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CONSTITUENT ASSEMBLY ELECTIONS IN LIBYA

ASSESSMENT OF THE LEGAL FRAMEWORK

SEPTEMBER 2013

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ELECTIONS FOR THE CONSTITUENT ASSEMBLY OF LIBYA: ASSESSMENT OF THE LEGAL FRAMEWORK

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EXECUTIVE SUMMARY

The newly adopted law for the election of the constituent assembly (Law 17 of 2013) regulates a number of aspects of these elections adequately but leaves significant gaps in regulating essential areas such as the electoral system. Without further amendments of the law, the High National Elections Commission will have to fill these gaps by adopting regulations.

The exact electoral system to be used remains unclear. While the legal text suggests that the 60 members of the constituent assembly will be elected in single-member districts on a first-past-the-post basis, the current draft of constituencies, appended to the legal text, indicates that there shall also be eight multi-member districts. It is not clear what electoral systems should be used for the multi-member districts and how the two components relate to each other.

Provision is made for the representation of women by reserving six seats for female candidates. Given that the chosen system offers women little chance to win other seats, the provision is very low and insufficient to ensure adequate representation of women. While the law is silent on minorities, the appended constituency list mentions five reserved seats for Amazigh, Tebu and the Touareg. It is unclear under which electoral system these seats are elected.

According to the law the country is divided into three regions: east, west and south, each represented by 20 members of the constituent assembly. With the population in the three regions differing widely, there is inequality in the vote: a vote from the sparsely populated south will have a much greater relative weight than one from the highly populated west. While equality of the vote is a core electoral principle, there are valid reasons not to apply it for in this election for a constituent assembly: the distribution of seats was agreed as a compromise based on historic precedent, taking into account long-standing grievances by the east and the south about neglect of their regions. The compromise may contribute to peace-building, allaying fears that a western majority could impose its preferences on sensitive issues like decentralisation.¹ Furthermore the eventual constitution shall be approved in a popular referendum, giving each Libyan voter an equal chance to vote on the final text.

Areas which will need more regulation include the delimitation of constituency boundaries; specification of the electoral system; transparency of management, voting and vote counting; the process of voter registration; voting for Libyans abroad and internally displaced persons; and election-dispute resolution. Special attention should be given to voter education, because the electoral system differs from the 2011 GNC elections.

1. POLITICAL CONTEXT

1.1. SUMMARY

Libya is in the midst of a political transition away from 42 years of dictatorship. Provisional authorities, including an interim government and parliament, are running the country until a new constitution can be established. The structure of the constitution-making process has been in the background of the transition since the fall of Muammar Qadhafi. The National Transitional Council, Libya's self-appointed wartime government, drew up a Constitutional Declaration as an interim document to manage Libya's post-war transitional period. The Constitutional Declaration outlined provisional legislative and executive powers, which it entrusted to an interim parliament, and a timeline for the constitution-making process, to be led by a constituent assembly.

Elections for the interim parliament, the General National Congress, were held on 7 July 2012. The GNC had three functions according to the Constitutional Declaration: appoint a prime minister and monitor the cabinet, appoint a 60-member constituent assembly and pass interim legislation.

The GNC's first appointee as prime minister did not manage to form a government that was supported by a majority in the GNC, costing several months in the timeline laid out in the Constitutional Declaration. With the public faith in the GNC somewhat undermined, many demanded that the constituent assembly be directly elected rather than appointed by the GNC. The GNC amended the Constitutional Declaration accordingly, paving the way for direct elections.

On 13 February 2013, the GNC formed a committee of members of congress, later supplemented by 13 external advisors to draft an electoral law for the constituent assembly. The electoral law had to work within the narrow requirements of the Constitutional Declaration: that the constituent assembly have 60 members, 20 from each of Libya's three historical provinces in the south, west and east. Further demands were placed on the committee to grant special measures for women and ethnic groups, including the Touareg, Tebu, and Amazigh. The law would also define constituencies within the three provinces, as Libya had no strong tradition of sub-national boundaries. The draft law was approved by the GNC plenary on 16 July 2013.

The election will take place in a tense political environment. The political-isolation law, a lustration law passed in May 2013, has barred a host of officials from the GNC and cabinet and will complicate candidate registration. Calls for the resignation or removal of Prime Minister Ali Zidan are increasing with the deterioration of the security situation. Fighting between militias occurs across the country and assassinations are growing in the east and spreading to the west. Strikes at oil fields have reduced energy supplies and oil exports, Libya's economic lifeblood.

¹ See "Decentralisation in Libya," Democracy Reporting International, University of Benghazi and the Sadeq Institute, August 2013.

1.2. POLITICS UNDER THE NATIONAL TRANSITIONAL COUNCIL

As the revolution drew to a close, the NTC began to chart a course from its abdication of power to the establishment of a new constitution. The NTC released the 32-article Constitutional Declaration in August 2011. The Constitutional Declaration mandated a call for elections within 90 days of the declaration of liberation by the NTC (23 October 2011) and for GNC elections within 180 days from then. The GNC would appoint a government and a 60-member constituent assembly within 30 days of its first meeting. The constituent assembly would then have 60 days to draft a new constitution. The draft would be put to referendum within thirty days of completion and would be adopted by a two-thirds majority of voters.

Logistical problems forced the NTC to delay elections by one month. The NTC, which moved from Benghazi to Tripoli on 26 August 2011, also faced intense criticism from eastern-based federalists, who advocated immediate solutions to the decades of marginalisation under the Qadhafi regime. The NTC accepted the demands of this group for equality in representation between the west, east and south (according to the formula used to draft the pre-Qadhafi constitution of 1951²) despite disparities in population: the west has approximately 60 per cent of the population, the east 30 per cent and the south 10 per cent. The NTC accepted the 20-20-20 formula in Amendment 1 to the Constitutional Declaration, dated 13 March 2012. Many were still concerned about marginalisation, however, as half the members of the GNC would come from the west. They did not want the GNC to appoint the constituent assembly given this proportion. On 5 July 2012, two days before election day and several days after out-of-country polling had begun, the NTC passed Amendment 3 to the Constitutional Declaration to call for direct election of constituent assembly. The decision was controversial, and many legal experts questioned its legality given the proximity to election day and other procedural concerns.

Two hundred members of the GNC were elected in national elections on 7 July 2012 in a parallel electoral system: 80 seats were elected by closed-list proportional representation, and 120 individual candidates were elected from separate constituencies by single non-transferable vote.³ The closed-list system included a horizontal and vertical zipper for women, ensuring that female candidates were alternated on individual lists and across the top of parties' lists nationwide. Forty women were elected from the list-based system and one was elected from the majoritarian system. The elections were widely praised by international observers. The EU Election Observation Mission concluded that the Higher National

Election Commission was "transparent, efficient and professional in conducting its duties."⁴

1.3. POLITICS UNDER THE GENERAL NATIONAL CONGRESS

The GNC held its first meeting on 9 August 2012. On September 12 the GNC elected Mustafa Abu Shagur as prime minister, defeating former NTC prime minister Mahmoud Jibril by two votes. Abu Shagur was charged with forming a cabinet and submitting to the GNC for approval. He tried twice, but the GNC rejected both cabinets after complaints that they did not equally represent the regions of Libya. The GNC removed Abu Shagur on October 6. The failure of the Abu Shagur appointment cost the GNC two months in its task to organise the appointment of the constituent assembly. The GNC elected Ali Zidan as prime minister in November, and he was sworn in shortly thereafter.

After a government was finally formed under Ali Zidan as prime minister, the focus shifted to the question of drafting the constitution. There was a consensus amongst GNC members that Amendment 3 was illegal and that it would maintain its authority to appoint the constituent assembly. Large protests were held nationwide, however, and political elites even in the west questioned the GNC decision. The failure of forming a government swiftly diminished the credibility of the GNC to make further appointments. Under pressure from the public, the GNC changed course, deciding on 6 February 2013 by a vote of 97 to 87 (of 200 total members) that the constituent assembly would be elected after all. According to a nationally representative survey conducted by the University of Benghazi conducted in February and March 2013, 48 per cent of Libyans preferred direct election of the constituent body, where 21 per cent preferred appointment by the GNC and 30 per cent preferred a mix of appointment and direct election.⁵

On 13 February 2013, Mohammed Magarief, then-president of the GNC, appointed a commission of three judges — Suleiman Zoubi (chair) from Benghazi, Shaaban Abusita from the Nafusa Mountains and Mohammed Tumi of Sabha — to draft an electoral law. Thirteen non-GNC members from around the country were selected as advisors.

The election of the constituent assembly encountered a legal hurdle when the Supreme Court nullified Amendment 3 to the Constitutional Declaration since it had not received the required two-thirds majority within the NTC. The Supreme Court decision forced the GNC to amend the Constitutional Declaration by its own absolute two-thirds majority, made difficult by the divisiveness of the topic and the difficulty in reaching full attendance. Simultaneously, the GNC was debating a highly controversial lustration law for former Qadhafi officials, which also required amendment of the

2 See "Assessment of the 1951 Libyan Constitution According to International Standards," Democracy Reporting International, July 2012.

3 See "Preliminary Assessment of Libya's Draft Election Law for the General National Congress," Democracy Reporting International, January 2012.

4 "Final Report: Libya 2012," European Union Election Assessment Team, July 2012.

5 "Results of the Comprehensive National Survey on the Constitution," Research and Consulting Centre, University of Benghazi, February–March 2013 [in Arabic].

equality clause in the Constitutional Declaration. The GNC passed amendments enabling the lustration law and the election of the constituent assembly in one vote on 10 April 2013 by 140 out of 144 voting members. The GNC also granted the electoral-law committee 45 days to prepare a draft law.

The draft law proposed a plurality system with eight single- and 42 multi-member constituencies drawn within the three historical provinces, no special measures for women or ethnic groups, and high qualifications for candidates based on education and independence from the former regime. Party blocs within the GNC proposed a series of amendments to increase the representation of women and ethnic groups, and there was consensus that a plurality system would reduce the influence of political parties on the constitution-making process, perhaps making it less partisan. Some proposals, which would have required amendment of the Constitutional Declaration, increased the size of the constituent assembly to as high as 90 members.

The GNC voted on the articles in piecemeal, eventually adopting a plurality system but not blocking members of political parties from running. Six seats were reserved for women, and candidate qualifications were lowered to secondary-school education and age of 25 years. The law was adopted on 16 July 2013 by 124 of 172 voting GNC members.

GNC members representing the Amazigh, Tebu and Touareg took issue with the small number of reserved seats for ethnic groups and what some called unfair boundary delimitation (there were no Qadhafi-era delimitations to work from). The small number of reserved seats for women was also controversial.

1.4. SYSTEM OF GOVERNANCE

1.4.1. CONSTITUTIONAL DECLARATION

The Constitutional Declaration was announced on 10 August 2011 by the NTC to act as the interim constitution and as a timeline for the political transition.⁶ The document defines Libya as a “democratic, independent state” in articles 1 to 6 and guarantees legal, political and human rights in articles 7 to 15. Articles 17 to 29 establish interim institutions and a timeline for their work (see above). According to the Constitutional Declaration, the constituent assembly would have 60 days after its formation to present a draft constitution, which would then be put to a referendum. The draft would be adopted by a two-thirds majority in the referendum; if it failed, the constituent assembly would have another 30 days to make amendments. The GNC would write the electoral law for the national parliament within 30 days of the adoption of the constitution, and elections would be held within 180 days from then. The GNC would be dissolved upon the first meeting of the national parliament. The proposed timelines have expired, raising questions as to the authority of

the current institutions. The Constitutional Declaration indicates that the Supreme Court has jurisdiction over questions related to the Constitutional Declaration.

1.4.2. THE GENERAL NATIONAL CONGRESS

The 200-member GNC is the interim legislature of Libya.⁷ The GNC president convenes congressional committees to discuss urgent matters, publishes the minutes of plenary meetings and chooses the sequence of speeches in plenary. An executive bureau supports the president and seeks consensus on internal issues such as the legislative agenda, speaking times, the budget and preparations for plenary. There are around thirty permanent committees to facilitate the work of the GNC, initiate legislation or investigate specified themes, such as national security. Temporary committees, such as the one on the electoral law, are also created on an *ad hoc* basis for important pieces of legislation. The Legislative and Constitutional Committee reviews all legislation before it is presented to plenary.

The two largest parliamentary blocs in the GNC are the National Forces Alliance (NFA) and the Muslim Brotherhood-affiliated Justice and Construction Party (JCP). Friction between the two blocs has led to several boycotts by members of both. The GNC's work has also been slowed by absenteeism and the dismissal of members based on lustration laws and decisions enacted in the middle of the term.

1.4.3. THE GOVERNMENT

Prime Minister Ali Zidan and his 32-member cabinet took office on 14 November 2012. Zidan's government is the executive arm of the transitional authorities and is meant to work in tandem with the local governments (either appointed or elected in the period between liberation and the GNC election) to deliver services.

The government has been preoccupied by efforts to resolve the security crisis by rebuilding Libyan security services through the incorporation of militias formed during the revolution. In August 2013, Zidan adopted an emergency cabinet to deal with security. Economic development has been another focus, with Zidan encouraging efforts by the Ministry of Planning and Local Government to restart development efforts. Corruption and uncertainty in the security sector have slowed these efforts.

6 See “Libya's Transition: The Constitutional Declaration: A Basis for Democracy?,” Democracy Reporting International, December 2011.

7 See “Analysis of the Rules of Procedure of the General Congress of Libya,” Democracy Reporting International, H2O and the Sadeq Institute, May 2013.

2. NATURE OF A CONSTITUENT-ASSEMBLY ELECTION AND THE MAKING OF A CONSTITUTION

The increase in making or reforming constitutions since the beginning of the 1990s has reinforced the recognition of the importance of creating durable legal foundations for states embarking on democratic transitions.⁸ In post-conflict contexts especially, constitutions are seen as a means to bringing former adversaries to the table to resolve their differences through negotiation and compromise.⁹ Scholars and practitioners have acknowledged the importance of the process of constitution making rather than the outcomes of constitutional deliberations alone.¹⁰ “Democratic” or “participatory” constitution making has both normative benefits (the legitimating role of public participation and deliberation) and instrumental ones (whereby process is linked to better, more durable outcomes).¹¹ Inherent in the benefits of public participation in constitution making is the engagement of a broad spectrum of citizens, representing a wide range of interests, viewpoints and ideas; broad participation implies broad representation.

The opportunities for broad public participation have been identified at various junctures of the constitution-making process. For instance, popular ratification by the people as opposed to the legislatures alone has become an increasingly common form of legitimising new constitutions.¹² In many cases, public consultations are carried out at various points during drafting: in some cases before writing starts, sometimes mid-term or alongside the process, and often only once the first draft had been completed.¹³ Crucially, public participation has increasingly been sought at an earlier stage, in the selection of a constitution-making body or constituent assembly: through appointment or indirect election, but now often, through direct election of its members.¹⁴

Directly elected constituent assemblies created for the sole purpose of constitution-making remain relatively

uncommon.¹⁵ There are, however, reasons to entrust a directly elected and independent body with drafting a new constitution: by promoting public accountability through direct representation,¹⁶ strengthening “constitutionalism” (the constitution’s ability to constrain governments) by preparing civil-society groups to more effectively guard democratic rights,¹⁷ and improving durability and enforcement through public ownership of the process and final text.¹⁸ Furthermore, a constituent assembly with no other purpose than writing a constitution may be more efficient than one that serves as constitution-maker and legislature at the same time. Members cannot give undivided attention to constitution making, and controversies over law making can block negotiations on the constitution, as can be seen in Tunisia.

Elections for constituent assemblies are similar to legislative elections. Provisions for voter registration, campaign regulations or election-day procedures, such as those protecting the secrecy of the ballot, should not distinguish between different types of elections. But given their substantially different legal and political significance, there are crucial differences between elections for parliaments and for constituent assemblies. Most critical is the depth and breadth of representation or public participation through consultations to satisfy a distinct demand for legitimacy and ensure a democratic and durable result. International standards related to constitution making must be blended with international elections standards to evaluate the design of Libya’s constituent-assembly elections. The following sections discuss these standards.

2.1. BROAD REPRESENTATION IN CONSTITUTION MAKING

Constitutional politics are fundamentally different from day-to-day politics conducted in legislatures.¹⁹ While the latter searches for solutions within an existing framework of rules, the former is about establishing that very set of fundamental laws within which regular politics can flourish. Given the foundational nature of constitutional politics, the question of legitimacy assumes a higher position in constitution-making processes.²⁰ And while in the past the task of writing constitutions has more often than not been entrusted to legislatures or expert commissions, more inclusive representation is now considered to be preferable to enhance

8 See Franck and Thiruvengadam, “Norms of International Law Relating to the Constitution-Making Process,” in Miller (ed.), *Framing the State in Times of Transition: Case Studies in Constitution Making*, United States Institute of Peace (2011); Ghai, *The Role of Constituent Assemblies in Constitution Making*, International Institute for Democracy and Electoral Assistance (2006).

9 Widner, *Constitution Writing and Conflict Resolution*, UN University (2005); Widner, “Constitution writing in post-conflict settings: an overview,” *William Mary Law Review* 49.4 (2004), pp. 1513–41.

10 Elster, “Ways of constitution-making,” in Hadenius (ed.), *Democracy’s Victory and Crisis*, Cambridge University Press (1997), pp. 123–42. See Ginsburg, Elkins and Blout, “Does the Process of Constitution-Making Matter?” *Annual Review of Law and Social Science* 5 (2009), pp. 201–23.

11 See Ginsburg, Elkins and Blout 2009; Widner 2005; Widner 2008; Moehler, “Public participation and support for the constitution in Uganda,” *Modern African Studies* 44.2 (2006), pp. 275–308.

12 See Ghai 2006.

13 “Lessons Learned from Constitution-Making: Processes with Broad Based Public Participation,” *Democracy Reporting International*, November 2011.

14 See Ghai 2007, p. 19; See Elster 1997; Ghai 2006; Ginsburg, Elkins and Blout 2009; Ghai and Galli, “Constitution building processes and democratization,” *Democracy, Conflict, and Human Security: Further Readings*, International IDEA (2006); Samuels, *Constitution Building Processes and Democratization: A Discussion of Twelve Case Studies*, International IDEA (2006).

15 See Ghai (2006), p. 19; Ginsburg, Elkins and Blout 2009, p. 208; Widner 2005, p. 7. See Ghai 2006 p. 19.

16 Miller, “Designing Constitution-making Processes: Lessons from the Past, Questions for the Future,” in Miller 2010.

17 See Przeworski, *Democracy and the Market*, Columbia University Press (1991); Weingast, “The political foundations of democracy and the rule of law,” *American Political Science Review*, 91.2 (1997), pp. 245–63; Carey, “Parchment, equilibria, and institutions,” *Comparative Political Studies* 33 (2007), 735–61.

18 Miller 2010, p. 36. See also Voigt, “The consequences of popular participation in constitutional choice – toward a comparative analysis,” in van Aaken, List, Luetge (eds.), *Deliberation and Decision*, Ashgate (2007), pp. 199–229.

19 Ginsburg, Elkins and Blout (2009), p. 210. See also Ackerman, *We the People*, Harvard University Press (1993); Buchanan and Tullock, *The Calculus of Consent*, University of Michigan Press (1962).

20 Ginsburg, Elkins and Blout 2009, p. 206. See also Hart, *The Concept of Law*, Oxford University Press (1961); Kelsen, *General Theory of Law and State*, Russell & Russel (1961).

the legitimacy of the process, especially after conflict.²¹ What arises from the unique task facing constituent assemblies is a higher demand for participation and a functional focus on general welfare rather than short-term policy solutions.

The demand for legitimacy also reflects an instrumental aim of achieving successful outcomes. Case-study research has generated findings that suggest a positive relationship between broad representation and the presence of rights and certain democratic institutions in resulting documents.²² Participation can refer to a number of mechanisms other than the targeted inclusion of groups in constituent assemblies. Direct participation in constitution making, however, offers the first and perhaps most effective opportunity for citizens to claim ownership of the constitutional bargain. Inclusive assemblies with members representing a wide range of interests and ideas lend themselves to a deliberative style of decision-making, as opposed more homogenous entities, where members are more likely to reaffirm their existing viewpoints.²³

Providing for a broad range of views inside a constituent assembly does not alone guarantee a broadly representative constitution-making process. Formal participation, or what some have referred to as *external inclusion* (i.e., quota or reserved seats for women representatives in the assembly), does not necessarily guarantee *internal inclusion* that ensures that representatives of minority positions or dissenting views can substantively contribute to the process by participating in decision-making forums (i.e., seats for women on the assembly's executive board, or a veto for the women's caucus).²⁴ The benefits of inclusive representation can be neutralised by poorly devised or undemocratic rules of procedure that do not allow for deliberative and participatory decision-making.

2.2. CONSTITUENT ASSEMBLIES AND THE NORMS OF INTERNATIONAL LAW

International law establishes a set of minimum obligations and standards for participation in public affairs, which are applicable to constitution making. The key source is the International Covenant on Civil and Political Rights (ICCPR) and in particular articles 1(1), 2(1), 3, 19, 25, 26 and 27.²⁵ These

articles address the general minimum standards for participatory political processes. Further, the ICCPR's monitoring body, the UN Human Rights Committee (UNHRC) has established some general comments and "case law" on rights and obligations in constitution making. The right to self-determination (Article 1) and the right to participate in the conduct of public affairs (Article 25) are cited as legal foundations for the inclusion of citizens in the constitutional process.

The collective right to self-determination in ICCPR Article 1(1) has two dimensions: the external, which pertains to the right of the people to determine the form of constitution or government of their state without outside interference, and the internal, which entitles citizens to co-determine their state's domestic political status and its economic, social and cultural development.²⁶ Accordingly, Article 25, the principal legal foundation for individual participation rights, establishes the right of citizens to "take part in the conduct of public affairs, directly or through freely chosen representatives...without any of the distinctions mentioned in Article 2 and without unreasonable restrictions."²⁷

The UNHRC has issued a General Comment on Article 25, specifying that state parties should adopt "such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects." UNHRC General Comment 25 further specifies that the conduct of public affairs encompasses reforming or drafting new constitutions.²⁸ Moreover, in the case of *Marshall v. Canada*, the Committee concluded that constitutional conferences constituted "conduct of public affairs" as stated in Article 25.²⁹ The UNHRC held that the right to participate in the conduct of public affairs, directly or through chosen representatives, applies to the making of constitutions, although it left it up to the "legal and constitutional system of the state party to provide for the modalities of such participation."³⁰

The UNHRC further held that Article 25 provisions do not imply that citizens or "any directly affected group, large or small, have unconditional right to choose the modalities of participation in public affairs."³¹ It remains the state's discretion to decide the process by which a constitution will be adopted. Possible elements include direct elections, consultations and approval referenda.³² If elections or referenda are conducted, state parties can place no unreasonable or discriminatory restrictions may be placed on public participation. The UNHRC has called for processes of constitution making and reform that are transparent and

21 Ghai 2006, p. 4.

22 See Ginsburg, Elkins and Blout 2009; Voigt 2003; Miller 2010, p. 16.

23 Ghai 2006, p. 5. See also Sunstein, *Designing Democracy: What Constitutions Do*, Oxford University Press (2001); Ghai, *Human Rights and Social Development: Toward Democratization and Social Justice*. Geneva, UNRISD (2001).

24 Banks, "Expanding participation in constitution making: challenges and opportunities," *William Mary Law Review*, 49.4 (2008), pp. 1043–69.

25 Article 1(1) recognises the right of all peoples to self-determination, including the right to "freely determine their political status," pursue their economic, social and cultural goals, and manage and dispose of their own resources.. Article 2(1) requires rights be recognised "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 3 provides an accessory non-discrimination principle. Article 19 mandates freedom of expression. Article 25 protects political participation, including the right to vote. Article 26 provides an autonomous equality principle that is not dependent upon infringement of another protected right. This widens the scope of the non-discrimination principle beyond the scope of ICCPR. Article 27 mandates the rights

of ethnic, religious and linguistic minority to enjoy their own culture, to profess their own religion and to use their own language.

26 Banks 2008, p. 105.

27 Article 2 requires states "to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status."

28 HRC, General Comment 25, paragraph 6.

29 HRC, *Donald Marshall v. Canada*, paragraph 5.3

30 Franck and Thiruvengadam 2010, p. 20.

31 HRC, *Donald Marshall v. Canada*.

32 HRC, *Donald Marshall v. Canada*, paragraph 5.4–5.5.

include all stakeholders.³³ In addition, the UN Secretary General and commentators have urged states to expand direct participation in constitution making in ways that allow citizens to meaningfully influence the process.³⁴

Similar interpretations can be derived from other international documents that pertain to the right to participate or to the conduct of elections that, among other obligations, require state parties to respect citizens' right to equal participation and to take measures necessary to eliminate discrimination in public life.³⁵

2.3. CONSTITUENT-ASSEMBLY ELECTIONS AND INTERNATIONAL ELECTIONS STANDARDS

The ICCPR remains the primary international legal document that addresses political participation and electoral principles. ICCPR does not distinguish between types of elections. The focus is on the conduct of the electoral process, which should adhere to basic principles. Elections standards in ICCPR apply equally to elections for a constituent assembly.³⁶

One of the main debates in the election of the constituent assembly in Libya has been the role of political parties. ICCPR Article 22 establishes the **right of association**, which protects the right to form political parties. However, the provision refers to the right of the individual, which can be inside or outside of a formal party structure. As long as individuals are not prevented from freely associating, the principle is not breached. As such, arguments relating to the role of political parties in the constituent assembly are ideological and not legal. In this case political parties are not expressly prohibited from participating in the elections.

The choice of **electoral system** for constituent-assembly elections is also important. There are no international standards for the specific choice of an electoral system. Comparative experience suggests however that broad representation is more easily achieved through a system of proportional representation.³⁷ While plurality systems are generally hailed for their simplicity and can be especially effective where political parties enjoy little popular support, they tend to produce considerable distortions between voter preferences and representation.³⁸ They tend to be less favourable to women, minorities and other underrepresented

groups.³⁹ Special measures, such as quotas or systems of reserved seats, aimed at enhancing the representation of women and other underrepresented groups, are useful to address systematic under-representation, but they are more easily integrated into proportional systems.⁴⁰

Proportional systems have been used in a majority of cases of direct election of constituent assemblies. Some countries (South Africa, 1996) resorted to a national single-district proportional list, while in others (Namibia, 1990) a lists system with sub-national constituencies was used. In Tunisia in 2011, the system was closed-list proportional representation. Some states have used a mixed system to maximise representativeness of different interests: in Nepal, in 2007, 240 members were elected from single-member constituencies and 335 from national party lists, while 26 were appointed.⁴¹ Nepal tempered the influence of political parties by introducing rigid requirements for participation based on gender, caste and ethnicity in both the list and seat races. In 2006 and 2007, Bolivia enhanced representation for smaller parties by preventing parties from taking a third seat in the district if the runner up received at least five per cent of the vote.

The **equality of the vote** is one of fundamental considerations for any election. ICCPR Article 25 and UNHCR General Comment 25, paragraph 21, state that electoral boundaries and the method of distribution of votes should not distort the principle of "one person, one vote." Nonetheless, the principle of equal representation does not apply in some exceptional cases, for instance in bicameral legislative elections in federal states, where seats in one chamber are based on population and in the other are equal for each sub-national unit (state, province, etc.) as their purpose to provide representation for that sub-national unit, rather than an electorate. A similar deviation from the equality of the vote might be justified in the case of constituent-assembly elections in federal states, or states where historical factors or regional identities are an important part of the political and social fabric. In some cases, the heightened demand for broad inclusion in constitution making can potentially justify the over-representation of regional groups in the interest of national consensus on the constitutional bargain.

Although international norms provide that the **right to stand** should not be restricted beyond citizenship and age in legislative elections, some arguments in favour of further restrictions can be made for constituent-assembly elections.⁴² Higher qualification criteria for members of a constitution-making body are not uncommon. Constitution making, given its technical nature, can benefit from experts in

33 HRC, Concluding Observations, Bosnia and Herzegovina 2006–2007, paragraph 8

34 UN Secretary General, "Guidance of the Secretary General, United Nations Assistance to Constitution-making Processes" (2009). See also Banks 2008, p. 1055.

35 Including the Universal Declaration of Human Rights (1948), the International Convention on the Elimination of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of Persons with Disabilities (2007), the African Charter on Human and Peoples' Rights (1981) and the Arab Charter on Human Rights (2004).

36 One obvious exception is the obligation of periodic elections.

37 See Brandt, Cottrell, Ghai and Regan, *Constitution-making and Reform: Options for the Process*, Interpeace (2011). See also "Pluralism in Constitutions: A Research Report," Democracy Reporting International, April 2013; Ghai 2006; Wiedner 2008; Samusel 2006; Ginsburg, Elkins and Blout 2009.

38 See Electoral System Design, International IDEA (2008); Ghai 2006; Banks 2008; Brandt, Cottrell, Ghai and Regan 2011.

39 Reynolds, Reilly and Ellis 2005.

40 See "Guidelines for Gender Reports: Explanatory Notes and Reporting Templates," volume 2, Organisation for Security Cooperation in Europe, August 2012.

41 Asian Network for Free Elections, "Constituent Assembly Election," 10 April 2008, p. 33.

42 See Brandt, Cottrell, Ghai and Regan 2011.

various fields, especially in cases of small assemblies or those where no expert quotas exist.

On the other hand, since constitutions are social contracts between citizens, many hold that they should be drafted by representatives of the people regardless of educational background or level of expertise.⁴³ While some countries have used quotas for assembly members with a background in pertinent fields, most have not adopted similar requirements, leaving it up to voters to choose their representatives. In India, for instance, it was the political parties that supported the candidacy of some of the country's key constitutional experts. The downside of this approach is that voters are group actors; there is no single decision maker who can design the inputs into the constitution-making process. Even if a majority of voters would agree that experts should be elected to the constituent assembly, individual voters might use other logics — such as commitment to local priorities — to choose between candidates in a sub-national constituency and in fact elect no experts.

In some cases, the **right to vote** in constituent-assembly elections is broader than in legislative elections. Eritrea (1997), for instance, had no provisions for out-of-country voting in parliamentary elections, but allowed Eritreans abroad to vote for the constituent assembly. Afghans in refugee camps were also invited to vote for the constitutional Loya Jirga in 2004. Similar provisions have been made for other groups of voters who are not necessarily eligible to participate in regular elections. In Kenya (2004), a court decision expanded the right to participate in a referendum to prisoners, although incarcerated citizens are ordinarily stripped of suffrage rights in national elections. The argument for expanding suffrage in constitutional moments is that constitutions set rules that affect the lives of citizens more fundamentally than legislatures, and over a much longer period time, for instance well after the expiration of a given group of voters' current disqualifying status.

2.4. CONCLUSIONS

There is no blueprint for constitution making or the conduct of elections to constituent assemblies. Case studies indicate that the type, form or level of participation depend on the socio-political context of a given state. There is, however, an emerging consensus among scholars and practitioners on the importance of broad representation in participatory constitution making. Normative arguments for representativeness emphasise the legitimising function of inclusive and deliberative processes. The trend towards inclusiveness is supported by international law, notably the ICCPR, which establishes minimum obligations for participation in public affairs that are applicable to constitution making or reform.

3. ASSESSMENT OF THE LEGAL FRAMEWORK

This assessment is based on an unofficial translation of the of Law 17 of 2013, dated 16 July 2013, including the appended constituency table. The original Arabic version and an English translation are provided in the appendix. The GNC might adopt other versions of the law, or the national electoral management body — the High National Elections Commission (HNEC) — might adopt regulations that clarify aspects of the law. At the time of publication, the constituency maps, special measures for women and ethnic groups, voter-registration procedures and determination of electoral system for multi-member districts (among other issues) appeared to still be a matter of debate and subject to change by the GNC or HNEC.

3.1. STANDARDS FROM INTERNATIONAL AND DOMESTIC LEGAL INSTRUMENTS

Libya has signed or ratified a number of international instruments that are relevant to the country's electoral framework. Most importantly, Libya ratified the International Covenant on Civil and Political Rights. The ICCPR sets out the basic international standards for genuine elections. Article 25 of the ICCPR, which is the principal article relevant for elections, states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

To take part in the conduct of public affairs, directly or through freely chosen representatives;

To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

To have access, on general terms of equality, to public service in his country.

Other articles of the ICCPR are also specifically relevant to genuine elections in Libya including:

Article 2 (in relevant part):

Each State Party to the present covenant undertakes: (a) to ensure that any person whose rights or freedoms are herein recognised as violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) to ensure that the competent authorities shall enforce such remedies when granted.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection

43 See Elster 1995.

against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 19

Everyone shall have the right to hold opinions without interference.

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

For respect of the rights or reputations of others;

For the protection of national security or of public order, or of public health or morals.

Libya is party to a range of other international and regional instruments that pertain to elections. Article 5 of the International Convention on the Elimination of Racial Discrimination states,

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service....

Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women⁴⁴ states:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 13 of the African Charter on Human and Peoples' Rights states: "Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law." Article 24 of the Arab Charter on Human Rights states: "Every Citizen has the right... 3. To stand for election or choose his representatives in free and impartial elections, in conditions of equality among all citizens that guarantee the free expression of his will." Finally, Article 29 of the Convention on the Rights of Persons with Disabilities States to "ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected."

The Constitutional Declaration of Libya includes relevant provisions, including:

Article 6

Libyans shall be equal before the law. They shall enjoy equal civil and political rights, shall have the same opportunities, and be subject to the same public duties and obligations, without discrimination due to religion, doctrine, language, wealth, race, kinship, political opinions, and social status, tribal or eminent or familial loyalty.

Article 14

Freedom of opinion for individuals and groups, freedom of scientific research, freedom of communication, liberty of the press, printing, publication and mass media, freedom of movement, freedom of assembly, freedom of demonstration and freedom of peaceful strike shall be guaranteed by the State in accordance with the law.

Article 15

The State shall guarantee the freedom of forming political parties, societies and other civil societies, and a law shall be promulgated to regulate the same.

The following assessment analyses Libyan electoral framework against these international instruments, the comments and opinion of UN human-rights bodies, the Libyan Constitutional Declaration and relevant electoral "good practice" documents.

3.2. THE ELECTORAL LAW FOR THE CONSTITUENT ASSEMBLY (LAW 17 OF 2013)

On 16 July 2013, the GNC passed the electoral law for the constituent assembly of Libya, Law 17 of 2013. It applies only to forthcoming elections to a 60-member body responsible for drafting of a new Libyan constitution. In light of the discussion above, the assessment accounts for areas where international standards of constitution making supplement those of elections, particularly in the area of broad representation.

⁴⁴ Libya has ratified CEDAW subjects to the following reservations: 1. Article 2 of the Convention shall be implemented with due regard for the peremptory norms of the Islamic sharia relating to determination of the inheritance portions of the estate of a deceased person, whether female or male. 2. The implementation of paragraph 16 (c) and (d) of the Convention shall be without prejudice to any of the rights guaranteed to women by the Islamic sharia.

3.2.1. ELECTORAL SYSTEM

The law is brief in describing the electoral system. Article 6 states: “An individual electoral system, based on simple majority, shall be adopted. The candidate who obtains the highest number of votes shall win.” The current draft of the constituency chart, however, indicates eight multiple-member districts and 42 single-members districts, suggesting a parallel system that includes both first past the post (FPTP) and single non-transferrable vote (SNTV) in multi-member districts. Under SNTV, each voter casts one vote for a candidate in a district where there is more than one seat to be filled. Those candidates with the highest vote totals win those seats. Voters vote for candidates rather than political parties.⁴⁵ In both FPTP and SNTV, the voter has one vote and a candidate with the majority of votes wins the seat.

Different electoral systems can produce very different kinds of outcomes, making the electoral system a critical component of the election law. The HNEC is expected to issue a clarification of the law in its regulations that will confirm that SNTV will be used in the multi-member districts. In any case, these clarifications should be combined with robust voter education.

The NTC, through the Constitutional Declaration, limited the options for making the system more inclusive and representative, especially as will be seen further below with respect to women and ethnic minorities, by recreating the numerical membership and seat distribution of the 1951 constituent assembly.

3.2.2. SPECIAL MEASURES FOR WOMEN

The values of representation and inclusion are arguably more important for a constituent-assembly election than a parliamentary election. The current Constitutional Declaration does not bar discrimination on the basis of sex or ethnicity, making the electoral law the only defence against such discrimination in the electoral process.

Libya is obligated by Article 7 of CEDAW, which requires state parties to take measures to eliminate discrimination in political life and ensure women have the right to stand for office and participate in the formulation of government policy on equal terms with men. Under Article 3, state parties must take measures in all fields, including political, to guarantee the advancement of women “for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.” Under Article 3(3) of the Arab Charter, Libya is obliged to “take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter.”

The quota for women is very low at a total of six, or 10 per cent of the membership of the assembly. Two women’s seats are

allocated to each of the three regions, and assigned to particular sub-constituencies. In the western region, two sub-constituencies are specifically assigned to women. This arrangement restricts voters’ choices and the right to candidature for men. In the other two regions, two women have been placed in sub-constituencies that are multi-member and that the woman candidate who gets the most votes in that jurisdiction will be granted the seat. Assuming that the electoral system will make it difficult for women to win other seats, 10 per cent falls significantly short of the UN Beijing target of 30 per cent and the 16 per cent in the GNC achieved by a vertical and horizontal zipper for the list-based seats.

Some GNC members have argued that the quota is low since the number of seats in the constituent assembly is low, leaving little room to satisfy other demands placed on membership, especially for regional and ethnic representation. However, women and regional groups could be represented simultaneously. Furthermore, the regardless of their relative weight, the absolute number of only six women creates a small and easily marginalised bloc, even with a high supermajority requirement for decision making. The constituent assembly should consider rules of procedure that guarantee women’s participation in decision-making forums, encourage coalition building and promote international standards against discrimination.

The method of assigning reserved seats for women is unwieldy. In the western region, two constituencies were created where only female candidates can stand, whereas in the southern and eastern regions, women will run alongside their male counterparts in multi-member districts, with one seat assigned to the best performing female candidate. This means that in the latter two regions, women with the highest number of votes may receive fewer votes than some of the men they will win against.

It is not likely that women will be elected on other seats, given that female candidates tend to perform poorly in plurality voting systems. Taking the experience of the GNC elections, of the 2,501 candidates who ran for the 120 individual seats, only 88 women stood for elections and only one was elected.⁴⁶ The poor performance of women in plurality systems is a global trend.⁴⁷ According to the Council of Europe’s Venice Commission, “one of the most well-established findings is that countries applying proportional representation systems have a higher proportion of women in their parliaments than those with majority or plurality systems.”⁴⁸ In this way, the Libyan law effectively pre-determines which parts of the

45 See Electoral System Design, International IDEA (2008).

46 Megan Doherty, “Women’s Political Participation in Libya: Quotas as a Key Strategy for States in Transition,” remarks at Global Gender Forum, Washington, D.C., 28 February 2013.

47 See “Increasing Women’s Political Representation: New Trends in Gender Quotas,” in *Women in Parliament: Beyond Numbers*, International IDEA (2005), p. 100; *Equality in Politics: A Survey of Women and Men in Parliaments*, Inter-Parliamentary Union (2009).

48 Council of Europe, “Impact of electoral systems on women’s representation in politics,” 8 September 2009.

country will be represented by men and which by women. Recognising the barriers to women's participation in Libyan society and politics,⁴⁹ women's advocacy organisations had pushed for a 35 per cent quota for the constituent-assembly election.⁵⁰

3.2.3. SPECIAL MEASURES FOR ETHNIC GROUPS

Under CERD, Libya is committed to guaranteeing equality without distinction as to race, colour or national or ethnic origin, in the right to stand for elections.

The law provides no quota for ethnic groups. Article 5 of the Law provides that the country's "components with cultural and linguistic character" should be considered in the election to the constituent assembly. The chart appended to the law sets five seats aside for candidates representing the "cultural components," although the three groups — Amazigh, Tebu and Touareg — are colloquially believed to be guaranteed two seats each, or six seats in total in an Assembly comprising 60 members: two Amazigh seats in the west, two Touareg seats in the south and two seats for Tebu one in the east and one in the south. The precise system by which these representatives will be elected is not clear in the law.

Whether five or six, the number of seats allocated to the components does not provide adequate representation. The groups are underrepresented according to their share of the national and local population. It is estimated that the Amazigh alone constitute 10 per cent of the Libyan population.⁵¹ The one seat allocated to the Amazigh in the list is in the western region, in Aljabal, where this group is heavily concentrated. There are many other jurisdictions in the west, however, where Amazigh are dominant. The Tebu and Touareg are even more scattered throughout the country, yet guaranteed representation is limited to these specific areas. The most politically active or influential members of these groups might not reside in these areas and therefore not able to run for a reserved seat.

Groups that are relatively concentrated and well organised can benefit from a plurality electoral system, but their odds depend on the delineation of constituency borders. Groups that are split among districts will be less likely to be represented.

3.2.4. UNIVERSAL SUFFRAGE

Article 25 of the ICCPR recognizes and protects the right of every citizen to vote and to be elected. The Libyan Constitutional Declaration does not specifically establish the right to equal and universal suffrage, nor does the law for the election of the CA. The CA law merely states: "The election

shall be free, public and direct." The law does, however, set out the criteria necessary for one to vote and to be elected. ICCPR requires that any restrictions on the exercise of fundamental freedoms and human rights, including the right to participate in an election, be "objective and reasonable." Under the 2012 parliamentary election law, members of the military are barred from voting. Although Libya is not alone in this practice, it is considered to be a violation of article 25.

Article 7 leaves out-of-country voting entirely to the discretion of the commission.

The political-isolation law applies to the CA election, barring anyone associated with the former regime or who acted in a way favourable to it from running for the CA. As discussed in the section on candidate qualifications, there are a number of issues around these particular criteria.

3.2.5. EQUALITY OF THE VOTE AND BOUNDARY DELIMITATION

How election districts are determined is critical to ensuring equal suffrage and that the election reflects the will of the people as mandated under ICCPR Article 25. As the UNHRC has said in General Comment 25, paragraph 21:

The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.⁵²

Article 5 of the electoral law for the constituent assembly provides only that there will be three electoral regions and that each region will have 20 seats, "provided that representation of components with cultural and linguistic character shall be considered. Though it is positive the law mentions that the value of communities of interest should be considered, there is no further information on how the constituencies were determined. No additional criteria for districting within these three regions are mentioned. The specifics of boundary delimitation are left to the HNEC.

The law provides for three electoral regions that are each granted 20 seats each, despite a significant discrepancy in their populations: Tripolitania (west) with some 60 per cent of the population, Cyrenaica (east) with 30 per cent, and the Fezzan (south) with 10 per cent. The three electoral regions are further subdivided into main constituencies and sub-constituencies. The chart appended to the law specifies that the sub-constituencies elect mostly one but up to three seats in the constituent assembly. Although done inconsistently,

49 See Council of Europe 2009; "A Revolution for All: Women's Rights in the New Libya," Human Rights Watch (2013).

50 Human Rights Watch 2013, p. 22.

51 Ali Al-Gattani, "Libyan Amazighs Push for Recognition," *Magharebia*, 18 August 2013.

52 Also, "the maximum difference in voting power should not exceed 10 to 15 per cent." Code of Good Practice in Electoral Matters, Venice Commission (2002), p. 17

the boundaries between sub-constituencies are drawn to respect generally the principle of equality of the vote; that is, to reflect a similar voter-to-seat ratio across each electoral region.

In the preliminary list of constituency allocations, it appears that central Tripoli, with approximately 1.5 million people out of a total population of about 6 million,⁵³ has six seats, the same number as many other much smaller jurisdictions.

Especially in an election where the concerns regarding representation and inclusion are high, it is important that matters regarding boundary delimitation be clearly described and explained in the law. As the constituencies are different from those established in 2012, special care must be taken to advise voters of changes in their polling stations.

3.2.6. CANDIDATE QUALIFICATIONS

Article 9 requires that candidates be at least 25 years old; hold a secondary degree; not be a member of the HNEC, the government or the GNC (though candidates can resign current posts to run for the constituent assembly); not be in the military; not have been convicted of a crime of “moral turpitude”; meet the requirements of the lustration law; be seconded by one hundred citizens; and pay a deposit.

Candidates must be seconded by one hundred voters from one’s constituency. UNHCR General Comment 25 states: “If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy.” This number does not seem overly onerous, and is not out of the realm of practice in other countries, but it depends on the size of the constituencies. Requiring a deposit to run for office is not unusual, but the amount required here — 500 Libyan dinars (300 euros) — might be excessively high. One must balance the interest in limiting the election to candidates who are committed and to avoid spurious or frivolous candidacies and having a manageable number of candidates on the ballot, with the interest in opening up the process to all interested citizens who wish to serve. A heightened interest in inclusivity in this election, and difficult economic conditions for many Libyans, especially youth, might tilt the balance in the direction of the latter.⁵⁴

There is cause to question the requirement that one have a secondary school diploma or its equivalent. General Comment 25, paragraph 15, states: “Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education....” The education requirement can be seen as problematic in this light, especially given its potential impact on the participation of women or candidates outside the urban centres. At the

same time, because of the unique nature of a constituent assembly, in that a small body of members will perform a specific set of duties related to the process of drafting a constitution within a short time-frame, it may appear that an educational requirement is a reasonable limitation.

The political-isolation law applies to the constituent-assembly election. Former officials are excluded from participating in political affairs for a certain period of time depending on their former seniority, the most punitive exclusion before for a period of 10 years. The question is if this restriction is reasonable under ICCPR. While some observers have considered this to be the case for the GNC elections,⁵⁵ others were more cautious.⁵⁶ It appears that the restrictions imposed by the political-isolation law are broad and vague, while restrictions should be narrow and specific.

The ability of others outside the HNEC to object to a candidacy is contained in Article 28. Article 18 requires the HNEC to investigate and potentially exclude candidates who violate Articles 15 to 17 regarding campaign rules. There is no provision for challenging such determinations or appealing them. There is no specification as to what burden of proof must be met in order for such a determination to be made. Rights of appeal might be contained in the civil procedure.

3.2.7. ELECTION ADMINISTRATION AND THE ELECTORAL MANAGEMENT BODY

An independent, neutral electoral-management body that is distinct from the government is recommended to help ensure a credible election process. Lack of faith in the independence and impartiality on the part of election management bodies has caused civil strife and protracted litigation over election results in countries from Africa to Latin America. Usually this assurance of independence is achieved by making the process for selection of members of the commission an open and transparent process with the participation of many stakeholders and checks and balances among the judicial, executive and legislative branches in the final appointments process.

International documents underscore the importance of this point, most directly UNHCR General Comment 25, paragraph 20: “An independent electoral authority should be established to supervise the electoral process and to ensure that it is

53 Umar Khan, “Tripoli Election Committee Chairman Explains Local Council Vote Plans in Interview,” *Libya Herald*, 27 March 2013.

54 See Shaimaa Abul Hajj, “The Scourge of Youth Unemployment in Libya,” *Equal Times*, 20 June 2013.

55 The EU Election Observation Mission noted with respect to the political-isolation law that, “An application of such an exceptional legal requirement would, under different circumstances, contravene international standards. Nonetheless, consolidating a democratic regime is directly indicated into the draft Constitutional Declaration, and there is no doubt that this objective justifies a temporary deviation of the protection of citizens’ electoral rights.”

56 The Carter Center remarked, “The Center recognizes the NTC’s motivation to exclude from this election cycle those individuals allegedly involved in supporting human rights violations or corrupt practices associated with the previous regime, particularly given its mandate to form a constitutional council. However, restrictions on the political participation of citizens should be strictly limited and should be based on clearly defined and communicated criteria that are consistently and objectively applied. Such restrictions on electoral rights should be reviewed regularly with a view toward eliminating the restriction as soon as possible, and the state should continue to meet its obligation to protect the individual’s right to effective remedy.”

conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.”

The law, given its lack of substance, gives a great deal of discretion to the HNEC. It is reassuring that in Law 8 of 2012 establishing the HNEC, Article 2 states:

The Commission shall exercise all the tasks, competences and authorities stipulated in this law with utmost independence and impartiality. The decisions delivered by the Commission shall be made public and no one shall interfere in its functions and competences or limit its powers.

There is also a vague provision regarding the criteria by which members are to be chosen by the GNC. They must be:

highly regarded, characterised by impartiality, non-affiliation to any political party or entity and meet the criteria provided for in Law 26 (2012) on the High Commission for the Implementation of the Integrity and Patriotism Standards and its amendments.

Many laws around the world provide for much more explicit criteria to ensure neutrality and balance.

The HNEC has a great deal of authority over the voting process in the present law. This makes it all the more vital that it have the capacity to act independently, impartially and in a non-discriminatory manner at every stage. While a new law establishing the HNEC would be ideal, for this election the HNEC should take all steps possible to reassure the public of its fairness and independence.

3.2.8. VOTER EDUCATION

There is no provision in the law for voter education, which is particularly important given that the system has changed since 2012 and the unique nature of the election. A comprehensive regulation is recommended providing both a structure for voter education and clearly informing the public as to what to expect from such a programme. The government, through the HNEC, has a duty to educate the public on how to vote. UNHCR General Comment 25 states: “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right.... Voter education and registration campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community.”

3.2.9. TRANSPARENCY

UNHCR General Comment 34 on ICCPR Article 19 states: “the principles of transparency and accountability are...essential for the promotion and protection of human rights.” The UNHRC has interpreted ICCPR Article 19 to mean that citizens have a right to access public information. Factors that enhance electoral transparency include: consultation with stakeholders (voters, candidates, parties and civil society organisations); the clarity of the electoral rules; the visibly equal application and enforcement of laws and regulations; open decision making; effective communication; and ensuring the public’s access to information and processes. Paragraph 19 goes so far as to say: “States parties should proactively put

in the public domain Government information of public interest.”

There are few provisions regarding transparency in the law save with respect to campaign-finance rules. Of particular note is that there are no provisions for open meetings or publication of minutes of the HNEC, which also is not provided in Law 8 of 2013 establishing the commission. Similarly, there is no requirement that decisions of the HNEC be published and reasons provided, and nothing in the law requires public consultation on constitution making.

The law includes no requirements for transparency or access to information regarding voter registration, turnout, candidates or other data. As is often done in countries around the world in the interest of transparency, and in comportment with good practices, candidates and other stakeholders should have the right to be provided with the voter register.

Article 22 provides that counting of votes at the polling station level should be done in the presence of candidate agents and observers. There is no requirement, however, that results be published and posted at the polling place level, though this was done in practice in 2012. There is also no requirement that party agents be given a copy of the results report.

There is no general requirement in the law that the election and voting process be conducted in a transparent manner, which is advised.

3.2.10. OBSERVATION

The law provides for international and citizen observation in accordance with international good practice. Article 22 provides that counting of votes at the polling-station level should be done in the presence of candidate agents and observers. In addition, Article 40 states: “Civil-society organisations, competent regional and international organisations as well as candidate agents may engage in observing the electoral process. The Commission shall be bound to facilitate their tasks in a manner that guarantees free and fair elections.”

It is unusual that, under Article 40, such observation groups are required to submit their reports to the HNEC “on the progress of elections.” Observation groups should consult with the HNEC but still have discretion over what information it is required to provide to the HNEC about its findings in advance of the election. The Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organisations states:

Election management bodies, other governmental authorities, funders and other supporters recognise and honour the premise that the information gathered, analysis performed and conclusions developed by non-partisan citizen election observation and monitoring organisations belong to the respective citizen nonpartisan observation and monitoring organisations, and those organisations are responsible for determining in light of legal requirements the timing and manner for presenting their findings and recommendations.

3.2.11. MEDIA

UNHCR General Comment 34 states:

The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.

Freedom of the media and its ability to have wide access to key information is critical to the ability of the public to exercise the right to vote and the fundamental right to receive information. As UNHCR General Comment 25, paragraph 25, explains:

In order to ensure the full enjoyment of rights protected by Article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.

At the same time it is important to introduce safeguards to ensure that the media cannot be abused, for example, by publicly owned media being dominated by the governing party.

In Article 14, the law provides for “equal footing” among candidates on public media and for equal airtime, though it is unclear how this will be monitored and implemented. It is left to the HNEC. One matter the HNEC might keep in mind in implementing this provision is the need for equality not just in terms of quantity, but also quality of airtime. The UN Office of the High Commissioner for Human Rights has stated: “Fair media access implies not only allocation of broadcast time or print space to all parties and candidates, but also fairness in the placement of timing of such access (i.e. prime-time versus late-night broadcasts, or front-page versus back-page publication).”⁵⁷

Article 15 mandates that campaigns be treated impartially on the part of mass media.

This should apply to publicly owned media in accordance with international principles. Read literally, this would appear to also include privately owned media and social or electronic media, which should be clarified in order to ensure there are no restrictions on legitimate public expression of opinions or commentary. Penalties for failure to be impartial, or to provide equal airtime, are not described.

There is no reference in the law to political advertising through the mass media: whether it will be allowed and if so under what conditions. It may be advisable going forward to

establish a separate media law. A general statement on freedom of the press, particularly during election periods, either in this law or in a media law, could be useful.

3.2.12. VOTER REGISTRATION

UNHCR General Comment 25, paragraph 11, states:

States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote.

According to these guidelines, it is preferable that the law make the registration system clear and ensure that it is accessible to all eligible voters.

Article 7 of the law briefly addresses voter registration. The HNEC is given wide latitude to determine the process of voter registration, though the GNC has made clear its preference that a new register is to be prepared (that is, that it not be based on the register used in the 2012 GNC elections), and that the primary method of registration should be SMS. Registration by SMS requires that Libyans send their national ID number to the HNEC. The national ID number system has changed recently, requiring Libyans to apply for a new number after sending their family-book number and other data to the national civil-registry office. Provisions for voter registration will be made in person during a fixed period to be determined by the HNEC. It is concerning, however, that mobile network coverage is not universal in Libya, especially in the south. Furthermore, certain marginalised groups are often much less likely to have documentation necessary for national identification cards or possess the cards themselves, including women, the poor, the displaced and ethnic minorities.⁵⁸ It must be ensured that all citizens eligible to hold such a number have it in time to register for the election. There is serious concern as to whether those without the national ID number will be able to obtain it in time for the election given the state of public services. Furthermore, the voter register should be made public and available for challenge before election day, which is currently not provided in the law.

Article 8 sets out the requirements regarding who is eligible to register to vote. First, one must be 18 years old at the time of registration. Usual practice is to require a citizen to be 18 years old at the time of the election in order to register to vote. The article also states that one must be “legally competent” to register to vote. That term is not defined. One might look to the election law utilised for the 2012 election for elucidation on this point, although unlike several other laws, Law 4 is not

⁵⁷ “Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections,” paragraph 91, Office of the UN High Commissioner for Human Rights.

⁵⁸ See Tova Andrea Wang, “Voter Identification Requirements and Public International Law: An Examination of Africa and Latin America,” The Carter Center (2012).

referenced in the preamble to the present law. The political-isolation law might also have implications for the definition of this term. Under the 2012 law, if that is what is to be followed, members of the military are barred from registering. Although Libya is not alone in this practice, it may be contrary to universal suffrage under Article 25 of the ICCPR and good international practice.⁵⁹

There is no reference to registration for internally displaced persons. The UN estimates that as of the end of August 2012, there were between 65,000 and 80,000 IDPs in Libya.⁶⁰ In 2012, the HNEC established special centres for IDP registration and voting.

Article 7 leaves overseas voting to the discretion of the HNEC. Increasingly, good practice is considered to include making some provision for out-of-country registration and voting. This is especially the case in Libya given the number of eligible voters who fled during the conflict or who were living in exile under the Qadhafi regime and did not yet return.

3.2.13. CAMPAIGNING

Most relevant to campaigning is ICCPR Article 19, which expresses the right to freedom of opinion, expression and to information. Article 19 does, however, allow for certain exceptions in paragraph 3, including in some circumstances measures that are necessary: “(a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.” The restrictions in the electoral law must be assessed to determine whether they are all necessary for these purposes, or rather reach too far, crossing the line into unreasonable restrictions on the right of free expression, especially with regard to penalties. UNHCR General Comment 34 says that restrictions under paragraph 3 “must conform to the strict tests of necessity and proportionality.” General Comment 34 states:

[The UNHCR] observed in general comment No. 22 that ‘the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations...for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.’ Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination.

Moreover, UNHCR General Comment 34 regarding Article 19 applies to some of the restrictions in the law when it explains that freedom of expression includes:

political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious

discourse.... The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20.

Furthermore, UNHCR General Comment 34 states:

The Committee has observed that in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition...States parties should not prohibit criticism of institutions, such as the army or the administration.⁶¹

Article 15 of the law sets out the broad principles under which campaigning is to be conducted. The campaigns must comply with Islamic *sharia*, public order and ethics; the administration and the mass media must be impartial; campaign finance must be transparent; there should be equality among candidates; observance of the privacy and dignity of the candidates; and national unity and sovereignty should be observed.

The concept that campaigns must be in accordance with Islamic *sharia* is unusual from a global perspective. Given prior experience in the 2012 election, it is not expected that this will impact the rights of any citizen to stand for election or, in itself, restrict the ability to campaign freely beyond prohibiting use of uncivil or provocative speech, which is addressed in other provisions in the law as well. Islamic *sharia* is unclear on punishments for such violations, however, and clarity in the law is advised. The lack of clarity in which aspects of Islamic *sharia* apply and to what extent could lead to misinterpretations of Islamic law that would place overdue restrictions on particular candidates, especially women.

The law contains very strict provisions regarding statements in the course of campaigning. This is cause for concern especially given that in June 2012 two party officials were charged with insulting Islam and “instigating division” for election poster cartoons. For example, Article 13 states that candidates can express their opinions but “without prejudice to public order.... The use of expressions that may constitute incitement to commit crimes or disrupt public security, hatred, discrimination or jeopardise the unity of Libya shall be

59 “General National Congress Elections in Libya, Final Report,” The Carter Centre, p. 27; International Parliamentary Union, “Free and Fair Elections: International Law and Practice,” p. 128.

60 UNHCR country operations profile — Libya (2013).

61 The Arab Charter, to which Libya is a party, provides in Article 32 that the Charter ensures the freedom of expression and such “rights and freedoms are exercised in the framework of society’s fundamental principles and shall only be subjected to restrictions necessary for the respect of the rights or reputation of others and for the protection of national security or of public order, health or morals.”

prohibited.” Article 16.6 prohibits “incitement, slandering other candidates or stirring tribalism, regionalism or ethnic sentiments.”

The enforcement of articles 15 through 17 rests with the HNEC, which can exclude candidates for breach. There is no noted right of appeal, though this might be covered in the civil code. These provisions, particularly Article 15(1) and (6) Article 16(6) if strictly enforced would result in a breach of ICCPR Article 25 as being overly restrictive of the provisions relating to freedom of expression.

Article 31 makes it a crime punishable by at least one year in prison and a fine of 5,000 Libyan dinars (3,000 euros) to publish or broadcast “false statements or reports or other sort of deception in matters related to the elections or the behaviour or ethics of candidates with the intention of influencing the results.” Article 32 makes it a crime punishable by a sentence of at least six months to insult “verbally or with a gesture, the commission chair, a member of the board of commissioners or an official in charge of the electoral process.” Under Article 37, “use of expressions that may constitute incitement of crimes, disruption of public security, instigation of hatred or discrimination, reflect regionalism, tribalism, clannishness, or anything that may be detrimental to public values or defamatory against some candidates or votes” is a crime punishable by imprisonment or a fine not to exceed 5,000 Libyan dinars (3,000 euros) and a ban from running for office for five years. It is also a crime to campaign through international media.

There are other countries with similar provisions, and they do raise serious questions under the international law cited above and good practice. The penalties, however, may be disproportionate. It is recommended to refer some of these offenses to civil law regarding libel and slander. Article 14 of the Constitutional Declaration states: “Freedom of opinion for individuals and groups...freedom of communication...freedom of movement, freedom of assembly, freedom of demonstration and freedom of peaceful strike shall be guaranteed by the State in accordance with the law.”

Also left unstated in the law is how it will be determined if one’s remarks come within the purview of these restrictions, who will make such determinations, and how full due process for anyone accused of such transgressions will be provided.

3.2.14. CAMPAIGN FINANCE

Article 15 of the law requires “transparency of the electoral campaign in terms of funding sources and spending methods of allocated funds.” Article 17 requires the HNEC to determine a spending limit and candidates to “clarify the funding sources” of their campaign. As long as the campaign-spending limit is “reasonable,” this conforms to UNHCR General Comment 25. The transparency of campaign financing should extend to the public and civil society, not just election authorities.

Article 16 makes it illegal for a campaign to use foreign or “suspicious” funds. While it is not unusual to bar funding from

foreign sources, the term suspicious might be clarified in order to give fair notice to the candidates and campaigns as to what sources will invite scrutiny.

Article 19 requires candidates to open a special campaign bank account, which is common practice. Article 20, in accordance with international obligations and good practices, requires that candidates submit to the HNEC a statement of their donations, the sources and nature, and campaign related expenditure. However, the candidates must do this “within seven days from polling day.” It is recommended that such filing be made, at least on a preliminary basis, before election day so that such information is available to the voting public before they cast their ballots. Again, it should be the case that such data is accessible to the public and civil society. It is appropriate that the exact format of reporting be left to HNEC regulations.

3.2.15. POLLING PROCEDURES

UNHCR General Comment 25, paragraph 12, states: “Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively.” In addition to ICCPR, Article 29 of the UN Convention on the Rights of Persons with Disabilities requires states to “ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected.”

There is little information on polling-place procedures in the present law. Article 21 states: “The Commission shall determine the procedures for polling, sorting and counting in polling stations and centres.” Article 22 says that voting will take place between 8:00 am and 7:00 pm, “when the head of polling centre declares the end of the polling process. Polling may continue beyond 7:00 pm if some voters are still queuing to cast their votes inside the polling centre. In this case only those shall be allowed to vote.” Article 23 requires a secret ballot and that people with special needs may be assisted in marking their ballot.

While the details of voting procedures can be left to regulation, some basics should be established by law. The current language leaves too much discretion to the HNEC and other officials involved in the process. Wide discretion can lead to disparate implementation. There is no information in the law on the type of ballot that will be used, which goes hand in hand with the lack of specificity about the voting system that will be employed. The HNEC should widely publicise the image of the ballot well in advance of the election.

As the ballot type is unknown, how it should be marked and what constitutes a valid ballot are also unclear. Disputes over the validity of a ballot (i.e., whether it has been marked properly in order to count) are common. This makes it critical that the criteria for determining the validity of ballots are

made explicit. Good practice is to make the standard based on whether the intent of the voter can be determined. This may be something that should be provided by law rather than regulation. In any case, it is important that the HNEC provide clear and widely disseminated instructions on how to properly mark the ballot in order to not cause inadvertent disenfranchisement.

The law sets the hours for polling and allows voters who are in line at the closing to cast a ballot, which is in line with good practice.

There is also the issue of access to the ballot. For example, there is no requirement for polling place accessibility for the disabled. Similarly, there is no provision for voters who may be unable to get to a polling site, such as the elderly and infirm. Access to polling centres is particularly sensitive in Libyan given the large number of wounded veterans of the conflict. Often “mobile voting” is provided for these purposes. There are no provisions regarding voting by internally displaced persons in the law. International documents take particular note of displaced persons’ right to participate.⁶²

There are no limits on the maximum number of voters per polling station. This is a matter that, under good practice, should be determined in the law or in regulation as a means of ensuring the right to vote is realised in practice and not thwarted by overcrowding or overly burdensome waiting times to cast a ballot.

There is no requirement regarding polling-centre staff or whether any particular sort of diversity is required. It may be necessary to have a minimum number of female staff at polling stations to verify the identity of veiled voters. It is also unclear whether separate polling centres or lines for women will be available. This may be left to regulation but should be clear and planned for in plenty of time.

Article 21 states that, if polling cannot be conducted at any polling centre on election day, the HNEC is to announce a second polling date “at least one week later than the first one.” This may be desirable from a preparation standpoint but could decrease and delay reporting of election results.

Article 25 says the HNEC can “withhold the results of a polling station if fraud or tampering is confirmed, or any act that may affect the overall results of the electoral process, as per the executive regulation of this law.” This provision is vague and provides no criteria for making such a determination, nor any procedure to challenge such a determination.

Similarly, article 26 says, “The executive regulation shall determine cancelled and uncounted votes.” This would seem to indicate an executive regulation would determine the criteria for determining the validity of a ballot. As noted, it may be preferable for this to be established in the law.

3.2.16. VOTE COUNTING AND AGGREGATION

There are few provisions regarding vote-counting procedures. Article 22 says that at the end of voting, “sorting and counting of votes shall immediately start inside the polling station,” and that at the end of the polling process the HNEC will announce the preliminary results as they come in within 10 days of the election. There are no details, however, regarding how the counting process should be undertaken or any provision for reconciling the ballots. It may be preferable for this to be in the law, but if not, then in well-publicised regulations.

Furthermore, there is no detail on what the procedures will be when results of various polling stations are aggregated. Disputes resulting from non-transparent vote aggregation have been the source of many electoral conflicts and violence. Ideally, the law should stipulate how results are aggregated, that candidate representatives and election observers are present at the aggregation stage and receive official result forms that include all the necessary detail, including a breakdown of aggregated results by polling stations. Such information should also be published at the premises where aggregation takes place, and on the Internet.

Depending on the circumstances related to infrastructure and security, it could be preferable for the count to take place at the polling-station level, with results posted at the polling station level upon completion. While this is not in the law, this was the practice in 2012 and should be included in future legislation.

There is no provision for sealing, transferring, handing over or securing ballots prior to or after voting. These provisions could be in the law, but in their absence should be present in well-publicised regulations. UNHCR General Comment 25, paragraph 20, states that the “security of ballot boxes must be guaranteed.”

There is no provision for recounts. A process for recounts in the case of a dispute should be established as a means of ensuring that the will of the people is truly recognised and the election is genuine. The UN Human Rights and Elections Handbook on Legal, Technical and Human Rights Aspects of Elections, paragraph 112, states: “recount procedures should be available in case of questionable results.”

3.2.17. ELECTORAL OFFENCES

The law deals fairly extensively with election crimes. Articles 30 and 31 of the law detail a number: there is a minimum term of six months imprisonment for voter impersonation, voting more than once and voting when knowingly ineligible. Crimes that are punishable by at least a year in jail and a fine, which appear reasonable, include coercion and intimidation, vote buying, putting out ballots without HNEC permission, fraud in

62 Principle 22 of the UN Commission on Human Rights Guiding Principles on Internally Displaced Persons states that “internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: ... (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right....”

vote counting, violating ballot secrecy and obstruction and destroying documents.

There are a few acts in Article 31 that may be of concern, however, from the perspective of international law and the principles of fairness and proportionality. These include making it a serious crime to publish false information relating to the election or the “behaviour or ethics of candidates.” There is no provision that such information must be knowingly false, and it seems disproportionate to include in crimes that entail a year in jail making statements about a candidate’s ethics, given how subjective that could be. Another provision makes it a crime with a year imprisonment to fail to report to work at the polling place without a legitimate excuse. While it is undoubtedly important that poll workers arrive on election day to staff the polls, the punishment is excessive.

Article 32 makes it a crime to insult an elections official, which under the ICCPR would seem at a minimum disproportionate. Article 33 further makes it a serious crime to intimidate elections officials, damage election related facilities and equipment, or destroy voter records, ballots or software. Article 34 deals with abuse of power, making it a criminal act to “abuse...one’s position to influence the results of the electoral process.”

Other criminal acts are described throughout the law, including the ones referenced with respect to campaigning, that may give pause with respect to proportionality and in some cases freedom of expression. For example:

- Article 35 makes circumventing “the instructions delivered by officials in charge of the electoral process” a crime punishable by at least one month in prison or a fine of 300 Libyan dinars (180 euros).
- Under Article 37, the “use of expressions that may constitute incitement of crimes, disruption of public security, instigation of hatred or discrimination, reflect regionalism, tribalism, clannishness, or anything that may be detrimental to public values or defamatory against some candidates or votes” is a crime punishable by imprisonment or a fine not exceed 5,000 Libyan dinars (3,000 euros), and disbarment from running for office for five years. Again it should be determined if all of these aspects should be criminalised, especially speech that “may be detrimental to public values or defamatory.”
- It is a crime to campaign through international media. It is unclear what this means, for example, if it includes even appearing on an international news outlet. It is especially vague considering the boundless reach of Internet media.

3.2.18. ELECTION-DISPUTE RESOLUTION

Article 28 provides that any voter or candidate can challenge voting procedures within three days of the incident; any citizen may challenge a voter or candidate who does not meet the eligibility criteria; and a candidate may challenge the preliminary results of an election. It would thus appear that only candidates, and not voters or other entities, may challenge the election results.

The law details the process by which challenges to the electoral process and subsequent appeals can be made in the courts. It is unclear, however, whether there is any process for complaints to be first addressed at the polling place level and go up a chain through the HNEC before reaching the level of courts. It appears not. While it is important that there be access to judicial review, rules for reaching that point may need to be devised. The law would also appear to address only those complaints against election staff. Read literally, it may not include a complaint of an offence by non-staff such as official abuse of state resources or late campaigning.

4. CONCLUSIONS AND RECOMMENDATIONS

Elections for a constituent assembly are subject to international standards not only for elections but also constitution making. These additional standards need to be considered in assessing the electoral law for Libya’s constituent assembly.

The additional requisites of constitution making could entail a different approach to thinking about other elections standards, including the electoral system, equality of the vote and constituency boundaries, candidate qualifications and special measures for women and ethnic groups. Other elections standards, such as transparency and universal suffrage, also apply as they do in parliamentary elections. The voting system and the constitution making process will be the result of a political bargain, but policymakers should adhere to international standards and best practice, which also can guide advocacy from civil-society groups and professional organisations.

The electoral law, as adopted on July 16 as Law 17 of 2013, is vague or silent on a number of important issues, including the electoral system to be used in multi-member districts, specific procedures on voter registration and the allotment of reserved seats and constituencies. These and other issues presumably will be covered in an amendment to the law, detailed regulations from the HNEC or both. In considering amendments or regulations, the GNC and the HNEC should consider the following recommendations based in international elections standards.

General recommendations

- Clarify in the election law the electoral system to be used, especially if, as indicated in the additional charts, there will some single and some multi-member districts
- Include more special measures to support the candidacy of women and members of ethnic groups beyond the reserved seats currently envisioned
- Provide greater transparency around the delimitation of boundaries of electoral constituencies, including the criteria for the determining the districts
- Enact measures and codes of conduct that help guarantee the independence and neutrality of the HNEC

- Remove the requirement that observers provide progress reports to the HNEC
- Require the commission or the government to conduct voter education on its own and in cooperation with civil society

Voter registration

- Provide more detail on how voter registration will be conducted, particularly with guarantees of inclusion and accessibility for all communities, including traditionally marginalised groups.
- Provide for a period of public review of the voter register for challenges, appeals and revisions
- Make voter eligibility 18 years old on election day, not the deadline for registration
- Make special provisions for voting of internally displaced persons
- Include provisions for out-of-country voting
- Ensure universal access to ID numbers
- Consider allowing members of the military to vote

Candidate qualifications

- Consider whether the number of signatures and size of the deposit required by candidates are reasonable
- Consider whether persons excluded under the political-isolation law for 10 years should participate, as their exclusion will end when the constitution is still in force

Campaigning

- Clarify the requirement that campaigning must comply with Islamic *sharia*, including specific offenses and punishments
- Review restrictions on speech during the campaign, especially relating to slander, public values, candidates' ethics and insults
- Provide a transparent and fair process for adjudicating transgressions and penalties

Procedures for polling centres

- Provide and widely publicize how to properly mark the ballot and what will constitute a valid ballot
- Provide a procedure for counting and reconciling ballots at the polling place and the site of central counting
- Include provisions for the accessibility of polling centres for disabled voters
- Provide a means to accommodate persons who cannot travel to vote, such as the elderly and infirm
- Provide a limit on the number of voters who can be assigned to one polling place

Vote counting

- Provide more detail on the process of vote counting, particularly for ensuring the security of ballots and determining whether a ballot is valid
- Include provisions for recounts
- Provide provisions that ensure full transparency in the aggregation of results

Election challenges

- Include a provision for persons other than candidates to make challenges
- Provide an administrative process to adjudicate complaints before entering the court system
- Define a procedure for lodging challenges against persons other than elections officials

Electoral offenses

- Review punishments to ensure that they comport with the principles of proportionality and obligations of freedom of expression

Transparency

- Include a general statement guaranteeing transparency of the election in the election law
- Require open meetings of the HNEC and publication of meeting notes
- Require open access to data on subjects such as rates of voter registration, turnout and results.
- Provide for transparency in candidate vetting, including by the High Commission for the Implementation of Integrity and Patriotism for those candidates subject to the political-isolation law.

The HNEC, government, civil-society groups and the international community should sponsor an extensive civic-education campaign to explain: voter registration, including requirements to register and the process for doing so; the design of the ballot; the delineation of electoral constituencies; and the electoral system, especially the distinction between single- and multi-member districts. Special attention should be given to the differences between these elections and those of the GNC in 2012, and the planned elections for local councils.

The small size of the constituent assembly and the pre-existing parameters complicated the challenge of achieving broad representation through the electoral system. The GNC, the government and the constituent assembly should consider the following recommendations for the constitution-making process to further promote broad representation.

- Include procedures for broad public participation, through public hearings, public committee sessions, comment periods on drafts and other feedback mechanisms at multiple stages of the process to promote inclusion, transparency and participation, especially for groups that are formally underrepresented
- Include provisions in the constituent assembly's rules of procedure that ensure that underrepresented groups have access to the process
- Require that the government, GNC or constituent assembly conduct an extensive civic-education program to encourage, among other goals, engagement by underrepresented groups

APPENDIX: THE CONSTITUTIONAL DECLARATION AND CONSTITUTIONAL AMENDMENTS

National Transitional Council of Libya Constitutional Declaration⁶³

In the name of Allah, most gracious, most merciful

In view of our faith in the Revolution of 17 February 2011, corresponding to 14 Rabi' Al-Awwal 1432 AH, that was led by the Libyan people in various regions of their country, and out of faithfulness to the souls of the martyrs of this blessed revolution who sacrificed their lives for the sake of freedom, living in dignity in the homeland, and the recovery of all rights that were deprived them by Qadhafi and his collapsed regime;

Based on the legitimacy of this revolution, in response to the Libyan people's desire and aspiration to achieve democracy and establish the principles of political pluralism and state of institutions, in addition to the aspiration toward a society that lives in stability, security and justice which shall develop with knowledge and culture, may achieve welfare and health care, and shall endeavour to raise the new generations according to the Islamic spirit and love of goodness and homeland;

In the hope of establishing a society of citizenship, justice, equality, prosperity, progress and opulence wherein there is no place for injustice, tyranny, despotism, exploitation and dictatorship;

The Interim National Transitional Council has decided to promulgate this Constitutional Declaration so that it may become the basis for rule in the transitional stage until a permanent constitution is ratified in plebiscite.

Part I: General Provisions

Article 1

Libya is an independent democratic state wherein the people are the source of powers. The city of Tripoli shall be the capital of the state. Islam is the religion of the state, and the principal source of legislation is Islamic jurisprudence (*sharia*). The state shall guarantee for non-Muslims the freedom of practicing their religious rituals. Arabic is the official language. The Libyan state shall guarantee the cultural rights for all components of the Libyan society, and the languages thereof shall be deemed national ones.

Article 2

A law shall prescribe the coat of arms and the national anthem of the state.

Article 3

The national flag shall have the following shape and dimensions:

Its length shall be double its width. It shall be divided into three parallel coloured stripes: the uppermost being red, the centre black and the lowest green. The black stripe shall be equal in area to the two other stripes together and shall bear in its centre a white crescent, between the two extremities of which there shall be a five-pointed white star.

Article 4

The state shall seek to establish a political democratic regime based upon political pluralism and multi-party system in order to achieve peaceful and democratic circulation of power.

⁶³ Unofficial translation by Democracy Reporting International.

Article 5

Family is the basis of the society and shall be entitled to protection by the state. The state shall also protect and encourage marriage. The state shall guarantee the protection of motherhood, childhood and old age. The state shall take care of children, young people and persons with special needs.

Article 6

Libyans shall be equal before the law. They shall enjoy equal civil and political rights, shall have the same opportunities and shall be subject to the same public duties and obligations, without discrimination due to religion, doctrine, language, wealth, race, kinship, political opinions, social status, or tribal, regional or familial affiliation.

Part II: Public Rights and Liberties

Article 7

The state shall preserve human rights and basic liberties and shall commit itself to join international and regional declarations and conventions that protect such rights and liberties. The state shall endeavour to promulgate new charters that honour the human being as God's successor on Earth.

Article 8

The state shall guarantee equal opportunities to all citizens. It shall provide decent standard of living, the right of work, education, health care and social security to all citizens. It shall also guarantee the right of individual and private ownership. The state shall further secure the fair distribution to national wealth among citizens and among the various cities and regions of the country.

Article 9

Defending the homeland, safeguarding the national unity, and preserving the democratic constitutional civil system shall be a duty of all citizens, in addition to the adherence to civil values and combating regional, clannish and tribal bias.

Article 10

The state shall secure the right of asylum according to the law. The extradition of political refugees shall be prohibited.

Article 11

Private housing and real estate shall be inviolable and subject of sanctity, they may not be entered or searched unless in the cases and manner defined by law. Also, safeguarding and preserving public and private funds shall be the duty of every citizen.

Article 12

The private life of citizens shall be inviolable and protected by law. The state shall not spy on citizens unless pursuant to judicial warrant in accordance with the provisions of law.

Article 13

The inviolability and secrecy of correspondence, telephone calls and other means of communication shall be preserved by law. They shall not be confiscated, observed or monitored unless pursuant to court order and for a definite period in accordance with the provisions of law.

Article 14

The state shall ensure freedom of opinion, individual and collective freedom of expression, freedom of scientific research, freedom of communication, freedom of the press and mass media as well as printing and publication, freedom of movement, freedom of assembly and peaceful demonstration and strike, all within the scope of the law.

Article 15

The state shall secure the freedom of forming political parties and societies as well as all civil society organizations. A law shall be promulgated to regulate the same. No secret or armed societies, societies violating the public system or public morals, and other such societies that may harm the state or national unity shall be established.

Article 16

Private property shall be safeguarded. Owners shall not be prevented from disposing of their property unless within the scope of the law.

Part III: Governance System during the Transitional Stage

Article 17

The shall be the supreme authority in the Libyan state that shall undertake the functions of supreme sovereignty, including legislation and setting the state general policy. It shall be the sole legitimate representative of the Libyan people. It shall derive its legitimacy from the Revolution of February 17. It shall be entrusted to guarantee national unity and safety of national territory, to embody and promote values, good morals and safety of citizens and residents, to approve international conventions, and to set up the foundations for a democratic constitutional civil state.

Article 18

- The Interim National Transitional Council shall consist of representatives of the local councils. It shall be taken into consideration in determining the representatives of each local council the population density and the geographical standard of the city or region it represents. The Council shall have the right to add ten members for the sake of national interest. Such members shall be nominated and selected by the Council.
- The Interim National Transitional Council shall elect a chairman as well as first and second vice-chairmen. In case any of the said posts became vacant, the Council shall select a replacement. In all cases, election shall be effected by the relative majority of attendance, and in case of equal votes for more than one candidate, the candidate that is favoured by the chairman shall be selected.

Article 19

The chairman of the Interim National Transitional Council shall take the oath before the Council, and the members of the Interim National Transitional Council shall take the following oath before the council chairman:

“I solemnly swear by Almighty God to perform the duties of my job with utmost honesty and devotion, to remain faithful to the goals of the Revolution of February 17, to respect the Constitutional Declaration and the Council’s rules of procedures, to fully look after the interests of the Libyan people and to safeguard the independence, security and territorial unity of Libya.”

Article 20

The Interim National Transitional Council shall have rules of procedures that regulate the method of work therein and the manner to exercise the functions thereof.

Article 21

It shall be impermissible to combine the membership of the Interim National Transitional Council with the assumption of any executive public office. It shall also be impermissible to combine the membership of the Interim National Transitional Council with the membership of the local council. No member shall be appointed in the Board of Directors of any company, nor shall s/he contribute to any commitments made by the government or by any public institution. Furthermore, during the term of his/her membership, a member, his/her spouse or children shall not purchase or rent any state property, shall not lease or sell any of his/her properties to the state or barter the same therewith and shall not conclude any contract with the state in his/her capacity as an entrepreneur, supplier or contractor.

Article 22

No membership of the Interim National Transitional Council shall be revoked unless in case of absence of one of the membership conditions or in case of violation of the membership duties. Membership revocation shall be effected by a decision to be made by the Interim National Transitional Council by two-thirds of the members thereof. Membership shall end with the decease of the member, acceptance of resignation by the Interim National Transitional Council, loss of eligibility, or loss of capability to perform the duty. In case of membership revocation or expiry, the concerned local council shall select a replacement for the member whose membership was revoked or expired.

Article 23

The headquarters of the Interim National Transitional Council shall be in the city of Tripoli, and it may have a temporary headquarters in the city of Benghazi. It may hold its meetings in another place at the request of the majority of its members.

Article 24

- The Interim National Transitional Council shall appoint an executive office, or an interim government, consisting of a president and a sufficient number of members in order to manage the various sectors of the country. The Interim National Transitional Council shall have the right to dismiss the president of the executive office, or interim government, or any member thereof provided that such decision is made by the majority of two-thirds of the Council's members.
- The chairman and members of the executive office, or interim government, shall be jointly liable before the Interim National Transitional Council for carrying out the state's general policy in accordance with the instructions of the Interim National Transitional Council. Each member shall further be liable before the executive office or the interim government for the functions of the sector s/he presides.

Article 25

The president and members of the executive office or the interim government shall take the oath in the formula stated in Article 19 before the chairman of the Interim National Transitional Council prior to assuming their functions.

Article 26

The executive office, or interim government, shall undertake carrying out the state's general policy in accordance with the instructions of the Interim National Transitional Council. It shall undertake the issuance of the executive regulations to the issued laws. The executive office, or interim government, shall also undertake to submit the draft laws to be presented to the Interim National Transitional Council in order to review and take the measure it may deem appropriate in respect thereof.

Article 27

The general budget of the state shall be released by a law.

Article 28

The Interim National Transitional Council shall establish an accounting department which shall undertake financial control over all revenues and expenses and over all movable and immovable funds belonging to the state, and it shall ensure the proper use and preservation of such funds. It shall submit a periodical report in this regard to both the Interim National Transitional Council and the executive office or interim government.

Article 29

The Interim National Transitional Council shall appoint the state's diplomatic representatives through nomination to be made by the executive office. It shall have the right to dismiss them and accept their resignation. It shall also have the right to accept the credentials of the heads of foreign diplomatic missions. The council may as well delegate its Chairman to accept the credentials of the heads of foreign diplomatic missions.

Article 30

- Prior to liberation, the Interim National Transitional Council shall be completed as

approved by the Council. It shall remain the supreme authority in the Libyan state, and shall be responsible for running the country until the General National Congress is elected.

- After the declaration of liberation, the Interim National Transitional Council shall move to its main headquarters in Tripoli, and shall form a transitional government within a maximum period of thirty (30) days. Also, within a period not exceeding ninety (90) days as of the declaration of liberation, the Council shall do the following:
 - 1- Promulgate a law for the election of the General National Congress.
 - 2- Appoint the High National Election Commission.
 - 3- Call for the election of the General National Congress.
- The General National Congress shall be elected within two hundred forty (240) days as of the declaration of liberation.
- The General National Congress shall consist of two hundred (200) elected members from amongst all the Libyan people in accordance with the law of electing the General National Congress.
- The Interim National Transitional Council shall be dissolved on the first assembly of the General National Congress. The oldest member, in terms of age, shall chair the session, and the youngest member shall undertake the functions of the session rapporteur. During such session, the president of the General National Congress and his/her two deputies shall be elected through direct secret voting by relative majority. The transitional government shall continue carrying out its functions until an interim government is formed.
- The General National Congress, within a period not exceeding thirty (30) days as of the date of its first meeting, shall:
 - 1- Appoint prime minister, who in turn shall propose the names of his/her government members, provided that all such members have the confidence of the General National Congress prior to commencing their functions as interim government. The Congress shall also appoint the heads of sovereign positions.
 - 2- Select a constitutional commission, to be called the “Constitutional Commission the Constitution,” to draft a constitution for the country, provided that it submits a draft constitution to the Congress within a period not exceeding sixty (60) days as of the date of its first meeting.
- The draft constitution shall be approved by the General National Congress, and shall be subjected to referendum of yes or no within thirty (30) days as of the date of its approval by the Congress. In case the constitution is accepted by the Libyan people with the majority of two-thirds of the voters, the constitutional commission shall approve it as a constitution for the country and the General National Congress shall adopt it. In case the constitution is not accepted by the Libyan people, the Constitutional Commission shall be mandated to reformulate it and re-subject it to referendum within a period not exceeding thirty (30) days.
- The General National Congress shall issue a public electoral law in accordance with the constitution within thirty (30) days.
- General elections shall take place within one hundred eighty (180) days as of the date of issuing the regulative laws thereof. Both the General National Congress and the interim government shall supervise the preparation of all the requirements of conducting an electoral process in a democratic and transparent manner.
- The High National Election Commission (which shall be re-formed by the General National Congress) shall conduct the general elections under the supervision of the national judiciary and under the surveillance of the United Nations and international and regional organizations.
- The General National Congress shall ratify and announce the results. The new legislative authority shall convene within a period not exceeding thirty (30) days. In the first session thereof, the General National Congress shall be dissolved and the legislative authority shall undertake its tasks.
- By holding the first session of the legislative authority, the interim government shall be deemed a caretaker government until the permanent government is approved in accordance with the constitution.

Part 4: Judicial Guarantees

Article 31

There shall be no crime or penalty unless stipulated for. The accused shall be considered innocent until he/she is proved guilty by fair trial wherein s/he shall be granted the guarantees necessary to defend himself/herself. Every citizen shall have the right to recourse to the judiciary in accordance with the law.

Article 32

- The judicial authority shall be independent. It shall be exercised by courts of various types and degrees whose judgements shall be passed in accordance with the law. Judges shall be independent, subject to no other authority but the law and the conscience.
- Setting up extraordinary courts shall be prohibited.

Article 33

- Resorting to courts shall be a right preserved and secured for all people. Every citizen shall have the right to resort to his/her appropriate court. The state shall ensure bringing the judicial authorities close to the litigants and ensure the speedy decision in lawsuits.
- Laws shall not provide for prohibiting the judiciary from controlling any administrative decision.

Part 5: Concluding Provisions

Article 34

Documents and laws of constitutional nature, in force before the application of this Declaration, shall be repealed.

Article 35

All provisions stated in the existing legislations shall remain effective insofar as they are not inconsistent with the provisions hereof until they are amended or repealed. Every reference, in such legislations, to what used to be called the People's Congresses or the General People's Congress shall be deemed as a reference to the Interim National Transitional Council or the General National Congress. Every reference to what used to be called the General People's Committee or the People's Committees shall be deemed as a reference to the executive office, the executive office members, the government or the government members, each within its respective area of jurisdiction. Every reference to the Great Socialist People's Libyan Arab Jamahiriya shall be deemed as a reference to Libya.

Article 36

No cancellation or amendment shall be made to any provision contained herein save with another provision issued by the Interim National Transitional Council by a two-thirds majority of the Council members.

Article 37

This Declaration shall be published in the different media, and shall take effect as of its date of publication.

Interim National Transitional Council

Issued in Benghazi on the third day of Ramadan, 1432 AH, corresponding to 3 August 2011

Amendment 1 of 2012: Regarding the Amendment of Some Paragraphs of Article 30 of the Constitutional Declaration

With reference to the Constitutional Declaration issued on 3 Ramadan 1432 AH, corresponding to 3 August 2011, the text of Article 30 of the Constitutional Declaration shall be amended to be read as follows:

- The Interim National Transitional Council shall be completed as prescribed by Article 18 hereof. It shall remain the supreme authority in the Libyan state, and shall be responsible for running the country until the General National Congress is elected.
- After the declaration of liberation, the Interim National Transitional Council shall move to its main headquarters in Tripoli, and shall form a transitional government within a maximum period of thirty (30) days. Also, within a period not exceeding ninety (90) days as of the declaration of liberation, the Council shall do the following:
 1. Promulgate a law for the election of the General National Congress
 2. Appoint the High National Elections Commission
 3. Call for the election of the General National Congress
- The General National Congress shall be elected within two hundred forty (24) days of the declaration of liberation.
- The General National Congress shall consist of two hundred (200) members elected from amongst all the Libyan people in accordance with the law of electing the General National Congress.
- The Interim National Transitional Council shall be dissolved on the first assembly of the Congress, and all the competencies thereof shall devolute to the General National Congress. The oldest member, in terms of age, shall chair the first session, and the youngest member shall undertake the functions of the session rapporteur. During such session, the president of the General National Congress and his/her two deputies shall be elected through direct secret voting. The transitional government shall continue carrying out its functions until an interim government is formed. In all cases, all the decisions of the General National Congress shall be made with the two thirds majority.
- The General National Congress, within a period not exceeding thirty (30) days of the date of its first meeting, shall:
 1. Appoint a prime minister, who in turn shall propose the names of his/her government members, provided that all such members have the confidence of the General National Congress prior to commencing their functions as interim government. The Congress shall also appoint the heads of sovereign positions.
 2. Select a Constitutional Commission consisting of external members, to be called the "Constitutional Commission the Constitution," to draft a constitution for the country. It shall consist of sixty (60) members, similar to the Committee of the Sixty that was formed to prepare the Constitution of Libya Independence in 1951. In all cases, the decisions of the Constitutional Commission the Constitution shall be issued with a two-thirds-plus-one majority. It shall complete the formulation and approval of the draft constitution within a period not exceeding one hundred twenty (120) days as of the date of its first meeting.
- The draft constitution shall be subjected to referendum with yes or no within thirty (30) days as of the date of its approval. In case the draft constitution was accepted by the Libyan people with the majority of two thirds of the voters, the Commission shall approve it as a constitution for the country. Then it shall be referred to the General National Congress to release it. In case of non-acceptance, the Commission shall reformulate it and re-subject it to referendum again within a period not exceeding thirty (30) days as of the date of announcing the results of the first referendum.
- The General National Congress shall issue a public electoral law in accordance with the Constitution within thirty (30) days.
- General elections shall take place within one hundred eighty (180) days as of the date of issuing the regulative laws thereof. Both the General National Congress and the interim government shall supervise the preparation of all the requirements of conducting an electoral process in a democratic and transparent manner.
- The High National Election Commission (which shall be re-formed by the General National Congress) shall conduct the general elections under the supervision of the national judiciary and under the surveillance of the United Nations and international and regional organizations.
- The High National Election Commission shall ratify and announce the results. The legislative authority shall be convoked within a period not exceeding thirty (30) days

as of the date of approval by the General National Congress. In the first session thereof, the General National Congress shall be dissolved and the legislative authority shall undertake its tasks.

Interim National Transitional Council

Issued in Tripoli on 20 Rabea al-Akhir, 1433 AH, corresponding to 13 March 2013

Amendment 2 of 2012

With reference to:

- The Constitutional Declaration, issued on 3 August 2013,
- Law 3 of 2012 regarding the High National Elections Commission,
- The memorandum of the High National Elections Commission submitted to the Council on 10 June 2012, and
- Minutes of the National Transitional Council's meeting held on Sunday, 10 June 2012,

The following has been issued.

Article 1

The third paragraph of Article 30 of the Constitutional Declaration shall be amended to be read as follows:

The General National Congress shall be elected within two hundred seventy (270) days as of the declaration of liberation.

Interim National Transitional Council – Libya

Issued in Tripoli on 10 June 2012

Amendment 3 of 2012

With reference to:

- The Interim Constitutional Declaration, issued on 3 August 2011,
- Amendment 1 of 2012, issued on 13 March 2012,
- Amendment 2 of 2012, issued on 10 June 2012, and
- The conclusions of the Interim National Transitional Council in its meeting held on Thursday, 5 July 2012,

The following amendment has been issued.

Article 1

- Paragraph 2 of Item 6 of the Amendment 1 of 2012 shall be amended to be read as follows:

Elect a Constitutional Commission of external members through direct open voting to formulate a draft permanent constitution for the country. It shall be called the "Constitutional Commission" and shall consist of sixty (60) members, similar to the Committee of the Sixty, which was formed to prepare the constitution of Libya after independence in 1951. The General National Congress shall define the standards and regulations for the election thereof where consideration shall be given to the necessity of representing the Libyan social components that have cultural and linguistic specificity.

In all cases, the decisions of the Commission Drafting the Constitution shall be issued with a two-thirds-plus-one majority. It shall complete the formulation and approval of the draft constitution within a period not exceeding one hundred twenty (120) days as of the date of its first meeting.

Article 2

This Declaration shall be published in the different media, and shall take effect as of its date of publication.

Interim National Transitional Council, issued in Tripoli on 5 July 2012

Amendment 4 of 2012: Amending Constitutional Amendment 1 of 2012

With reference to:

- The Interim Constitutional Declaration issued on 3 August 2011,
- Amendment 1 of 2012, issued on 13 March 2012,
- Amendment 2 of 2012, issued on 10 June 2012,
- Amendment 3 of 2012, issued on 5 July 5 2012, and
- The Conclusions of the General National Congress in its ninth meeting held on 1 September 2012,

The following Constitutional Amendment has been issued.

Article 1

The last phrase of paragraph 5 of Amendment 1 of 2012, issued by the Interim National Transitional Council on 13 March 2012, shall be amended to be read as follows:

With a majority of at least one hundred twenty (120) members, the General National Congress shall issue legislation on the following subjects:

1. Approving the public budget and closing account of the state
2. Declaring and lifting state of emergency
3. Declaring and ending of war
4. Dismissing the General National Congress president, vice-president or any other member
5. Subjecting the government to vote of no-confidence
6. Ratifying international treaties
7. Laws organizing local administration and general election affairs
8. Laws that result in the public treasury being subject to financial obligations not provided for under the public budget
9. Laws stipulating conditions to hold public and sovereign positions
10. All matters constituting danger to social peace and national unity

Any congress member may propose to have the voting on an issue being discussed subjected to the approval of one hundred twenty (120) members, and the motion shall not reach the voting process unless it has been backed up by five congress members. The decision of having the vote subjected to this majority shall be made with the absolute majority of the attendance.

Article 2

The period referred to in paragraph 6 of Amendment 1 of 2012 shall be amended and shall read: "At no later than fifty days as of the date of its first meeting."

Article 3

This amendment shall be published in the official gazette and different media, and shall come into force on 8 August 2012.

General National Congress — Libya, issued in Tripoli on 1 September 2012

Amendment 5 of 2013

The General National Congress, with reference to

- The Interim Constitutional Declaration, issued on 3 August 2011, together with the amendments thereof,
- The rules of procedure of the General National Congress,
- Law 17 of 2012 establishing the principles of national reconciliation and transitional justice, together with the amendments thereof,
- Resolution 17 of 2012 of the General National Congress on adopting the rule of institutional reform and political and administrative isolation,
- Resolution 9 of 2013 on electing the constitutional commission for drafting the constitution via direct and free balloting,
- Ruling of the constitutional department of the Libyan Supreme Court on Amendment 3 of 2012 issued on 5 July 2012, and
- The Conclusions of the General National Congress during its seventy-ninth regular meeting held on 9 April 2013.

Issues the following amendments.

Article 1

A new paragraph shall be added to Article 6 of the Interim Constitutional Declaration issued on 3 August 2011, reading as follows:

It shall not be considered a violation of the provisions of this Declaration to prohibit and prevent certain individuals from holding sovereign, commanding and high positions in the state for a temporary period pursuant to a law to be issued in this regard, without prejudicing the rights of those individuals to resort to litigation.

Article 2

The voting on the Political and Administrative Isolation Law shall be made with a majority of one hundred one (101) members of the General National Congress.

Article 3

The text of paragraph 6 of Article of the Constitutional Declaration of 2012 shall be amended as follows:

Within a period not exceeding ninety (90) days as of the date of its first meeting, the General National Congress shall:

1. Appoint a prime minister, who in turn shall propose the names of his/her government members, provided that all such members shall have the confidence of the General National Congress prior to commencing their functions as interim government. The Congress shall also appoint the heads of sovereign positions.
2. Restructure the Higher National Election Commission in order to elect a Constitutional Commission by way of free and direct balloting by those other than General National Congress members. This Constitutional Commission shall draft the permanent constitution of the state and shall be called the Constitutional Commission the Constitution. It shall consist of sixty members similar to the Commission of Sixty formed to prepare the constitution of Libya independence in 1951.

By virtue of a particular law, the General National Congress shall define the criteria and rules of electing the Constitutional Commission where the representation of the Libyan society components with linguistic and cultural specificities shall be considered. In all cases, the resolutions of the Constitutional Commission the Constitution shall be issued with a two-thirds-plus-one majority, provided that it completes the drafting and adoption of the constitution within a period not exceeding one hundred twenty (120) days as of the date of its first meeting.

Article 4

This amendment shall be published in the official gazette, and shall supersede any contrary provision, and shall come into force as of date of issuance.

General National Congress, issued in Tripoli on 11 April 2013

APPENDIX: ELECTORAL LAW (LAW 17 OF 2013)⁶⁴

Law 17 (2013) on the Election of the Constituent Assembly in Charge of Drafting the Constitution

Having noted:

- The Constitutional Declaration enacted on 3 August 2011, and its amendments;
- GNC Resolution 62 (2013) on the approval on the amendment of the bylaws of the GNC.
- Civil and Commercial Proceedings Law and its amendments
- Penal and Criminal Procedures Law and its amendments
- Law 24 (2010) on the provisions of Libyan nationality
- Law 8 (2013) on the Establishment of the High National Election Commission
- Law 13 (2013) on Political and Administrative Isolation
- GNC Decision 30 (2013) on the formation of a committee on the development of the draft elections law related to the election of the Constituent Assembly in charge of drafting the Constitution
- The outcome of the General National Congress deliberations during its regular session held on 16 July 2013.

The following law has been enacted.

Chapter I: Definitions

Article 1

For the purpose of implementing this law, unless the context requires otherwise, the expressions cited below denote the meanings adjacent to each:

1. Assembly: the constituent body that shall be elected for the development and wording of the permanent constitution draft for the country
2. The Commission: The High National Elections Commission established as per Law 8 (2013)
3. Region: one of the three electoral regions, provided for in Article Five of this law.
4. Country: the state of Libya
5. Elections: the process of electing members of the Constituent Assembly.
6. Constituency: the geographical area for which a specific number of seats has been allocated in accordance with the provisions of this law
7. Voter Register: the register developed to list voters
8. Voter: Every Libyan, who has the right to elect members of the Constituent Assembly and registered in the voters register as per the provisions of this law
9. Candidate: Every Libyan whose application for candidacy for the Constituent Assembly elections has been approved as per the provisions of this law.
10. Polling: the process through which voters cast their votes
11. Polling Centre: the place designated by the Commission for the purpose of polling.
12. Polling Station: the place that accommodates ballot boxes, ballots and the committee overseeing the boxes.
13. Polling Staff: All employees working for the Commission inside the polling station.
14. Ballot: the uniform ballot produced by the Commission for the purpose of voting.
15. Observers: All national or international bodies, civil institutions or persons accredited by the Commission to observe the progress of the electoral process.
16. Candidate's agent: Person(s) delegated by the candidate and accredited by the Commission for the purpose of observing the progress of the electoral process, as per the provisions of this law.

⁶⁴ This translation was developed by the UN Electoral Support Team in Libya. It is unofficial in nature and is provided for informational purposes only.

17. First Pass the Post: the electoral system approved for the election of members of the Constituent Assembly. This system entails that the candidate who obtains the highest number of votes shall win the race
18. Component: Amazigh, Tebu and Tuareg
19. Media Representatives: the persons accredited by the Commission and authorized to cover the electoral process in the media.
20. Registration Centre: the place where voters are registered in accordance with this law and the subsequent regulations.
21. Official security apparatus: the servicemen affiliated to which hold security or military number.

Chapter II: Preliminary Provisions

Article 2

The Constituent Assembly in Charge of Drafting the Constitution comprises 60 members, to be elected in accordance with the provisions of this law, as was the case with the 60-member committee, formed in 1951. All Libyans, men and women, who meet the requirements stipulated in this law have the right to be nominated for candidacy for membership to the Assembly.

Article 3

The Constituent Assembly shall be mandated to draft the permanent constitution of the country and shall have a separate legal entity and financial position.

Article 4

The election shall be free, public and direct.

Article 5

For the purpose of implementing the provisions of this law, the seats of the Constituent Assembly shall be apportioned to three electoral regions. Each region shall have twenty (20) seats distributed across the constituencies in accordance with the attached table, provided that representation of components with cultural and linguistic character shall be considered.

Chapter III: Election

Article 6

1. An individual electoral system, based on simple majority, shall be adopted. The candidate who obtains the highest number of votes shall win. In the event of a tie, a draw will follow to break the tie.
2. Six seats shall be reserved for women, distributed across some electoral constituencies. Only women shall be allowed to compete for those seats. All voters, male and female, shall cast their votes to elect candidates competing for those seats. The attached table indicates those constituencies and the manner through which they are decided

Article 7: Voter Register

1. The Commission shall be responsible for determining the registration centres in all constituencies, provided that each centre has a unique number that shall not be duplicated. Those centres and their numbers shall be announced well in advance prior to the commencement of the electoral process in all available TV, radio and printed mass media.
2. Any citizen who meets the voter eligibility criteria shall select an electoral centre in the sub-constituency located in one's place of residence to register either manually or electronically, following their announcement by the Commission, as per the conditions and requirements determined by the latter.
3. The Administrative Committee in charge of the National Number project and the Directorate of Civil Status shall provide all data and technical capabilities to the Commission, as required by the electoral process. The concerned authorities shall provide the required electronic coverage for all the electoral regions, when possible.

4. The Commission shall be in charge of organizing voters records in-country and out-of-country. The requirements regulating registration and review of the data shall be determined in accordance with the conditions and parameters stipulated by this law.

Article 8

The person exercising the right to vote shall be:

1. A Libyan citizen, at least 18 years of age on registration day and legally competent.
2. A National Number holder and registered in the voters register.

Chapter IV: Candidacy

Article 9

In addition to the voters' eligibility criteria, the person running for the CDA elections shall be:

1. At least 25 years of age prior to registration date,
2. A holder of secondary school diploma or equivalent,
3. Not a member of the High National Election Commission, or employee of its central administration, sub-committees or polling centres,
4. Not a member of the GNC or the interim government.
5. Not a serviceman of regular security apparatus or the military,
6. Not convicted of a crime or misdemeanour of moral turpitude, even if exonerated.
7. Meet the requirements for assuming public offices as per Political and Administrative Isolation Law.
8. Seconded by one hundred voters from one's constituency, provided none of the seconders has vouched for another candidate. The certificate of secondment shall be signed by the person delivering it or endorsed by a notary public.
9. Deposit a non-refundable amount of 500 LYD (five hundred Libyan dinars) into the Commission bank account or any of its accounts in the main constituencies. This amount shall be transferred to the public treasury.
10. Abide by the code of conduct for candidates as determined by the Commission.

Article 10

A candidate shall not apply for candidacy in more than one constituency.

Article 11

The Commission shall organize, manage and fully oversee the electoral process. Furthermore, the Commission shall determine the parameters and mechanisms of candidacy and dates for submitting documents determined by it in accordance with the provisions stipulated by this law.

Article 12

Applications for candidacy shall be filled out on forms designed by the Commission. If it transpires that any of the candidates does not meet the conditions stipulated by this law, the Commission shall exclude and notify him/her or his/her agent through the means the Commission decides within one week from the deadline for receipt of applications for candidacy.

Chapter IV: Electoral Campaign

Article 13

The Commission shall announce in all mass media the electoral campaign period for candidates. It shall determine the rules and places where posters may be posted throughout this period, in coordination with the local authorities across the country.

Each candidate included in the final list shall have the right to express one's opinion and present one's electoral platform as far as the constitution is concerned in accordance with the provisions of this law and without prejudice to public order.

The use of expressions that may constitute incitement to commit crimes or disrupt public security, hatred, discrimination or jeopardize the unity of Libya shall be prohibited. However, all activities perceived as campaigning shall end 24 hours prior to E-day.

Article 14

The Commission shall determine the rules and specifications of campaigning materials. All candidates in the final list shall use public and private media for their electoral campaign on equal footing. The Commission shall establish the rules and procedures of electoral campaigning in a manner that guarantees equal airtime in the programmes dedicated for all candidates and the distribution of airtime on all mass media.

All candidates may publish their campaigning materials in the form of brochures, posters or newsletters, provided those publications shall include the biography of the candidate and name and address of the printing authority. It is permissible to use electronic mass media for campaigning, as per the provisions of this law.

Article 15

The electoral campaign shall be subject to the following principles:

1. Compliance with Islamic *sharia*, public order and ethics
2. Impartiality on the part of the administration and mass media
3. Transparency of the electoral campaign in terms of funding sources and spending methods of allocated funds
4. Equality among candidates
5. Observance to the privacy and dignity of the candidates.
6. Observance to national unity and sovereignty.

Article 16

The candidate or any of one's subordinates shall be prohibited from doing any of the following:

1. Campaigning in mosques, universities, institutes, public schools and facilities occupied by the ministries and other public institutions and directorates overseen by the state;
2. Engaging in acts or using data that may obstruct the campaign of another candidate;
3. Providing material or monetary gifts or other benefits to influence voters;
4. Financing one's electoral campaign from funds or aids derived from another country or a non-Libyan authority, or campaigning through foreign media, or using funds of suspicious sources;
5. Receiving support from any public authority or using state assets;
6. Incitement, slandering other candidates or stirring tribalism, regionalism or ethnic sentiments;
7. Using the emblem of the state in the announcements, meetings and publications during the electoral campaign.

Furthermore, all civil servants of public institutions are prohibited from campaigning for any candidate in their workplaces.

Article 17

The Commission shall determine an expenditure limit on campaigning activities. The candidate shall clarify the funding sources of one's campaign.

Article 18

The Commission shall investigate, of its own accord or upon a claim made by a stakeholder, the adherence to the provisions of the last three articles. Accordingly, the Commission shall exclude the candidate whose violation of these provisions is proved. In the event of the above, the winner next in line shall be approved.

Article 19

All candidates shall open a current account in any bank, in which they shall deposit all monetary donations or funds allocated for their campaign. The candidates shall notify the Commission on all financial funds deposited and their source.

Article 20

All candidates shall submit to the Commission a statement detailing the total of donations, their sources, nature and campaign-related expenditure within seven days from polling day.

Chapter V: Election Procedures

Article 21

1. The General National Congress shall determine the polling date upon a proposal made by the Commission, which shall be an official holiday. If polling procedures cannot be conducted in any polling centre the same date, the Commission shall declare the date and place decided to conduct polling in the affected centre within 24 hours. The second polling date shall be at least one week later than the first one.
2. The Commission shall determine the procedures for polling, sorting and counting in polling stations and centres.

Article 22

Polling day shall continue for one day only, starting from 8:00 am until 7:00 pm, when the head of polling centre declares the end of the polling process.

Polling may continue beyond 7:00pm if some voters are still queuing to cast their votes inside the polling centre. In this case only those shall be allowed to vote. Following the announcement of the end of the polling process, sorting and counting of votes shall immediately start inside the polling station, in the presence of the head and staff of the polling station, candidates' agents and observers.

At the end of the polling process, the Commission shall announce the preliminary results as they come within at least ten days from polling day.

Article 23

The voter shall cast one's vote with utmost secrecy, so that s/he votes for the candidate and cast the ballot into the ballot box.

People with special needs — who are unable to tick the ballots or vote verbally — and illiterate persons may be accompanied by another person to assist them, following the approval of the head of polling station. The escort may assist one voter only.

Proxy voting or by correspondence may not be permitted.

Article 24

The Commission shall propose the timeline and procedures for polling for Libyans abroad, in potential countries, deemed possible by the latter for organizing elections.

Article 25

The Commission shall have the right to withhold the results of a polling station, if fraud or tampering, or any act that may affect the overall results of the electoral process is confirmed, as per the executive regulation of this law.

Article 26

The executive regulation shall determine cancelled and uncounted votes.

Article 27

Within at least 25 days from the date of the announcement of the preliminary results, the Commission shall produce the overall final results and publish them on an official mass medium.

Chapter VI: Challenges

Article 28

- a. Any concerned voter or candidate may have the right to challenge any procedures related to the stages of the electoral process within three days from the date of occurrence of the incident.
- b. Any citizen may submit a challenge before the competent court against any voter or candidate who does not meet the eligibility criteria stipulated in this law within three days from the date of publication of the lists. The complainant shall be exempted from court fees.

- c. Any candidate may challenge the preliminary results of the elections within three days from the date of publication.

Article 29

The Local Court (Partial Court) Judge, within which the polling centre is located, shall consider all challenges related to the electoral process as a whole, and adjudicate on the challenge within three days from the date of submission. The ruling shall be substantiated. The complainant, may lodge an appeal against these decisions before the head of the Primary Court, or his/her delegate, within three days from the date of delivery of the ruling, which shall be adjudicated within three days. The ruling shall be final and binding for the Commission to implement.

However, the provisions of Civil and Commercial Proceedings Law shall apply to any matter not stipulated in this law.

Chapter VII: Electoral Crimes

Article 30

Any person who engages in any of the following acts shall be sentenced to imprisonment for at least six months:

1. Impersonating another person to vote
2. Voting more than once
3. Voting despite the knowledge of one's ineligibility

Article 31

Any person who engages in the following acts shall be sentenced to imprisonment for at least one year and a fine of at least 5,000 LYD (five thousand Libyan dinars):

1. Coercing or intimidating a voter to obstruct him/her from voting or influence voters.
2. Offering another person or commitment to offer benefits either to oneself or another person, directly or indirectly, to obstruct voting or force the voter to vote in a certain manner.
3. Accepting from others or requesting benefits for oneself or others in exchange for voting.
4. Publishing or broadcasting false statements or reports or other sort of deception in matters related to the elections or the behaviour or ethics of candidates with the intention of influencing the results.
5. Acts related to printing or circulating ballots used in the electoral process without the permission of the Commission.
6. Fraud or deception in the course of sorting the votes or counting the ballots.
7. Violating the secrecy of voting or obstructing any functions related to polling.
8. Any person who fails to report to the polling centre, to which s/he is assigned to work on polling day without a legitimate excuse.
9. Hiding, stealing or destroying any document related to the electoral process with the intention of manipulating the results. The candidate benefiting from the crimes cited in this article shall receive the same punishment as that of the original perpetrator, if evidence proving his/her involvement is provided.

Article 32

A person who insults, verbally or with a gesture, the Commission Chairperson, a member of the Board of Commissioners or an official in charge of the electoral process in the course of, or due to his/her work, shall be sentenced to at least six months of imprisonment.

The same penalty shall apply to any person who holds a weapon, visible or concealed, inside the polling centre, offices affiliated to the Commission or polling centres committees. Only personnel assigned to guard the centre, deployed outside the premise, shall be permitted to hold weapons.

Article 33

Any person who engages in any of the following acts shall be sentenced to imprisonment and a fine not exceeding 10,000 LYD (ten thousand Libyan dinars):

1. Using force or intimidation against any person in charge of the electoral process.

2. Any person who damages buildings, facilities, transportation means or equipment prepared to be used in the elections with the intention of obstructing the progress of the electoral process.
3. Intercepting committees or transportation means transporting ballot boxes for the purpose of taking them over, bargaining over them or obstruction of the process of sorting the results. The penalty shall be intensified by at least by one-third if it transpires that the perpetrator is a person assigned to be a member of an electoral committee, a staff member or security serviceman in charge of guarding ballot boxes.
4. Destruction, concealment or alteration of the voter records, ballots or the software related to them.

Article 34

Any person who abuses one's position to influence the results of the electoral process shall be sentenced to imprisonment and dismissal from office.

Article 35

- a. Any candidate, who receives monetary aids from an international authority, directly or indirectly, shall be sentenced to imprisonment and a fine not exceeding double the amounts received and shall be barred from running for the elections for at least ten years, as of the date of the delivery of the final ruling.
- b. Any candidate who breaches the provisions cited in Article Seventeen of this law shall be sentenced to imprisonment, a fine of at least LYD5,000 (five thousand Libyan Dinars) and shall be barred from candidacy for at least three years, whereas any public civil servant who breaches the same provisions for the benefit of any candidate or has been an accomplice shall receive a similar penalty intensified by at least one third.

Article 36

Any person who circumvents the instructions delivered by the officials in charge of the electoral process in the course of their work shall be sentenced to at least one-month imprisonment or a fine not exceeding 300 LYD (three hundred Libyan dinars).

Article 37

Any candidate who commits any of the acts below shall be sentenced to imprisonment or a fine not exceeding 5,000 LYD (five thousand Libyan dinars) and shall be barred from candidacy for five years:

1. Use of expressions that may constitute incitement of crimes, disruption of public security, instigation of hatred or discrimination, reflect regionalism, tribalism, clannishness, or anything that may be detrimental to the public values or defamatory against some candidates or voters.
2. Exceed the spending limit determined by the Commission in the course of one's political campaign.
3. Has not submitted a detailed statement to the Commission that includes a total of received donations, their source, nature and the amounts spent on political campaigns.
4. Any act that may obstruct the political campaign of another candidate.
5. Campaigning through international media with the exception of private webpages owned by the concerned candidate.
6. Conduct an activity that may be perceived as political campaigning on or 24 hours prior polling day.
7. If it transpires that s/he used mosques, public premises or educational institutions for electoral campaigning.

Article 38

The penalties cited in this law are without prejudice to any severer penalties provided for in the penal code or any other law.

Article 39

Without prejudice to any other provisions, the criminal lawsuit against an electoral crime, against which judicial proceedings have not been taken, shall lapse after three months of the date of the announcement of the elections final results.

Chapter VIII: Conclusive Provisions

Article 40

1. Civil-society organizations, competent regional and international organizations, as well as candidates' agents, may engage in observing the electoral process. The Commission shall facilitate their tasks in a manner that guarantees free and fair elections.
2. CSOs and accredited international and regional organizations shall observe the electoral process and submit their reports to the Commission on the progress of elections.
3. The executive regulation subsequent to this law shall determine the rights and duties of observers, agents and media representatives.

Article 41

The chairman and members of the Board of Commissioners, heads and members of sub-committees and heads of polling centres shall have the powers of the judicial officer, in matters related to the crimes cited in this law.

Article 42

The Commission shall deliver the regulations required for the implementation of this law.

Article 43

All state institutions shall extend the assistance and support required for the conduct of the electoral process.

Article 44

State security institutions shall provide security, ensure order and guarantee the voters cast their votes freely during the electoral process.

Article 45

The Constitution Drafting Assembly shall hold its first meeting, which shall be called for by the GNC, within two weeks from the date of announcement of the final results. The seat of the CDA shall be in Al-Bayda City. The Assembly may hold their session in any other city. The most senior member shall preside over the first session of the Constituent Assembly, whereas the most junior shall be selected as rapporteur, provided during this session, the members shall select a chair and rapporteur for the assembly through secret balloting.

Article 46

Only the Constituent Assembly shall be responsible for developing the by-laws regulating its functions within at least ten days from the first session.

Article 47

Members of the Constituent Assembly shall operate on a full-time basis, in accordance with the provisions of this law. They shall not exercise any other activities during their tenure.

Article 48

State institutions and apparatus shall extend full support to the assembly as required. To achieve its tasks, the Assembly may have the right to obtain data, information and documents that may help in the performance of its work or seek the assistance of any person deemed fit.

Article 49

The GNC shall appoint administrative, financial and technical departments to be in charge of the affairs of the Assembly, provided those departments work under the supervision of the Assembly chair.

Article 50

Notwithstanding the provisions of Article Seven of this law, any person who besieges or breaks into the CDA headquarters, while a session is in progress, shall be sentenced to imprisonment.

Article 51

The distribution of the electoral regions or constituencies, as indicated in this law shall not entail any effects or have res judicata against the legislations governing local administration.

Article 52

Membership to the Constituent Assembly shall expire due to any of the following reasons:

1. Death or physical infirmity that may prevent the member from living up to one's responsibilities.
2. A final court ruling convicting the member of a crime of moral turpitude.
3. Acceptance of resignation of the member, sacking or dismissal.

The vacant post shall be filled by the candidate obtaining the second highest number of votes after the outgoing member in his/her electoral constituency.

Article 53

This law shall come into force as of the date of enactment and shall be published in the official gazette and different mass media. The authorities concerned by it shall implement its provisions.

General National Congress

Enacted in Al-Bayda City, 20 July 2013

Allocation of Sub-Constituencies

Western electoral region

Main Constituency	Sub-constituency		Seats
1. SIRTE 3 seats 3 sub-constituencies	1	Beni Walid, Tawergha, Bougreen, Alwishka, Zamzam, Bounjeim	1
	2	Jufra, which includes: Waddan, Hon, Sokana, Zella, Alfagah	1
	3	Ras lanouf, Assidra, Sirte	1
2. MISURATA 4 seats 4 sub-constituencies	1	Misurata	1
	2	Zliten	1
	3	Khoms, Souq al-Khamees, Ghneima, Gasr al-Akhyar	1
	4	Tarhouna, Meslata	1
3. TRIPOLI 6 seats 4 sub-constituencies	1	Garabolali, Tajoura, Souq al-Jumaa	2
	2	Bousleem, Ain Zara	1
	3	Hay al-Andalus, Central Tripoli, Janzour	2
	4	Al-Maya, Zahara, Nasriya, al-Aziziya, Swani Ben Yadam, Gasr Bin Ghasheer, Emseihel, as-Sayeh, Sibeya	1
4. ZAWIYA 7 seats 4 sub-constituencies	1	Zawiya	1
	2	Sarman, Sabratha	1
	3	Zwara	1
	4	Al-Ejeilat, Ragdalein, al-Jameel, Zaltan	1
	5	All towns and villages of the Western Mountains (al-Jabal)	3, incl. one Amazigh

- Two seats are allocated for women in main constituency 3 (Tripoli), one in sub-constituency 1 (Sirte) and the other for sub-constituency 3 (Tripoli).

Eastern electoral region

Main Constituency	Sub-constituency		Seats
1. AL-BATNAN 5 seats 3 sub-constituencies	1	Tobruk City, al-Jaghboub, al-Watar, Emsaed, al-Bardi, Ras Azaz, Gadr al-Jedi, Beer el-Ashhab, Kamboot, Jetroor, al-Gaara, Bab az-Zeitoun, al-Mrassas, Belkhater, Algardba, Ain al-Ghazala, Ashaaba, Mraslak	2
	2	Guba City, al-Mkheili, al-Abrag, al-Gaygab, Lali, Khoulani, Lemlounda, Ain Mara, Beit Tamer, Ras Hilal and surrounding villages	1
	3	Derna City, al-Aziyat, Attimimi, Om Errozam, Khaleej al-Bomba, Martouba, al-Fatayeh, al-Atroun, Kersa and surrounding villages	2
2. GREEN MOUNTAINS 5 seats 4 sub-constituencies	1	Shahhat, al-Faidiyya, Gernada, Soussa and surrounding villages	1
	2	Al-Bayda, al-Wasita, Messa, al-Khoweimat, Omar Mukhtar, Salanta, Gandoula, Mrawa, Jardas, al-Jarari and surrounding villages	2
	3	Marj, Takens, Jardas, al-Ebeid, al-Bnaya, as-Sileaya, Mdawar az-Zaytoun, Farzougha, al-Oweila, Zawiyat al-Gusour, Sidi Assadeg, al-Kharrouba	1
	4	Gasr Libya, Zawiyet al-Argoub, Wadi bil-Hdeed, al-Bayada, Talmeeta, Batta, Sidi Noah, Agfanta, al-Hamama, al-Hiniya.	1
3. GREATER BENGHAZI 5 seats 3 sub-constituencies	1	Benghazi, from the Sidi Khalifa Bridge in the east to at-Toraya in the west to the cement plant in the south	3
	2	The eastern coast in Tokara area up to Sidi Khalifa	1
	3	Sloog, an-Nougiya, Abu safan, Gmeinis, al-Magroon, Shatt al-Bedein, ar-Ragta, Zawiyet Talmoon, Sloog al-Jardina, Msoos, al-Abyar, ar-Rahma, Bneina, Wadi Elbab, as-Salk, al-Mgazha	1
4. AJDABIYA 5 seats 4 sub-constituencies	1	Ajdabiya, Sultan, Beshar, Breiga, al-Ageela, Murada, az-Zoweitina	2
	2	Wahat, Jalo, Ojala, Jakhra	1
	3	Kufra, Tazerbu	1
	4	Seat reserved for the Tebu	1

- A women's seat shall be allocated in the main constituencies 1 and (al-Batnan) 2 (Green Mountains), and a seat in the main constituencies 3 (Benghazi) and 4 (Ajdabiya) from among the seats distributed among the sub constituencies. The location of each seat shall be determined according to the place where the female candidate who earned the highest number of votes was nominated.

Southern electoral region

Main Constituency	Sub-Constituency		Seats
1. SEBHA 9 seats 2 sub-constituencies	1 Sebha	Ghodwa, Semno, Tamhant, az-Zighen	1
		al-Gardha, At-Tanawiya, Hay al-Karama	1
		Gayeed, al-Manshiya	1
		Al-Jadeed, Sakra, Hay Abdelkafi	1
	2 Ashatei	An-Nasriya, Hijara, al-Mahdiya	1
		Barrak, Ashkada, Zelwaz, Geera, Zowiya	1
		Agar, Hay al-Mashashiya, Tamzawa,	1
		Mahrouga, Algardha, Tharouth	1
		Gatta, Bargan, al-Gulla, Abu Gdood, az-Zahra	1
		Wanzarik, al-Heeta, Temsan, Mansoura, Edri	1
2. OBARI 9 seats 3 sub-constituencies	1 Obari	Obari City, Addisa, al-Hatiyya, al-Geirat, al-Ghreifa, Jarma	1
		Toush, Ebreik, al-Fakhakha, Toyohalkhraeg,	1
		Garagra, Tkarakbiya, al-Fijej	1
		Bint Beya, al-Giraya, Gabr Awn, ar-Rigeiba,	1
		at-Tanahma, Zowiya, al-Galaa,	1
		Ikhleif, Alhamra, Bin Haret, al-Abyadh	1
		Seat reserve for the Touareg	1
	2 Murzug	Murzug, Jizaw, Edleim, Haj Hajeel	1
		Om Elhamam, Doujal, Agar Atba, Marhaba,	1
		Tagrooten, Assibeitat, Tsawa	1
		Aljaren, Maknousa	1
		Traghen, Fangal, Om Elaraneb, Majdool,	1
		Timsa, Zweila	1
		Algatroon, Tjarhi, Albikhi, Madroos (reserved for the Tebu)	1
3. GHADAMES 2 seats 2 sub-constituencies	1 Ghadames	Ghdames, Sinawen, Derj	1
	2	Seat reserve for the Touareg	1

- Two seats are allocated to women in sub-constituency 1 (Sebha), and the second for sub-constituency 2 (Ashatei). The location of each seat shall be determined according to the place, where the female candidate who earned the highest number of votes was nominated.

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