: That could even be desirable. Instead of fixing the number, DC 2017 gives parliament discretionary power to determine that. The CDA was unable to build consensus regarding the number of governorates and was content to list criteria for parliament. Hedi

¹ Ahmad al-Abbar, NTC member, 25 July 2019

Buhamra says the CDA's interpretation opened the door for parliament to create units other than governorates and municipalities.¹

While DC 2017 provides relevant and important criteria, it does not prioritize them. Such a hierarchy will be needed, however, if a conflict arises about establishing a subnational governance unit. Should, for example, a municipality be established in consideration of historical factors even if it has a small population? On this issue, as on other important details, the draft refers to parliament, clearly driven by a desire to build consensus by excluding potentially controversial matters. Yet that is seen as leaving them to a body largely dominated by the most populated region, Western Libya.² In such a parliament, it would be difficult for the East and South to get their demands fulfilled, including that of establishing a truly decentralized system: The West, which is regarded as the beneficiary of the existing centralized system, would reject any such demands.

In anticipation of such a protest, the CDA includes future local government law amongst the laws subject to Senate approval, where regional representation is generally balanced. Passing such a law requires the approval of at least eight members from each region: No single region can enforce its will over the other two. However, there could be stagnation if the Senate and the House of Representatives disagree. In this case, DC 2017 foresees a committee being formed to help reach consensus; failing that, the bill would be discussed again in the following term. The draft does not specify what should be done if disagreement persists. It is quite likely that parliament will be unable to legislate on the important but controversial issue of local governance, as shown in the case of Law 59/2012.

Law 59/2012 left issues regarding subnational governance units to other legislation: an act of parliament on governorates, a Council of Ministers' decree regarding municipalities and sub-municipalities and a decision by the Minister of Local Governance on localities. The law stated that the establishment of such units should consider natural, demographic, economic, developmental and security conditions, as well as the integration of production and services units (Article 4).

Despite the importance of stipulating these standards, Law 59/2012 failed to state their hierarchy in case of conflict – perhaps because it lacked time. The NTC President signed the law on the last day of the Council's mandate.³ The government of Abderrahim el-Keib was only a caretaker government that was not authorized to issue executive regulations establishing the number of municipalities. The Local Government Minister of his government informed us that there should

¹ Hadi Buhamra, CDA member, 20 August 2019

³ Interview with Mahmud Al-Hashimi Al-Harari, Former Minister of Local Governance, 21 August 2019

have been 63¹ but in 2013 when Ali Zidane's government issued Resolution No. 130, it did not mention any number.

In fact, implementing the provisions of Law 59/2012 on subnational governance tiers and units was subject to social concerns. In the past governorates had not been established because of these considerations: instead, many – too many, one may justifiably say – municipalities were established. At first, 99 municipalities² were created but in the same year they were reduced to 90.³ According to some informants, the number of municipalities later rose to 126.⁴ The competing governments – the GNA in Tripoli and the IG in al-Bayda – established municipalities to please their populations.⁵ The IG Minister of Local Government, Adel al-Zaidi claims that municipalities were unofficially given 'a', 'b' or 'c' ratings. The c category included municipalities established to calm social and tribal sentiments and ensure security and stability and they will be done away with when the country has become stable.⁶

The IG also established new municipalities to win the support of ethnic groups. For example, it created an administrative area (an entity similar to a municipality but easier to establish) for Tabu in the city of Kufra alongside the municipality of Kufra that Arabs (Zawiyya tribe) dominated. It turned out, however, that the new area was not viable because the Tabu community does not reside in one distinct area but rather in one punctuated by areas inhabited by Arabs. Upon the request of Tabu representatives, the IG made the area a sub-municipality of Kufra. The GNA similarly established an administrative area for Tabu in the town of Rabyana to satisfy pro-government Tabu fighters.⁷

Since *unviable* new municipalities were created, it was suggested that they be integrated or merged. The mayor of Shahat municipality does not mind annexing his municipality to that of al-Bayda provided that sufficient powers and monitoring are ensured. Similarly, the Mayor of the Centre of Tripoli Municipality called for merging the Greater Tripoli municipalities: the Centre of Tripoli, Al Andalus District, Abu Salim, Ain Zara and Souq al-Juma' into one.⁸

1 Ibid.

2 Council of Ministers Decision No. 180 of 2014 on establishing municipalities. *Official Gazette*, No. 15, second year, on 15 December 2013

3 Municipal Council of Ministers Resolution No. 540 of 2013 amending the provision in Resolution No. 180 of 2013 about establishing municipalities. *Official Gazette* No. 15, second year.

4 Sarah Detzner and Jean-Louis Romanet Perroux, *Libyan Local Governance Case Studies* (European Delegation to Libya). Accessed online: <https://www.docdroid.net/ce1aKnu/00-libya-local-government-report-sept-2017.pdf> [last accessed 9 Dec. 2019].

5 E.g., Decisions of the Interim Government (e.g. Council of Ministers Resolution No. 97 of 2014 on establishing municipalities)

6 In-depth interview with Adel Al-Zaidi, Minister of Local Government, Interim Government

7 Abdallah Abdul Rahman, the Tabu head of the sub-*balidiya* of Shura, which is part of Kufra, 28-08-2019

8 In-depth interview with Abd al-Ra'uf Beit al-Mal, Mayor of Tripoli Municipality, 21-08 2019

5. Composition of Subnational Units

5.1. Positions

There are three positions regarding the selection of subnational councils and mayors or governors: in elections, by appointment or a combination of the two.

A comprehensive national survey conducted in 2013 by the Centre for Research and Consulting included questions about methods for selecting heads of local authorities. It revealed that 55 per cent preferred elections, 11 per cent appointment and 32 per cent a combination of the two. However, the respondents were not asked what the combination should look like. Ranking was similar in the three regions (East, West and South): Belonging to a specific region did not affect preferences.¹

Since a survey conducted in 2013 may not reflect current views, we complemented it with in-depth interviews and found that one group supports elections because they believe that is more democratic and decentralized.² For CDA member Ibtisam Bahih, '[E]xtended decentralization necessitates election; one can opt for appointment, but the system will no longer be extendedly decentralized.'³ As for Sayf al-Nasr al-Zawi, Tazerbu's representative in the NTC, '[L]eaders should be elected by the people; that confirms more legitimacy on them.'⁴ GNC member Abd Al-Mun'eim al-Wahishi says, '[T]he governorate council needs to be elected and accountable to parliament. The governor, too, is to be elected so the people can rest assured that those they elected cannot be dismissed by a minister.'⁵

A second group prefers appointment, which they view as enabling merit-based selection and ensuring accountability.⁶ Adil al-Za'idi, the IG's Minister of Local Governance opined that 'Law 59 needs to be amended so the governor and mayor will be appointed rather than elected. Appointment entails oversight and commitment and ensures the quality of selection in accordance with merit-based conditions and objective criteria instead of having to comply with fait accompli politics, that is, accepting whoever the ballot box brings even if corruption or tribalism is involved.'⁷ Some who opt for appointment stress the importance of elections. However, in their view, incompetent people have often been elected in Libya. They attribute this to socio-political

¹ Center for Research and Consultancy, *Results of a Comprehensive National Survey on the Constitution, 'the Constitution We Want.'* (Benghazi: Benghazi University), 73.

² In-depth interviews with Abd Al-Mun'eim al-Yisir (Member GNC), Ibtisam Bahih (CDA member), Hadi Buhamra (CDA member), Abdel Moneim Al-Wahishi (GNC Member).

³ Interview with Ibtisam Bahih, CDA member, 2 July 2019.

⁴ Interview with Sayf Al-Nasr Al-Zawi, Tazerbu representative in the NTC, 23 June 2019.

⁵ Interview with Abd Al-Mun'eim Al-Wahishi, GNC member, 15 July 2019.

⁶ Interviews with Adil al-Za'idi, Minister of Local Governance of the Interim Government, 21 August 2019; Ahmad al-Abbar, NTC Member, 25 July 2019; Abu Bakr Baira, Member of the House of Representatives, 16 July 2019; Younis Said, NTC Member, 24 June 2019.

⁷ Interview with Adil al-Za'idi, Minister of Local Governance of the Interim Government, 21 August 2019.

relations, including tribal connections. Abd al-Ra'uf Beit al-Mal, Mayor of the Centre of Tripoli Municipality, says he 'was always supportive of elections, as an expression of democracy, but in the current time, I prefer appointment because there are important institutions founded on tribalism and regionalism.'¹ Interestingly enough, Sayf al-Nasr al-Zawi, who once headed the local council of his town, Tazerbu, opposes appointment, fearing that the local community – in this case the tribe – would reject the appointee. He cited the example of his town's inhabitants rejecting an appointed military governor.²

A third group proposes combining elections with appointments. Some believe a distinction should be made between governorates and municipalities. Abd Al-Qadir Qadura, Professor of Constitutional Law and CDA member, considers appointments preferable for governorates because they are political and should include representatives of entities like tribes and political parties. He sees appointments guaranteeing proper representation and ensuring that governorate councils and governors are responsible to state authorities. If representatives were elected, however, they would only be accountable to their constituencies. Municipalities, however, are closer to people's everyday business: Citizens should elect municipal councils.³ Other people propose a different way of combining elections and appointments. Mawlay Qudeidi, head of the Supreme Council for Tuareg says, 'Ideally, election is the best method, but experience shows that our society is not yet at the stage where selection is based on merit: Selection based on tribalism and regionalism prevails. Thus, the best method for now is electing members of municipal and governorate councils while entrusting the next-higher tier to appoint the head of the council. This means the governorate council would choose mayors and the prime minister, not the Minister of Local Governance, would choose the governor. In both cases, the appointee should be chosen from elected council members.'⁴

5.2. Responses

In 2011,⁵ with the agreement of their inhabitants, local councils were created in the cities that joined the February Revolution to fill the vacuum created by the absence of state institutions.

The Constitutional Declaration, which was issued in August 2011 after these councils were formed, did not address their formation. With the NTC largely composed of representatives of these councils, changing them could have affected it.⁶ This was not a theoretical possibility. In November

¹ Interview with Abd al-Ra'uf Beit al-Mal, Mayor of Tripoli Municipality, 21 August 2019.

² Interview with Sayf al-Nasr al-Zawi, Tazerbu representative to the NTC, 23 June 2019.

³ Interview with Abd Al-Qadir Qaduri, Professor of Constitutional Law and CDA member, 2 July 2019.

⁴ Interview with Mawlay Qudeidi, Head Supreme Council for Tuareg, 28 August 2019.

⁵ Ibid.

⁶ This is not a purely theoretical assumption. In 2012, elections were held for local councils in some cities, such as Benghazi and Misrata. If a legislative and regulatory framework was lacking, the elected local councils demanded their representatives in the transitional council be replaced, although the latter had refused, claiming that rescinding membership requires the approval of two-thirds of its members according to Article 22 of the Constitutional

2011, the NTC finally issued a decree on local councils that detailed a number of issues. However, it did not address the selection of council members, except in one provision that entrusted that two members would be the head of the council (Article 6) and the deputy (Article 7). The decree also included ministry officials in local councils (Article 3) who had to report directly to the government (Article 4). The decree did not specify how those officials would be selected.¹

The Draft Constitution of 2017 adopts election as the method for forming municipal and governorate councils. It does not define how their heads – mayors and governors – are to be selected. The mechanism for selecting governors was to be regulated by a later law (Article 146).²

In justifying the adoption of an electoral system, Al-Hadi Buhamra³ states that it is a response to a key element of decentralization: being democratically composed in order to provide an organic connection between councils and their social environments. Al-Hadi Buhamra⁴ explained that CDA members did not disagree about elections. They did, however, disagree over the selection of the governor, with some wanting a governor to be directly elected, and others wanting the council member who received the most votes to become governor. Because this could lead to a governor being selected from a densely populated municipality, which could marginalize less populous municipalities, some members suggested that the governorate council or the Council of Ministers should choose the governor. The CDA left the decision about how to select the governor for later.

DC 2017 also says nothing about the method for selecting mayors of municipalities. Electing them seems to be more in line with the way municipal councils are staffed. Should they be chosen directly by the citizens or indirectly by the elected members of municipal councils?

Law 59/2012 also stipulates that members of municipal councils should be elected and subsequently choose the mayor from amongst themselves (Article 26). The law does not require members of municipal and governorate councils to have any minimum educational level (Article 8). Governorate councils are composed of members elected from municipalities in the governorate and must include at least one woman and a ‘revolutionary’⁵ with special needs.⁶ Council members choose one of their own to be governor. The law does not specify any

Declaration, an argument that some considered unfounded. See Azza Maghour, “Mafāja al-tuḥawwil al-dīmuqrāṭī: intikhābāt al-maḥallia.,” *Libya Mustaqbal*, 24 May 2012. Accessed online: <http://archive2.libya-al-mostakbal.org/news/clicked/22897> [last accessed 10 Dec. 2019].

¹ NTC Resolution No. 176 of 2011 regarding the adoption of by-laws of local councils.

²Buhamra, *Musār*, 242. 243 and Al-Hadi Ali Buhamra, *Ishkāliyyāt dustūriyya Lībā* (Benghazi: Dār al-Kutub al-Waṭanī, 168.

³ Ibid, XX

⁴ Ibid, XX

⁵ Someone who had participated in the February Revolution.

⁶ VNG, in a report on local governance in Libya, states that the provision may raise the question on whether or not this complies with the principle of equality for all citizens before the law. They conclude that it is not contradictory, mentioning the idea of positive discrimination. See VNG International, *The situation of decentralization and local governance in Libya* (year and publisher unknown). Available from the authors.

mechanism for ensuring that all municipalities within the governorate are represented in the Council. Since municipalities are different sizes, bigger municipalities may have more representatives than small ones. This may have prompted the Council of Ministers to include a provision in Executive Regulation No. 130 of 2013 on how mayors of municipalities in the governorate are also members of the governorate council (Article 31),¹ which ensures that each municipality has at least one representative.

While Law 59/2012 opts for electing municipal councils, the Council of Ministers' Resolution No. 161 of 2013 stipulates an individual list system. Municipal council elections were held on 30 November 2013, and again on 25 April 2014 for municipalities that had not held elections in 2013. The councils then chose the mayors (who were thus 'indirectly elected').²

However, some mayors and civil society organizations and activists objected to this system, which they regarded as having produced heterogeneous and unstable councils, whose members disagree and lack confidence in their mayors. The mayor of Zuwara believes that party lists should be used in elections to ensure that most council members share the same vision and goals.³

Apparently convinced by this argument, the GNA adopted a closed list system. Initially, it decided to keep the elected councils as steering councils after their mandates ended. Then in 2018, in accordance with the Council of Ministers Resolution No. 161/2013, it held an election for 95 municipal councils with individual candidates. Later, however, the GNA's Presidential Council issued Resolution 18/2019, adopting a closed-list system that was used in elections for 22 municipal councils.⁴ On 24 June 2019, however, at the request of civil society organizations and

¹ VNG notices this as well. They see it as a contradiction. "A contradiction can be observed between the formulation of this Article and Article 31 of the Executive Regulation, which stipulates that the composition of the council includes the mayors of the municipalities in the province. In all cases, the mayors also were elected by direct secret ballot as municipal councilors. However, the formulation of the two texts needs to be uniform and avoid ambiguity or conflict." See: VNG, *Local Governance*, 8.

² Rashid Khashana, "ja'at ba'da intikhābāt ta'adadiyya wa shafāfa, al-majālis al-baladiyya fi Lībā... ādā li-al-mushāraka wa madrasa li-al-dīmuqrāṭiyya," *Swissinfo*, 30 August 2015. Accessed online via: <https://www.swissinfo.ch/ara/%D8%A7%D9%84%D9%85%D8%AC%D8%A7%D9%84%D8%B3-%D8%A7%D9%84%D8%A8%D9%84%D8%AF%D9%8A%D8%A9-%D9%81%D9%8A-%D9%84%D9%8A%D8%A8%D9%8A%D8%A7-%D8%A3%D8%AF%D8%A7%D8%A9-%D9%84%D9%84%D9%85%D8%B4%D8%A7%D8%B1%D9%83%D8%A9-%D9%88%D9%85%D8%AF%D8%B1%D8%B3%D8%A9-%D9%84%D9%84%D8%AF%D9%8A%D9%85%D9%82%D8%B1%D8%A7%D8%B7%D9%8A%D8%A9/41613388>, [last accessed 10 Dec. 2019]

³ Romanet Perroux, Jean-Louis. 2017. "Zuwara." In *Libyan Local Governance Case Studies*, eds. Sarah Detzner and Jean-Louis Romanet Perroux (European Delegation to Libya), 17. Study quotes Ben Sasi, mayor of Zuwara.

⁴ "Sālim Bin Tāhīa fi ḥiwār li-bawāb al-wasāṭ: 10 ṣa'ūbāt tuwājuhu il-intikhābāt al-baladiyya," *Bawabat al-Wasat*, 10 August 2019. Accessed online: <http://alwasat.ly/news/libya/253908> [last accessed 10 Dec. 2019].

activists, the Tripoli Appellate Court annulled Resolution 18/2019, casting doubt on the legitimacy of the councils elected under its provisions.¹

As for the East of Libya, Abdulraziq Al-Nazouri, the Libyan National Army's chief of staff and the military governor of the Derna-Bin Jawad area,² replaced elected councils with appointed mayors and subordinated service and production sectors within the municipality to them.³ The post of military governor was subsequently abolished but the mayors appointed have kept their positions by virtue of an Interim Government decision⁴ despite requests by former elected councillors to return to their posts.⁵ IG Prime Minister Abdallah al-Thinni claimed that Law 59/2012 provides the basis for this practice and that the steering councils will cease to exist when elections are organized. He expressed dissatisfaction with the idea of electing municipal councils, believing that it would be better to have only a mayor and deputy mayor appointed for each municipality because this delineates responsibility and enables accountability.⁶

Studying Law 59/2012 reveals that al-Thinni's claim that it provides for temporarily appointing steering councils is inaccurate. Besides, the elections he promised have not been held. Steering councils remain active and the IG prevented the Tripoli-based Central Committee for Municipal Elections from organizing elections, claiming that its chair, Salem Ben Tahia, is part of the GNA. Salem Ben Tahia denied that, stating that he was appointed by Ali Zaidan's government (before the bifurcation) and that the Committee's task is purely technical, not political.

¹ "Trāpolis | Al-qaḍā' yaḥkimu bi-ilghā' qarār al-ri'āsi bi-sha'ān al-inthikhābāt al-baladiyya li-ṣudūrihi 'an ghair dhī ṣafa," *Al-Marsad*, 26 July 2019. Accessed online:

<https://almarsad.co/2019/07/26/%D8%B7%D8%B1%D8%A7%D8%A8%D9%84%D8%B3-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A1-%D9%8A%D8%AD%D9%83%D9%85-%D8%A8%D8%A5%D9%84%D8%BA%D8%A7%D8%A1-%D9%82%D8%B1%D8%A7%D8%B1-%D8%A7%D9%84%D8%B1%D8%A6%D8%A7%D8%B3/> [last accessed 10 Dec. 2019].

² This was done in August 2016. See on this also Floor El Kamouni-Janssen, Hamzeh Shadeedi and Nancy Ezzedine, *Local security governance in Libya: Perceptions of security and protection in a fragmented country* (Den Haag: Netherlands Institute of International Relations Clingendael), 22-23. Here it states that, although many feared that this move would be a step away from democracy, and fears of a military government arose, the move was actually welcomed by many citizens in the East. Citizens expected that it would make local governance more affective, as service delivery had up to that moment been failing. The authors also cite the example of tribal leaders asking for a military governor, e.g. in the example of Tobruk. See on this also Mohamed Elmagbri and Josiah Cohen, "Op-Ed: An uncertain future for Libyan local governance," *Libya Herald*, August 2017. Accessed online: <https://www.libyaherald.com/2017/09/01/op-ed-an-uncertain-future-for-libyan-local-governance/> [last accessed 10 Dec. 2019].

³ This included the municipal councils in Benghazi, Al-Abyar, Al-Abraq, Shahat, Ajdabiya, Kufra, Qamnis, Al-Marj and Al-Sahel. See: Abir Imneina, "Al-baladiyyāt fi Lībiā bayna al-'ashkarī wa al-'amal al-sīāsī," *Al-Fikra Al-Qanunia*, January 7, 2019. Accessed online: <https://www.legal-agenda.com/article.php?id=5176> [last accessed 10 Dec. 2019].

⁴ *Ibid.*

⁵ Fatih Munā', "Omdā 7 baladiyyāt bi-al-manṭaqa al-sharqiyya yuṭālībuna bi-'aqdat al-majālis al-muntakhiba ila sābiq 'amaliḥā," *Bawat al-Wasat*, August 22, 2017. Accessed online: <http://alwasat.ly/news/libya/141530> [last accessed 10 Dec. 2019].

⁶ Interview with Abdallah Al-Thinni, Prime Minister Interim Government.

5.3. Assessment

As mentioned above, those who prefer elections base their preference on the idea of democracy. Elections ensure a connection between councils and their communities, and democratically elected council members represent the demands of their voters. Those in favour of appointment invoke administrative effectiveness and accountability. Libya's transition experience, especially after the 2014 bifurcation, has increased support for appointment. One reason for this is that many election outcomes disappointed expectations. There were also practical considerations regarding the difficulty of organizing elections.

The solution could be to adopt election as the rule but allow for appointment in exceptional cases. Besides enhancing the local community's role in selecting and holding accountable subnational councils, elections provide councils with greater legitimacy than councils appointed by central authorities – who themselves lack legitimacy – can have. Measures such as requiring a minimum educational attainment and adopting a closed list system – along with or instead of an individual one – could help mitigate risks associated with elections. Appointment should only be used when elections are impractical.

Legislative responses to existing controversies

The CD does not state whether local councils should be elected or appointed although, and perhaps because of the fact that, they were used to select NTC members. In theory, if local councils represented in the NTC changed, the NTC's composition would change. However, this was not possible. After the situation had stabilized, some cities felt the need to restaff their local councils. Faced with the CD's silence on the issue – that some observers believed was intentional¹ – they organized elections that got big turnouts but lacked any legislative or regulative basis. The new councils then asked the NTC to replace their old representatives with new ones. However, the NTC refused on the grounds that it required the approval of two-thirds of its members.²

DC 2017 tried to reconcile the choice of elections for staffing governorate and municipal councils, which is praiseworthy, with opening the door to appointing governors. It invokes a law on determining the mechanism for selecting governors that allows parliament to either entrust the governorate council with selecting the governor or leave the choice to the council of ministers. Granting parliament this discretion could enable to make choices appropriate to the situation at hand.³ However, while it is understandable to let parliament decide on how the governor is to be selected, the DC 2017 should have required that the governor should always be selected from the members of the governorate council. This procedure is more in line with elections, being the preferred method. The DC 2017 is also unclear on how mayors should be chosen. We believe it

¹ Maghour, "intikhābāt al-maḥallia"

² Ibid.

³ Buhamra, *Musār*, 242-243.

should have explicitly opted for elections because the problems that could hinder a governor's election are not relevant here.

Law 59/2012 states that municipal councils are to be elected and that the councils choose the mayors. Its commitment to elections is generally praiseworthy. The only exception concerns the mayor, who for practical considerations, is appointed by the elected council. Experience, however, has revealed that elections sometimes result in heterogeneous, unstable councils that repeatedly dismiss mayors. A closed – instead of an individual – list election system is more likely to create more homogeneous councils. Minimum education attainments could also result in better councils. The law, however, overlooks these requirements but reserves one council seat for a disabled revolutionary person¹ and another for a woman. Allocating a seat for a woman is good, especially if this is understood as the bare minimum, according to the Directorate of Law² interpretation.³ However, while it is important to represent persons with special needs, requiring that that candidate be a 'revolutionary' seems unjustified. While it could be seen as rewarding persons who became disabled for defending a noble cause – the Revolution – this appears not to be the reason. According to the Directorate of Law, 'revolutionary' refers to any disabled person who took part in the revolution even if their disability is unrelated to the revolution. If this is the case, why not acknowledge the value of all revolutionaries, disabled or not, by reserving a seat for them? In our view it is better to reserve a seat for a *disabled* person – revolutionary or not.

The governorate councils, according to Law 59/2012, are directly elected, and their members choose the governor. While this is an attempt to reconcile the practice of elections with practical considerations, the criticism regarding mayoral selections applies here, too. The real problem with Law 59/2012 is that the governor's position breaks a fundamental rule of local government units: Responsibility, authority and accountability are connected, and governors should be accountable to their constituencies who elected them. But Law 59/2012 states that the governor represents the executive authority and supervises implementation of general state policy and service and production facilities in the governorate (Article 14). The governor is accountable to the Minister

¹ See VNG, *Local Governance*, 8 and Detzner and Romanet Perroux, *Case Studies*, 12.

² The Directorate of Law, or *Idarit al-Qanun*, is part of the Ministry of Justice. It issues opinions of legislation on topics that are unclear in the law.

³ Mahmuh Muhammad al-Kish, "ra'īs al-lajna al-markazīa li-intikhābāt al-majālis al-baladiyya." *Directorate of Law Interim Government*. Accessed online:

<http://aladel.gov.ly/home/wp-content/uploads/2015/10/%D8%A7%D9%84%D8%B1%D8%A3%D9%8A-%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86%D9%8A-%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D8%A9-%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B5%D8%A7%D8%AF%D8%B1-%D9%84%D8%B1%D8%A6%D9%8A%D8%B3-%D8%A7%D9%84%D9%84%D8%AC%D9%86%D8%A9-%D8%A7%D9%84%D9%85%D8%B1%D9%83%D8%B2%D9%8A%D8%A9-%D9%84%D8%A7%D9%86%D8%AA%D8%AE%D8%A7%D8%A8%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D8%AC%D8%A7%D9%84%D8%B3-%D8%A7%D9%84%D8%A8%D9%84%D8%AF%D9%8A%D8%A9.pdf> [last accessed 10 December 2019].

of Local Governance for exercising the powers stipulated by the law. Article 16 states that the governor must periodically report to the minister about activities in the governorate, underscoring the fact that governors are accountable to the executive – not to their voters or to the council who selected them as governors.

While Law 59/2012 neglected to specify a mechanism for ensuring representation of all municipalities in the governorate, Executive Regulation No. 130/2013 addressed this by stating that mayors of municipalities belong to the governorate council (Article 31)¹ – ensuring that each municipality has at least one representative. This appears justified but is it legal? The regulation only provides details necessary for implementing the law and should not introduce extraneous provisions.

Although the system for electing municipal councils in Law 59/2012 may have some flaws, it is much better than the later practice of replacing mayors and councils by appointment. At the end of their terms, elected councils have to be replaced. Since security concerns can make organizing elections difficult, extending their terms is a reasonable solution that confers councils more legitimacy than appointing completely new members.

Law 59/2012 does not include any clear procedure for dissolving councils. A VNG International report states, '[T]he law does not provide for cases in which the dissolution of the council can be resorted to, nor on the procedures or guarantees that must be accompanied by the resolution of the dissolution, i.e. the justification of such resolution. Therefore, the system of dissolving local councils in Libyan law does not guarantee local freedoms and does not respect the status of municipalities and provinces as decentralized local groups.'¹ Law 59/2012 refers to the Executive Regulation (ER) for how to dissolve councils (Article 74) but it does not address the issue. However, it does state the procedures and guarantees for dismissing heads and members of councils (Articles 47 and 48). While the ER has no provisions on dissolving the entire council, that is not necessarily a shortcoming. Apart from cases of individual members who should be dismissed because they no longer fulfil membership requirements – which the law already addresses – maintaining the council until its term ends might more closely respect the will of those who elected it.

¹ VNG, *Local Governance*, 9.

6. The powers of subnational governance units

6.1. Positions

As the federalist debate in Libya shows, discussion of which powers subnational governance entities should have is linked to the discussion about the state's form – federal or unitary.¹

There are two broad positions regarding state form. One prefers a federal system in which political, administrative and financial powers are divided between the central authority and subnational governance entities. The other prefers a unified system that centralizes political power at the national level but could accept having administrative and financial powers transferred to the subnational level to create a decentralized system. Being either for a federal or a unitary state are the two main positions we discovered through our research.

Support for federalism was voiced soon after the February Revolution, and specifically for a federal state in April 2011. At a meeting in Benghazi in July there were explicit suggestions to adopt a federal system as a way of solving political marginalization in large areas of the country. A remarkable development regarding the demand for federalism happened at a conference on 18 March 2013 in the town of Ras Lanuf. The meeting concluded by establishing a political office (*maktab siyasi*) for the region of Cyrenaica headed by Ibrahim Jadhran, head of the Petroleum Facilities Guard (PFG), and unilaterally declaring Cyrenaica a federal territory within the unified state of Libya. A Cyrenaica Defence Force was also formed. A second conference was held in Ajdabiyya on 24 October 2013, at which the creation of 22 ministerial portfolios was announced, with sovereign portfolios such as defence and foreign affairs left for the central authority.

Advocates of federalism can be divided into two broad groups. Some advocate a return to federalism as outlined in the 1951 Constitution, while others support a federal system with a new framework. On 6 March 2012, the National Federalist Block (NFB) (*Al-takatul al-ittihadi al-watani*), the first political body to demand a federal system, was established. NFB organized a number of meetings and conferences calling for a federal system and a return to the 1951 Constitution. In a statement announced on 22 March 2018, the NFB rejected DC 2017, which does not adopt a federal system. According to the NFB, any draft amendment would have to reconsider the form of the state – and choose a federal system. The NFB also insisted that any referendum on the draft had to be held separately in each region. It considered that deliberating over DC 2017 was a waste of time and effort that would aggravate regional disputes and conflicts– that anyone calling for a referendum on DC 2017 is trying to revive grievances that have afflicted the region for decades.²

The NFB emphasized that the real issue facing Libya is whether the state should be federal or unitary: Focusing discussion on decentralization avoids the most important issue. In a statement

¹ Buhamra, *Musār*, 233.

² Salim al-Obaidi, “‘al-tukatil al-fīdirāli’ yurafaḍu masuda al-dustūr al-hāliyya wa yustaba‘ada ta‘adilha,” *Bawat al-Wasat*, 22 May 2018. Accessed online: <http://alwasat.ly/news/libya/206649?author=1>, last accessed 10 Dec. 2019.

issued on 1 July 2019, the NFB put forward federalist ‘constants’: The state should be federal, not unitary, and that should be written in the constitution; natural resources should be shared based on population, area and origin of the resources; and the administrative boundaries of the three historic regions should be preserved. The NFB warned that any attempt to geographically or demographically manipulate those boundaries would be an invitation for the people of Cyrenaica to demand self-determination. The statement ended by emphasizing that comprehensive and just national reconciliation would not be achieved by returning to a centralist state under any name because that meant reviving to historical grievances.¹

Some people also support federalism, but not necessarily in the 1951 form. They do not object to the creation of other ‘provinces’ (*wilayat*) than the three original ones, in light of the post-1950s developments. There are also those who accept replacing *wilayat* with governorates (*muhafazat*) as long as the latter are granted the same powers that the former enjoyed in the 1950s. They think that the authority conferred matters, not the name. This position has been called ‘federalism of the governorates’.

While federalism is often advocated in the East of Libya, similar demands have also been heard in the West and the South, especially after the attack on Tripoli on 4 April 2019. A top politician in Misrata and former HSC President, Abdul Rahman Sweihly, sparked debate on the issue by insisting that federalism can solve Libya’s problems. In a TV interview on he argued that Libya needs a truly decentralized – federal – system. He considers that Law 59/2012 provides for many powers but subjects them to the central government in Tripoli; a mayor cannot spend any money without approval from the Minister of Local Government, and in some cases, from the Prime Minister. ‘This must end with political measures stipulated in the Constitution, establishing the federal system[...] [W]hy [do] Libyans refuse to discuss the federal system? (...) [M]ost of the world’s successful countries adopt [this system].’² Ibrahim Hiba, an academic from the South, has opined, ‘[A]dopting the federal system could be a gateway to resolving the political and security crisis in Libya.’³

¹ Official webpage of the NFB, 1 July. Accessed online: https://www.facebook.com/nationalfederalbloc/?__tn__=%2Cd%2CP-R&eid=ARANnq_f0Ult5PBMQKGOnzYdym4KCKnYe2BuRKjSpY1ut996enZdGbKcXZ-c7u_nOet8qZAQTskoiJie [last accessed 10 Dec. 2019].

² “mu’akadā annahu ma’a al-nizām al-ittihādi al-fidirālī... al-Sweihlī: “Fajr Lībā” lam ta’at li-al-inqilāb ‘ala al-intikhābāt,” *Wakilat al-Jamahirīyya li-al-Anba’*, August 2, 2019. Accessed online: <https://www.jana-ly.co/%D9%85%D8%A4%D9%83%D8%AF%D8%A7-%D8%A3%D9%86%D9%87-%D9%85%D8%B9-%D8%A7%D9%84%D9%86%D8%B8%D8%A7%D9%85-%D8%A7%D9%84%D8%A7%D8%AA%D8%AD%D8%A7%D8%AF%D9%8A-%D8%A7%D9%84%D9%81%D9%8A%D8%AF%D8%B1%D8%A7%D9%84/> [last accessed 2 Aug. 2019].

³ Ali Tarfaya, “Al-taqsim yuhadadu mustaqbal ‘Lībā’.. ‘Kobler’ yuqtaraḥa inshā’ thalātha majālis ‘askariyya.. wa khibrā’: da’awa ṣarīḥa li-ikhfā’ ṭrapolis.. yu’ajilu bi-wuḍ’ ḥad li-ṣirā’ al-rāhin. *Al-Bawaba*, July 16, 2016. Accessed online: <https://www.albawabhnews.com/2021442> [last accessed 10 Dec. 2019].

However, more voices – not just in the West and South, but also in the East – reject federalism than support it: They want a system based on expanded decentralization within the framework of a unitary state. Some justify the demand by stating that Libya’s problems are administrative and developmental not political. The country suffers from the concentration of public expenditure, and financial and administrative powers in Tripoli, which is an administrative problem that can be solved by adopting ‘administrative decentralization’: a system of governorates with elected councils and broad financial and administrative powers stated in the constitution.¹ Others view the call for federalism as motivated by purely economic concerns: A fair system of wealth distribution, however, would end them.²

Similarly, some question the choice of federalism for Libya, considering that it is unjustified because there are no religious or ethnic specificities of the three ‘provinces’ that require far-reaching legislative competencies. There is simply a lack of trust, which can be restored via measures such as anchoring decentralization in the constitution so that it will not be left to the whim of the central authorities.³ Fawzi Aqab, Deputy President of the HSC, believes that the federal system is suitable for heterogeneous societies, which Libya is not, although he acknowledges that a tiny group of federalists claim that Libyan society is heterogeneous.⁴

Some Libyans question the claim that a federal system would eliminate centralization and marginalization. Centralization as an administrative system can exist in any country, whether federal or unitary. Remote areas in a federal state can suffer from centralization as much as remote areas in a unitary state. Al-Hadi Bouhamra, a prominent CDA member, claims that happened in the system enshrined in the 1951 Constitution: It was a federal centralist system.⁵

Others concur with this view and, agreeing that federalism is wrong for Libya, add that in the current situation, federalism could seriously endanger Libya’s national security. They consider that a better alternative would be a decentralized system with powers shared by the central government and subnational entities, with the former conducting the sovereign affairs of the state and the latter providing citizens with basic services.⁶

There is also the view that a federal system was needed at independence to help unify the country. However, with that achieved, federalism is no longer needed. Mansur Al-Kikhia, Professor of Geography and local governance expert, holds that federalism was only seen as needed until the country was united. Laws of that era, such as those on education, the judiciary and the economy,

¹ Interview with Abd Al-Mun’eim al-Wahishi, GNC Member, 15 July 2019

² Interview with Mansur Al-Kikhia, Professor, 5 July 2019.

³ Interview with Abd Al-Mun’eim al-Wahishi, GNC Member, 15 July 2019

⁴ Interview with Fawzi Al-Akab, per e-mail,

⁵ Interview with Al-Hadi Bouhamra, CDA member, 20 August 2019.

⁶ Interview with Abd Al-Mun’eim al-Yisir, GNC member, per e-mail,

were designed for a unitary state. Al-Kikhia believes there can be no return to the 1951 Constitution or even the one amended in 1963, because time and circumstances have changed.¹

Ahmad al-Abbar, a key NTC member who participated in the LPA negotiations, adds that the circumstances that once justified federalism have changed since independence, and that Cyrenaica, where calls for a federalist system are again heard, has changed, too: Now it is divided – over, for example, whether its capital should be Benghazi or al-Bayda.

Reviving the federal system does not have to mean just the three historical regions: There could be others.² Indeed, some advocate having a fourth region, Misrata or the Middle, while others want a region that includes towns and cities already largely inhabited by minorities to be specifically designated as theirs. The City of Nalut Coalition of Civil Society wrote to the German Ambassador in Libya, complaining that ‘the Arab majority tried to force a draft constitution written by them that excludes non-Arabs and grants only Arabs full control of all legislative powers and the appointment of high government officials, federal judges, and ambassadors. [...] Their strategy was built on dividing the country into just three electoral regions were [sic] Arabs constitute the majority in all of them, giving them all the powers and control.’ It continues: ‘The Amazigh community assert [sic] that the Libyan state building strategy can only be successful when based on the recognition and administrative/institutional accommodation of the endogenous Amazigh minority. This can only be accomplished by instituting a fourth electoral region in the west “from Zuwara city in the north to Ghat in the south” were [sic] the Amazigh speakers are the majority.’³

Interestingly, Abd’ Allah Murdaqi, head of the sub-municipality of Shura, which is home to the Tabu minority, reported that members of his community expressed fears of a 1950s federalism because returning to three historical regions would separate and weaken the community.⁴ Mawlay Qudeidi, Head of the Supreme Council for Tuareg, said that Tuareg have been influenced by negative reports about federalism from 2011 and 2012. He also disagreed with Amazigh leaders’ attempts to define ‘Amazigh’ as including other minorities, including Tuareg and Tabu. This belies the demand by the Amazigh city of Nalut that a fourth region designated as generally for minorities should be established.⁵

Participants in a focus group held in Derna, in the East, preferred the decentralized system of the 1963 Constitution. Some noted, however, that implementing a strongly decentralized system

¹ Interview with Mansur Al-Kikhia, Professor, 5 July 2019.

² Interview with Ahmad al-Abbar, NTC member, 25 July 2019.

³ Facebook page of Ehab Gnan, 19 September. Accessed online: https://www.facebook.com/ehab.gnan?__tn__=CH-R&eid=ARCJ25xej9PfHVvr_381GdCuMGYPcWlJWIanyOhe9MppTOT2TpU4WyrYC-iZ73AxEPmop8jy06VMc7V&hc_ref=ARQprAkAB61Z5NOURRqLG9UIxbBhNhndCJI_bGI-7E9w_hLL6wgn2pTHSOJsgadFMm4&fref=nf

⁴ Interview with Abdallah Abd al-Rahman, 29 August 2019.

⁵ Interview with Mawlay Qudeidi, Head of Supreme Council for Tuareg, 28 August 2019.

requires a strong central government, which Libya lacks.¹ In the West, too, specifically in Tripoli, another focus group supported administrative decentralization but stressed the need to implement Law 59/2012, particularly regarding the establishment of governorates and coordinating neighbouring municipalities with respect to services.²

Regardless of the system adopted – federal or another form of decentralization – resources must be allocated to subnational governance entities to enable them to exercise their powers. Discussing the powers of these entities implies that resource allocations must also be discussed.

In Libya, this debate is particularly sensitive because the economy heavily depends on the production of oil and gas, which will eventually be depleted. Fields are largely concentrated in the Southeast and Southwest, in Cyrenaica and Fezzan. It is therefore unsurprising that demands for federalism in Cyrenaica have been associated with reconsidering natural resource revenue allocations. Since the legal framework for managing these resources was written after the federal system was abolished in 1963, it does not take into account requirements embodied in the Oil Revenue Sharing Act of 1958, for example. That allocated 15 per cent of the revenues to the province where oil is extracted, with the remainder divided between the national government (15%) and national economic development (70%). In a statement issued on 18 July 2018, the NFB called for a revenue-sharing system based on resource location and the region's population and geographic expanse. The system should also compensate Cyrenaica for past injustices. If these criteria cannot be applied, the Oil Revenue Sharing Act of July 1958 should be enforced.³

While the NFB calls for returning to '1951' federalism, others argue that the federal system enshrined in the 1951 Constitution did not address the distribution of oil resources, because oil was discovered later. They demand a new approach to the issue with affirmative action for the oil and gas producing areas in the historical regions.⁴

Several opinion polls present positions on the distribution of the revenues of resources unlike those of the NFB. A comprehensive national survey on the constitution conducted by the Benghazi Centre for Research and Consultation in February and March 2013 asked respondents how the revenues of natural resources such as oil, gas and minerals should be managed: 60 per cent responded that they prefer the central authority to have full control and distribute the revenues to the regions; 36 per cent said that part of the revenues should be allocated to local authorities in the producing areas. When the answers are analysed by historical region (East, West and South), there is obvious polarization between the East and South – and the West. While 48 per cent of the

¹Focus group discussion, 9 July 2019, Derna.

²Focus group discussion, 20 August 2019, Tripoli.

³ Website of the NFB, 18 July 2019. See: https://www.facebook.com/nationalfederalbloc/?__tn__=%2Cd%2CP-R&eid=ARANnq_f0ULt5PBMQKGOnzYdym4KCKnYe2BuRKjSpY1ut996enZdGbKcXZ-c7u_nOet8qZAQTskoiJie [last accessed 10 Dec. 2019].

⁴ Al-Hadi Buhamra, CDA member, 20 August 2019.

respondents in the South and 49 per cent in the East preferred allocating revenues to the central authority, 66 per cent of the respondents in the West took this position. Furthermore, 50 per cent in the South and 48 per cent in the East but only 29 per cent in the West preferred having part of the revenues allocated to producing areas.¹ These data could well reflect feelings of marginalization and deprivation in the East and South. A poll conducted in May and June 2014 showed that 80.4 per cent of Libyans believe that oil revenues should be evenly distributed across the different regions of the country, while 2.3 per cent think they should remain in the production regions; 17.4 per cent prefer allocating producing areas a percentage of revenues.²

Despite these different opinions, there is consensus on the importance of opening a national dialogue on natural resource returns. A comprehensive survey of Libyan views on the national dialogue showed that 93.8 per cent believe that discussions about oil-wealth distribution belong on the agenda.³ Several experts also believe that the dialogue should address resource and revenue management.⁴ Calls for such a dialogue were echoed in consultative meetings held throughout 2018 during UN Support Mission in Libya (UNSMIL) preparations for the national conference, which was supposed to take place in April 2019 but was postponed because of Haftar's attack on Tripoli.⁵

6.3. Responses

As noted, the positions held regarding state form and resource allocation must be examined when considering the powers to be granted subnational governance entities. While DC 2017 presents a unitary state, it also introduces provisions that acknowledge the three historical regions – which in itself is a compromise.

This is true for the Constitutional Declaration, which when issued in August 2011, did not address decentralization, except for limited references to local councils. It opted for a unitary system. However, pressured by federalists, the NTC amended the CD to create the Constitutional Drafting Assembly with 60 members, 20 from each of the three historical regions, similar to the assembly that drafted the 1951 Constitution and the federal system.

This amendment did not satisfy the federalists because it meant the CDA would still be composed and controlled by the GNC, a legislative assembly controlled by a Western majority, who supposedly rejected federalism. With the risk that a federal system would be eliminated in the new constitution, the federalists again pressured the NTC and threatened to boycott the GNC

¹ Center for Research and Consultancy, *Constitution*, 105.

² Center for Research and Consultancy, *Al-musaḥ al-shāmil li-ārā' al-Lībīn ḥawla al-ḥiwār al-waṭanī* (Benghazi: Benghazi University), 47-48.

³ *Ibid*, 46-47.

⁴ For example: Khalid al-Ghweil. See transcripts Economic Focus Group Discussion, 7 January 2019, Tripoli and Economic Focus Group Discussion, 13 December 2018, Benghazi. On file with the authors.

⁵ Centre for Humanitarian Dialogue. *Al-musār al-tushāwarī li-l-mulataqa al-waṭanī al-Lībī*, *Final Report*, 39. Accessed online: https://unsmil.unmissions.org/sites/default/files/ncp_report_jan_2019_ar.pdf [last accessed 10 Dec. 2019]

election. The NTC then amended the CD a second time to make the CDA an elected assembly largely independent of the GNC, whose role was limited to issuing the referendum law. A senior NTC member said the amendments aimed to give federalists an opportunity to elect supporters of their cause to the CDA – at least from the East.

However, most members of the newly elected CDA, including several from the East, did *not* support a federal system. After the CDA wrote announced its draft in 2017 that did not include federalist demands, the House of Representatives intervened to amend the CD so that the DC had to win the approval of two-thirds of the voters nationwide *and* a majority of 50 plus 1 in each of the three historical regions.

Some draft versions reject federalism outright, although some CDA outputs clearly acknowledge some of its positive features. For example, DC 2017 emphasizes the Libyan state’s unitary character and adopts a system of local governance that provides subnational entities with administrative and financial autonomy but does not empower them to enact legislation. DC 2017 also adopts aspects of federalism with regard to the establishment and composition of a bicameral legislative assembly: a House of Representatives, largely composed by population so most seats go to (the majority) Westerners, and a Senate, based on the three historical regions, meaning that seats are generally balanced (32 for the West, 26 for the East and 20 for the South – out of a total 78). Article 75 uses the historical names of the three regions (Tripolitania, Cyrenaica and Fezzan) but terms them ‘electoral districts’. DC 2017 also seeks to balance the regions by distributing state institutions amongst their capitals: Tripoli, Libya’s capital gets the headquarters of the executive authority, Benghazi the legislative assembly, and Sabha the Constitutional Court.

DC 2017 sets out the principles for determining powers but leaves the details for a local governance law. Local governance entities have intrinsic powers, powers transferred to them by the central authority and other powers that they share with the central authority. Article 147 states that future local governance legislation will determine those powers based on the principle of subsidiarity (*al-tafriya*). Governorates only have local governance powers if municipalities cannot effectively exercise them, and the central authority only exercises the powers that governorates cannot. But how are the powers of subnational units to be determined?

To enable subnational governance entities to exercise their powers, DC 2017 provides for allocating them ‘centralized resources appropriate for discharging their duties, along with self-generated resource including duties, remedies, and taxes of local nature, as well as returns on their investment, grants and wills they receive and whatever they acquire in loans and any other returns specified by the law’ (Article 148). It further specifies that any powers the central authority transfers to subnational governance entities must be accompanied by adequate financial resources.

According to the Draft Constitution, the public finances of the state are based on principles such as: “2. The distribution of national revenues in a fair and equal manner between levels of national and local governance, taking into account population density and distribution within the local entity, distance from the center, and the level of infrastructure; 5. Ensure financial independence of local governance entities, as stipulated in the provisions of this Constitution (Article 164). It also decides that all state revenues are to go first to the public treasury; any allocation or expenditure of any part thereof is conditional to an authorizing law (article 165).

DC 2017 makes natural resources the property of the Libyan people, allowing all regions to benefit in a just manner that preserves the rights of future generations (Article 169). It obliges the state to establish development projects in areas that produce non-renewable natural resources, commensurate with local potential (Article 171).

Law 59/2012 speaks of local ‘administration’ (*idarit mahaliyya*) rather than local ‘government’ (*hukm mahaliyya*). It grants legal personality and financial autonomy to governorates and municipalities (Article 5). ‘Within the limits of public policy and the general plans of the State, [local administration entities] shall establish and manage all public utilities within their scope, and shall oversee the employees thereof based on the general directives of the Ministry of Local Government’ – except those related to national or special utilities, which shall be determined by a Cabinet decree’ (Article 6). It also allows ‘ministers of ministries whose functions have not been transferred to local entities to delegate some of their functions to the Governor’ (Article 17-1).

As for municipalities, Law 59/2012 empowers them to ‘[manage] and [establish] ... public services related to urban planning, organization, buildings, health and social affairs, water utilities, lighting, sanitation, roads, squares, bridges, local transportation, public hygiene, gardens, public recreation areas, shelters, real estate, spaces, public markets, and construction permits for tourism and investment projects within the boundaries of the municipality’. Article 25 assigns the following tasks:

1. ‘Civil Registry affairs
2. Regulation of municipal guards, local markets and slaughterhouses
3. Construction and management of local roads and bridges
4. Issuance of local permits
5. Environment and public health monitoring
6. Establishment and management of small business incubators in cooperation with competent authorities.

The subsequent Executive Regulation reiterated some provisions in Law 59/2012, and its Article 4 similarly deferred defining ‘national’ or ‘special’ utilities to the Cabinet. The regulation does, however, list many of the services governorates should provide in order to implement ministerial

policies, including 'health, education, economy, housing, facilities, urban planning, agriculture, fauna and marine fauna, justice, interior affairs, culture, media, sports, social affairs, labour, training, transportation, industry, finance, telecommunications, tourism, energy, and electricity' (Article 8-1) and indicates that the list is not exhaustive. The Ministry of Local Governance will determine governorates' authority with regard to these services (Article 8).

Law 59/2012 regulates how local administration entities obtain the funding needed to fulfil their mandates. According to Article 49, 'The financial resources of the governorates shall consist of the following: (A) 10 per cent of the gross central taxes levied in the Governorate; (B) 10 per cent of all customs, transit, port and airport fees levied in the Governorate; (C) 50 per cent of the sales of buildings, lands fit for construction, and state-owned undeveloped lands located within the Governorate; (D) revenues of the governorate and utilities thereof; (E) central government subsidies; (F) fees and charges of a local character; (G) donations, grants, and trusts accepted by the council provided that donations, grants and trusts received from foreign entities are subject to the consent of the Cabinet. The Governorate Council shall distribute to Municipal Councils that fall under its jurisdiction a portion of its resources described in paragraphs (A) and (B) of this article, as may be determined by the council depending on the needs and circumstances of each municipality.'

Article 51 defines 'municipal resources' as including:

1. Fees for municipal services
2. Proceeds of museums, exhibitions, gardens, clubs etc.
3. Rents of properties leased by the municipality
4. Revenue of fairs, libraries and stadiums owned by the municipality
5. Municipal share of the value of local taxes allocated to the province
6. Municipal share of customs, transit, airport, and port fees levied in the province
7. Municipal investment yield
8. 50% of the value of buildings and properties sold by municipalities
9. Penalties and settlements imposed in return for reconciliation
10. Loans, donations and trusts approved by the provincial council
11. Sales of advertising and tourism products and of publications issued by the municipality
12. Proceeds of public open markets, slaughterhouses, baths, and public transportation operated by the municipality

13. Ten per cent of any ore found within municipal boundaries, in lands not owned by the State and on beaches that are located within the municipal boundaries, in accordance with the legislation in force
14. Sales of goods confiscated by the municipal guard
15. Government support and subsidies
16. Other resources prescribed by a decision of the Council.'

It should be noted that Law 9/2013, which authorized establishing municipalities before governorates and practically suspended establishing the latter indefinitely, transferred most governorate powers to municipalities.

In accordance with Article 6 of Law 59/2012, which assigns ministerial functions to local administrations, the GNA Minister of Local Government issued Resolutions No. 153 on 10 September 2019, No. 159 on 17 September 2019 and No. 166 on 26 September 2019 – transferring the powers of the Ministries of Economy and Industry, Communications and Health to the local administrations.

Resolution No. 159/2019, transfers powers from the Ministry of Communications, including:

- (1) Constructing and managing local roads and bridges and
- (2) Overseeing the management of the local public transportation means.

Resolution No. 166/2019 transfers powers from the Ministry of Health:

- (1) Overseeing the establishment and management of municipal hospitals
- (2) Overseeing the establishment, management, supply, development, maintenance of dispensaries and primary health care units within the municipality
- (3) Developing and executing plans and programs to enhance health in the municipality
- (4) Preparing plans for supplying medicines and medical equipment to municipal health facilities.

GNA Ministers of Local Government and Education also signed an agreement to transfer the local functions of the Ministry of Education to municipalities.

6.3. Assessment

Addressing the powers of subnational governance entities requires taking into account the state form and resources allocated. Those particular powers will partly relate to the system adopted – federal or unitary – and a realistic assignment of responsibilities and powers requires adequate resources.

Under a federal system, the national authority shares some of its legislative, financial and administrative powers with subnational units; in a decentralized unitary system, the national

authority retains legislative power and transfers financial and administrative powers to subnational governance units.

To determine which system best suits Libya, the problems must first be correctly diagnosed. The chapter on marginalization clearly shows that there is disagreement over the diagnosis. Still, several conclusions can be drawn:

1. Most opinions indicate that the centre has marginalized the periphery.
2. Consensus exists that decentralization would redress this marginalization because the centre is unable and/or unwilling to change it.
3. Decentralization should entail transferring sufficient powers to subnational governance entities along with sufficient resources to exercise power and end their territory's marginalization.
4. There is disagreement about whether a specific region or group has suffered more from marginalization than others. In the East, in particular, there are strong feelings that the region has been deliberately marginalized.
5. There is recognition of the 'continuous' existence of three distinctive historical regions – Cyrenaica, Tripolitania and Fezzan – that were once three provinces (*wilayat*). Yet just how distinctive they are today and what that might mean is unclear.
6. There is a lack of trust in the center's commitment to decentralization; it may reject it, limit it, hinder it or go back on it. Hence, there is a need for high powered legislation addressing this lack of trust.
7. Federalism is strongly contested as a measure to remedy mistrust. Some see it as the only solution while others reject it for many reasons, including the fear that it represents a step towards secession. Admittedly, federalism is better understood now than earlier, when it was subject to a *fatwa* that prohibited it. However, for federalism to be adopted as the state form, it must first enjoy popular support. Relying on the national survey of 2013-2014 that revealed that even in the East federalism had no strong supporters is not enough: Circumstances, and perhaps also attitudes, may have changed since then.
8. Although a federal system might be suitable for addressing the lack of trust in the centre, it does not address the issue of marginalization: A regional centre could simply replace the state. Federalism requires a decentralized system with responsibilities, powers, and resources transferred to subnational governance levels.
9. Regardless whether the state form is federal or unitary, measures to address the lack of trust in the centre must include addressing decentralization in the constitution (making it immune to being rolled back) and share powers still retained by the centre.

The Constitutional Declaration (CD) did not sufficiently address the issue of decentralization. At first the NTC neglected to address decentralization despite the many complaints about marginalization. This was striking because the NTC itself, which had issued the CD, consisted of representatives of local councils that were emerged from popular initiatives. The CD sought to address mistrust in the central authority by proposing equal representation of the three historical regions in the CDA and requiring the approval by a majority of voters in each region. This approach assumes that each region has its own interests that may differ from those of the other two but discussions within the CDA reveal varied, and sometimes conflicting, interests in the *same* region.

DC 2017 constitutes a serious attempt to address marginalization. It establishes expanded decentralization in provisions that confer legal personalities on governorates and municipalities, assign vast powers to subnational governance entities based on the principle of subsidiarity, allocates these entities central resources in addition to their own and empowers them according to the principle of free governance – which prevents the central authority interfering with their exercise of these powers, unless they are unable to perform them at all or cannot perform them properly.

A Libyan analyst, Yousef Sawani¹ describes decentralization provisions in DC 2017 as unprecedented – ‘similar to the historical system Libya experienced when it was a federal state from 1951 until 1963’. He consider that DC 2017 establishes a federal system with elected councils empowered to make and oversee municipal policies and plans, and to enact regulations set out in constitutional and national legislation. For the first time, it establishes the fiscal autonomy of local governance entities; enables subnational governance entities the right to invest, receive gifts and wills, and borrow – beyond their national budget allocation. They are also permitted to conclude partnerships amongst themselves and with foreign parties. The central authority is only allowed to intervene if they cannot properly fulfil their tasks.

These comments refer to the draft produced by the CDA’s Work Committee in 2015 but also apply to DC 2017. While the former calls the highest subnational governance entity *wilaya*, which may have been an attempt to please federalists, the latter terms it *muhafaza* (governorate). That said, the thrust of the two drafts is quite similar.

It should be noted first that the DC 2017, like the draft of 2015, empowers subnational entities to legislate subsidiary legislation (*tashri’at la’ihia*), such as provincial or municipal regulations, but not laws, which require full-fledged subnational legislatures. This is a considerable difference from the system enshrined in the 1951 Constitution wherein the *wilayat* had such legislatures.

Admittedly, the DC 2017 may indeed be seen as a serious attempt to establish extended decentralization, but it has its limitations.

¹ Sawani, Yousef, public administration.

The main problem is the shallowness of its new provisions, which are only principles and leave far too much to parliament, where legislators could gut the principles of DC 2017 regarding local governance. Legislators could, for example, restrict resources for subnational governance entities or require compliance with excessively high standards – causing subnational governance entities to fail to exercise their powers and require the central authority’s intervention. Similarly, the provision that national resources must be fairly distributed at national and subnational levels requires a future public finance law to be enacted by the national legislature. Criteria like the degree of population concentration and distribution and distance from the centre may prove ineffective because the DC 2017 does not prioritize them. Besides, the draft already stipulates that all national revenues first have to go to the state treasury before being distributed.

One could counter criticism that the DC 2017’s expanded decentralization principles could be ignored by parliament, by arguing that it leaves it to the Senate – which is supposed to have balanced, albeit unequal, representation from the three historic regions – to enact legislation on local government and public finances.

However, the mechanism proposed for enacting the local governance and public finance laws could cause stagnation. The DC 2017 invokes the law on local administration with respect to many details, many of which are highly controversial. That’s why the CDA could not agree on them. It is entirely possible that the Senate will not be able to agree with the House of Representatives. The DC 2017 stipulates that if that happens, a committee made up of members from both chambers would seek consensus, and if they fail, the bill would be postponed to another term. It does not address what happens if disagreement persists.

As for Law 59/2012, its envisaged transfer of responsibilities, competencies and resources to subnational government entities deserves praise. However, the scope of the transfer is unclear and most of the law awaits implementation.

Regarding the scope of the transfer, it appears that important powers of subnational governance entities must receive prior or retrospective approval from the central authority. This also applies to the financial resources the entities need to exercise their powers. Article 6 of Law 59/2012 assigns entities the power to establish and manage all public services located within their boundaries, and all powers currently enjoyed by the ministries. Although it appears that subnational governance entities are entrusted with vast powers, they are actually considerably restricted. First of all, Law 59/2012 does not grant subnational governance entities powers with ‘national’ or ‘special’ natures – but exactly what that means remains to be determined by the Cabinet. This is mentioned in Article 4 of Executive Regulation No. 130 regarding Law 59, which the Cabinet issued in 2013. Second, Article 6 of Law 59/2012 states that the powers must be exercised within the boundaries of public policies and plans, and supervised by the Ministry of Local Governance. Of course, compliance with national policies and plans is needed; the issue concerns the extent of Ministry of Local Governance’s oversight, which other provisions suggest may well

go well beyond 'general'. For instance, Article 18 requires that decisions of the governorate council, the highest subnational governance level, be submitted to the Minister of Local Governance for approval within 15 days of issuance. Its approval can either be explicit – or implicit (failing to object to the decisions within a month).

Furthermore, six years after passage, Law 59/2012 has not been fully implemented. The prime example regards governorates, which have not been established due to disagreements about their number, boundaries, seats and specific municipalities. Law No. 9/2013 'postponed' establishing governorates and, frequently to satisfy regional and tribal wishes, granted municipalities their powers although it leaves a few for the Council of Ministers. Among these is the power to approve budgets submitted by municipal councils (Article 1) . With more than 100 municipalities, the Council, which also has to coordinate municipalities because there are no governorates, has its hands full.

What is more, the powers assigned to municipalities, either by Law 59/2012 or Law 9/2013, still have to be implemented, including those regarding basics like environmental sanitation. This has put municipalities in a difficult position: While the municipalities are elected to perform such services, these remain the purview of central bodies, like the public company for sanitation services, that cannot efficiently perform them, despite having funds to do them. All the mayors complained about this situation and asked to be granted both the service provision and the associated budget. Municipalities in Tripoli even vainly proposed creating a test union of municipalities to take care of sanitation services for a year.

The problem is not limited to environmental sanitation but also affects other municipal health, education and security services that are currently assigned to deconcentrated sectoral directorates and offices (*idarat/mukatib qata'ia*), which belong to ministries. However, these offices often cannot provide proper services because they lack funds. Although municipal councils have no oversight over these directorates and offices and are not legally obliged to help them fulfil their services, out of a sense of responsibility to their citizens, they try to support the sectoral directorates and offices as much as their limited funds and restricted mandates allow. Some municipalities steer parts of operational and/or emergency budgets to building schools and purchasing medical equipment for hospitals. But because they not supposed to do this, they could eventually be held liable by auditing bodies and line ministries for conducting 'illegal operations'.

Describing municipalities that devote parts of their budgets to providing services might give the impression that they have regularly allocated budgets. In theory, municipalities *are* entitled to annual budgets, both operational, to cover salaries, stationery and other practical needs, and developmental. In reality, however, they often receive only the operational budget and occasional emergency funds. Municipalities are not authorized to collect the many different types of local revenues and instead have to collect fees, revenues and royalties for the central authority, which is supposed to return a percentage thereof to municipalities. Article 52 in Law 59/2012 left it to

the Executive Regulation to define 'local' fees, revenues and royalties, but it does not. Municipalities are still waiting for their share. Benghazi's mayor said that since being appointed (nine months before our interview), not one single *dirham* (the smallest unit of Libyan currency) had been deposited in the city's account. The situation in the West is not much better: The mayor of the Centre of Tripoli Municipality says that its budget allocations cover just two per cent of its needs.

With no funding from the central authority and no mandate to generate local revenues, some municipalities have felt compelled to improvise in ways that likely violate the law. Some municipalities simply retain the local revenues and fees (instead of submitting them to the central authority) while others invent methods for raising money. An interesting case is Kufra's municipal council, which set up a Fund for Constructing Kufra (*Sunduq A'mar Al-Kufra*). The Fund is based on 'fees' that the '*Subul al-Salam*' brigade collects from smugglers, especially those travelling by car between Libya and neighbouring countries. The proceeds are divided between the brigade (60%) and the municipality (40%). Zliten's municipal council levied fees on cement from the local factory and that of Zuwara, which is not far from Tunisia, introduced fees for crossing the border. The GNA government understandably disapproves of such practices and threatens to take legal action.

The military governor in the East is duly criticized for having appointed mayors instead of holding council elections. However, his action resolved the difficulties that municipal councils had had in coordinating service provision by subordinating the sectoral directorates and offices (which answer to line ministries) to the mayor: Being forced to report to the mayor improved sectoral directorates and offices' collaboration with municipalities and regular joint meetings allowed municipalities greater say in setting priorities and distributing funds.

The GNA's transfer of powers from the Economy and Industry, Communication and Health Ministries to municipalities will be a step in the right direction *if* it simultaneously allocates sufficient funds to exercise those powers. One cannot help but wonder about how practical it is to transfer such powers to Libya's huge number of municipalities. Law 59/2012 stipulates that such powers were to be transferred to governorates, which would have been far less numerous. Besides, transfer is limited to municipalities in the area under GNA control, while those in the IG's area in the East still have complicated relationships with sectoral directorates and offices.

In sum, while Law 59/2012 promises decentralization, its scope is unclear, and the failure to implement it has put municipalities in a dire position.

7. Conclusions

Purpose

It is our belief that, in general, no position regarding decentralization or any other constitutional issue is *per se* right or wrong. Any standpoint in any country on these matters reflects and responds to the political, economic, geographic, historical and social conditions facing that society – and its citizens’ personal preferences. Also, when it comes to Libya, it has not been our intention to list conclusive evidence of the validity of any particular centralized or *decentralized* system when discussing and assessing positions and attitudes regarding decentralization. We instead present informed views of the various options as the basis for finally starting a national dialogue about decentralization and major associated issues such as national wealth distribution.

This is not to say that we have no ideals or hopes for what Libya’s system would look like and what it would bring the Libyan people. Hence, we begin by briefly presenting our vision of a decentralized system. We then highlight the main findings of our socio-legal research and present our suggestions for policies and laws.

We envision

- A decentralized system governed by a *constitution* that defines the political and administrative structures and functions, and clearly and accurately defines the political and administrative *levels* of the state and the powers of national and subnational public institutions.
- A decentralized system that lays the groundwork for *dismantling ‘the hated centralization’ (almarkazia almaqiata)* with its authoritarianism, oppression and arbitrariness – and all its political, administrative and economic aspects – so as to ensure responsive, effective and fair local governance.
- A decentralized system whose national and subnational institutions clearly link *responsibility, authority and accountability*, that is, a system in which responsibility always has authority and authority is always accountable.
- A decentralized system deliberately oriented towards *developing Libya’s human potential*.
- A decentralized system that *dismantles the rentier economy*, diversifies the Libyan economy, manages resources efficiently and fairly allocates their returns.

We conclude

1. That there is no controversy about whether Libya should opt for decentralization: Disagreement concerns what exactly that means. Disputes rage about the nature and number of subnational governance levels and the number of entities at each level. Should federal provinces (*wilayat*) be the highest subnational governance level, or should the state be unitary, with governorates (*muhafazat*)? Should the provinces be the three historical regions, Cyrenaica (East), Tripolitania

(West) and Fezzan (South), or should others be added? If the state has governorates, should there be 10, like during the monarchy's late years (1963-1969) and Gaddafi's early years (1969-1975), or should more be added in light of the changes that have occurred since the 1970s?

No one is arguing about whether or not Libya should have municipalities: Municipalities exist all over the country – headed by mayors and directed by councils. However, there is a lot of debate about which next-higher entity should exercise oversight over municipalities. The absence of a functioning next-higher level means that the national state currently has to oversee some 126 municipalities, which is inefficient.

There is, however, great controversy about how to staff the subnational-level councils (for municipalities and governorates) and select their leaders. Would elections be a good method? Democratic elections link councils and their heads to the constituencies. What about appointing council members in order to ensure an effective chain of command and reduce the risk of being stuck with unqualified and incapable local political leadership? Or perhaps a combination of elections and appointments should be used to staff councils.

The extent of the national authority's political, administrative and financial powers compared with those granted to subnational governance entities is a big bone of contention. While no one questions the need for capable and effective central government, repugnance towards 'the hated centralism' (*almarkazia almaqiata*) leads federalists to insist that, like during Libya's federal constitutional monarchy (1951-1963), powers should be transferred to provinces that would have their own legislative councils. Others claim that not only transferring responsibilities, powers and resources to create effective regional autonomy is needed – but also that it is entirely possible in the unitary state that Libya has been since 1963.

2. Disagreement regarding how to share power between the centre and the constituent parts of the Libyan state is not just fundamental to the present, and to the events of February 2011, but were also of major significance during the lead-up to Libya's independence from 1949 to 1951.

The present debate on decentralization and possible legislative responses is partly inspired by history: Adopting a federal system in the first Constitution of 1951 was key to Libyan statehood. Cyrenaica ('the East') and Fezzan ('the South') insisted on federalism, fearing that otherwise Tripolitania, the most populous region, would dominate them. Tripolitania reluctantly agreed to a federal system, hoping it would lead to a unitary system, which it did in 1963. By then, Libyans had developed a national consciousness, which was one justification for adopting a unitary system in 1963. Other reasons were the high cost and cumbersomeness of a federal structure for a country with just a few million citizens, and the powerful oil companies' wish to have just one party with which to negotiate, rather than having to deal with a federal government *and* provinces.

3. When Gaddafi seized power in 1969, he preached decentralization, an even more so after he turned Libya into a *jamahiriya* ('state of the masses') in which 'Basic People's Congresses' were

accorded state powers. As one slogan in Gaddafi's Green Book put it, 'Power, wealth and weapons are in the hands of the people.' In reality, however, Gaddafi's regime was highly centralized and oppressive, with all real power concentrated in his person and informal 'revolutionary' paramilitary institutions that enjoyed greater authority than the people's congresses and were not legally regulated. The government structure Gaddafi inherited from the monarchy was also continuously changed, for example, the 10 governorates (the highest subnational level) in 1970 were transformed into 46 municipalities in 1975, before being reduced to only 7 in 1990, and from 1,455 Basic People's Congresses in 1992 to a mere 22 *sha'abiyat* in 2007. No wonder many Libyans associate centralization with authoritarianism and dictatorship. The popular expression *almarkazia almaqiata* – in which 'hated' modifies 'centralization' – is very revealing.

4. Under Gaddafi, certain privileged groups advanced while many others were marginalized. The latter also included groups and areas near Tripoli, the capital and perceived centre of power. Yet, it was feelings of marginalization in the East that fuelled the uprising in 2011. Unsurprisingly, even before Gaddafi's regime was defeated, demands for decentralization were already heard – most loudly from federalists in the East. Since 2011, Libya's transitional political institutions have attempted to respond to these demands, but Eastern federalists consider their responses insufficient. Moreover, recently, some key individuals from the West have begun to acknowledge the role that 'eastern' feelings of marginalization have played in the fight for Tripoli. Now they insist that these feelings must be assuaged, even if that means adopting a federal system.

5. Decentralization has been on the legislative agenda since Libya's National Transitional Council (NTC) issued a Constitutional Declaration (CD) in 2011 to begin reconstructing the state. Other significant initiatives include the Draft Constitution of 2017 (DC 2017), Law No. 59 of 2012 'Concerning the Local Administration System' (Law 59/2012) along with its amendments and executive regulations, and the Libyan Political Agreement (LPA) of 2015. How have they sought to resolve the issue of decentralization, and with what results?

6. While the CD only mentions decentralization briefly – perhaps because it is 'interim' – subsequent amendments have profoundly impacted the issue. In 2012, two amendments were introduced that shaped the Constitution Drafting Assembly (CDA) in such a way that it could not be dominated by the West, which was assumed to oppose federalism - while the East was believed to broadly support it. Clearly inspired by the assembly that wrote the 1951 federal Constitution, the CDA was made into a 60-member assembly with equal numbers of representatives from the country's three historical regions. The CDA was also made independent of the General National Congress (GNC), which had initially been entrusted, according to the CD, to appoint the CDA and ratify its draft constitution. This change increased the chances that the CDA would be sympathetic to federalist ideas.

However, after the CDA produced a draft that federalists considered flawed, the CD was amended yet another time to require that the proposed constitution be approved in a referendum by a

majority of voters *in each of the three historical regions*. Previously, only the approval of two-thirds of voters nationwide had been required. The amendment thus ensured that no draft constitution would be imposed on the East. Now that the already high threshold of approval had been raised, approval of a draft constitution became unlikely, especially given the largely unjustified negative publicity about its position on decentralization.

7. The Draft Constitution of 2017 (DC 2017) deserves greater recognition. It attempts to strike a balance between adopting a unitary system and providing for broad decentralization, and also includes features of a federal system. DC 2017 includes governorates and municipalities with elected councils whose powers are determined by the principles of subsidiarity and free governance, and allocates them both central and locally generated resources. However, critical details of these principles were delegated to a future law on local governance.

DC 2017 wisely provides for a bi-cameral parliament with a House of Representatives and a Senate, which are tasked with jointly legislating decentralization. Intended to prevent Westerners from dominating parliament, the Senate will have balanced, but not equal, representation from the three historical provinces – with Tripolitania getting 32, Cyrenaica 26 and Fezzan 20 of the 78 seats. The two chambers are charged with enacting a law on local governance. DC 2017 allows for asymmetric decentralization so that, for example, the future parliament could accord major cities like Tripoli, Benghazi and Sabha, special governorate status. DC 2017 also requires all three regions to agree with any new law on local governance – which is positive. But in light of the numerous controversial issues, extreme political care is needed to avoid a situation of protracted disagreement and stagnation.

8. If fully implemented, Law 59/2012 could answer the immediate need for decentralization. A law on local governance would likely be based on principles of expanded decentralization (*markazia muwasa'*) enshrined in the (future) constitution. Law 59/2012 provides for governorates and municipalities run by elected councils that receive percentages of locally generated revenues as well as subsidies from the centre. Governorates control the public utilities (*marafiq 'aama*) within their boundaries. They are also supposed to have, within their boundaries, the powers held by ministries save those powers characterised as special or national. Municipalities similarly enjoy broad powers with respect to public services.

However, Law 59/2012 left the embellishment of key details to 'subsequent' legislation that was supposed to have long since been passed. It referred to establishing governorates but left the future law free to determine their number, boundaries, seats and so forth. Instead, Law 9/2013 indefinitely postponed the establishment of governorates and transferred most powers to municipalities. This delay is viewed as an attempt to placate various local groups, especially tribes, who resist being included under certain local governance entities: 99 municipalities were established in 2013 before subsequently increasing, partly due to the 2014 political divide, to around 126.

According to Law 59/2012 the Council of Ministers determines the powers which are to be transferred from ministries to subnational entities and those that cannot be transferred because they are 'special' or 'national'. However, how powers are to be transferred to municipalities awaits determination in future legislation. Resource allocation also must wait for legislation that defines 'local revenues'.

Law 59/2012 requires all decisions by *governorate* councils – which, due to Law 9/2013, are now *municipal* councils, to be approved by the Minister of Local Governance. This seriously limits their autonomy.

Meanwhile, ministries and other central institutions charged with providing basic services through their local directorates and offices are under-performing. This seriously challenges municipal councils, whose constituencies expect them to provide services – because they have neither the mandates nor resources. They do their best to coordinate with municipal directorates and sectoral offices.

Such a dilemma has forced municipalities to develop alternative solutions, not all of which are legal: from keeping local revenues and imposing 'service fees' on purchases of goods such as cement, to charging for national border crossings and even smuggling! Municipal councils use these 'revenues' to provide basic services, including those supposed to be provided by the central state. For his part, the military governor of Eastern Libya appointed mayors to replace the elected councils and empowered them to supervise the directorates and sectoral offices within their boundaries.

In 2019, the central government in the West, the GNA, decided to transfer powers from the Ministries of Economy and Industry, Communication and Health to municipalities in the area it controls. That may prove to have been a smart move – *if* the municipalities receive enough funding, human and other resources to exercise their new powers. However, it is likely that the huge number of municipalities makes such power transfers impractical. One should note that Law 59/2012 stipulated that such powers were supposed to be transferred to a much smaller number of *governorates*.

In sum, while Law 59/2012 has established a first start for decentralization, its scope remains limited and sometimes unclear, whereas the lack of implementation - combined with the under performance of the national government institutions - has created hardships for municipalities.

9. Concluded in 2015 to end the political divide and build a new national governance structure, the Libya Political Agreement (LPA) says little about decentralization. It attempts to remedy municipal councils' difficulties with the centre's sectoral directorates and offices by establishing a 'Supreme Council for Local Administration' to promote their cooperation and coordination in accordance with Law 59/2012. The three historical provinces are acknowledged through

representation on a Presidential Council but that is hardly enough. Although decentralization is key to resolving Libya's chaos, it apparently was not part of the LPA negotiations.

10. Our research repeatedly came across 'decentralization' and associated terms in interviews and written materials. But this terminology is deceptively complex. Especially in Libya, terms like 'centralization' and 'decentralization' – as well as 'federalism' for that matter – are heavily loaded with emotions, both positively and negatively. Discussions about decentralization can easily be oversimplified and overlook real needs, capacities and contexts. Compared with other countries, Libya has not had the chance to gain significant administrative experience with a balanced system of central-local relations. Experience in other countries shows that achievement of development goals requires a nuanced combination of 'deconcentration' and 'devolution'. National dialogue on decentralization should first aim at creating a balanced and detailed repartition of sectoral responsibilities, legal competences and financial resources, instead of focussing on broad terms and slogans, which can be deceptive.

The way forward

As we noted regarding what we envision, decentralization must pay heed to both the national and subnational levels. The former calls for measures to share the power now concentrated in the centre, and the latter requires a system to deliver development throughout the country.

Credible attempts to satisfy these needs already exist, namely the Draft Constitution, along with Law 59/2012, a reasonable initiative that needs to be fully implemented. There are also plans to revise a power-sharing deal at a national conference or similar event.

We have found, however, that these initiatives are not appreciated, often not only due to a lack of awareness, but sometimes also because they are distorted. Our research has revealed cultural problems related to decentralization, including unrealistic views and expectations.

Therefore, since we do not aim to propose a specific system for Libyans, we neither advocate the Draft Constitution nor full implementation of Law 59/2012. However, we do consider it crucial for Libyans to be aware of all the options so they can take informed decisions – approving the Draft Constitution or demanding that Law 59/2012 finally be implemented and/or amended.

A well-informed national dialogue on decentralization and key issues such as national wealth distribution is urgently needed. The national conference once planned by the UN, or a similar event, could create the right opportunity to talk.

Ensuring well-informed dialogue about decentralization necessitates awareness-raising campaigns involving formal and informal actors. Libyans must understand in advance that decentralization has mutable, interrelated forms, is practiced in different variations worldwide, and decentralization does *not* rule out a strong and capable central authority; in contrast, it even requires one.

Initiatives to revise or replace the LPA also should pay heed to the need for decentralization. The preferences that Libyans express in the national dialogue should be the basis for any future initiative, including possibly ratifying the Draft Constitution.

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