

Constitutional Basis Proposal agreed upon by the LPDF Legal Committee

Tunis, 9 April 2021

Constitutional Amendment (.....)

Upon review of:

- *The Constitutional Declaration of 3 August 2011 and amendments.**
- *The Libyan Political Agreement signed on 17 December 2015.**
- *The Rules of Procedure of the House of Representatives.**
- *The Roadmap of the Libyan Political Dialogue Forum (LPDF) issued on 16 November 2020.**

The House of Representatives (HoR) issues the following constitutional amendment:

Article	Remarks
First Article	
<p>Article 30/12/1 of the Constitutional Declaration shall be amended to read as follows:</p> <p>The referendum on the Draft Constitution shall be postponed until after the formation of the new legislative authority, which shall be obligated to take all necessary actions to complete the referendum on the Draft before the expiration of its term.</p> <p>Until then, the constitutional basis below shall apply.</p>	

Chapter One: Legislative Authority

Article 1

The Legislative Authority shall be undertaken by a House of Representatives elected through public, free and secret suffrage. The law shall guarantee no less than 30% representation of women and shall also guarantee fair representation of cultural components, youth, refugees and internally displaced persons (IDPs).

There is a proposal to add the following paragraph: “Representation of cultural components shall be through seats allocated for their representation in “in their cities.”

Article 2

The seat of the House of Representatives shall be in Benghazi. It may hold its meetings outside its official headquarters in accordance with its Rules of Procedure.

Article 3

Within two (2) weeks from the announcement of the final results of the elections, the HoR shall hold its first meeting chaired by the oldest member whereas the youngest member shall be the rapporteur. In a public session, members of the HoR shall take the following oath:

"I swear by God Almighty to preserve the independence and territorial integrity of the country, to uphold the Constitutional Declaration and the Law, to fully take care of the people's interests and to work to achieve the principles and goals of the 17th February Revolution."

There is a reservations on the phrase “and work to achieve the principles and goals of the February Revolution” on the basis that its, “a loose phrase, and there is no official document issued by an official authority that defines these principles and goals, and the oath on respecting the Constitutional Declaration is sufficient because its Preamble refers to the February Revolution. If the Preamble does not clearly include the objectives and principles, it should be amended.”

Article 4

The meeting of the HoR shall only be valid with the presence of the absolute majority of its members.

Decisions shall be issued by a majority vote of those present, except in cases where a prescribed majority is required.

Article 5

The HoR shall take the following decisions by a two-thirds majority of its members:

1. Procedures of the constitutional process.
2. Declaration of a state of emergency, war and peace, and exceptional measures.
3. Award concessions of strategic nature for foreign investment.

Article 6

The term of the new HoR shall begin from the date of its first session and expire with the lapse of four (4) calendar years, or with the election of the legislative authority in accordance with the Permanent Constitution, whichever is earlier. The HoR shall ensure completion of the Permanent Constitution within a maximum of six (6) months prior to the end of its term. In the event that the Constitution is not completed within the specified time, legislative elections shall be called for within no later than one hundred and twenty (120) days before the end of term of the HoR based on the Constitutional Basis herein and the electoral laws promulgated accordingly.

<p>The Article herein may not be amended.</p>	
Article 7	
<p>No later than fifteen (15) days from its first session, the HoR shall elect its Speaker and two deputy Speakers [to serve] for one (1) year non-renewable.</p>	
Article 8	
<p>Within a maximum of thirty (30) days from its first meeting, the HoR shall establish its Rules of Procedure with an absolute majority of its members. The Rules of Procedure shall include modalities of exercising competences and safeguarding the Rules of Procedure. This shall be regulated by law and published in the official gazette.</p> <p>The HoR sessions shall be public, and its deliberations shall be recorded in minutes published in accordance with its Rules of Procedure. The HoR may convene a closed session at the request of its Speaker, President of State, Prime Minister, or at the request of one third of its members.</p> <p>Broadcasting the sessions in the media shall be in accordance with conditions prescribed in the Rules of Procedure.</p>	
Article 9	
<p>The HoR shall enjoy administrative and financial independence under the general budget of the State. The expenditures of the HoR shall be subject to oversight by an independent external statutory auditor selected in accordance with the Rules of Procedure for a period of one (1) year.</p> <p>The State shall allocate the human and financial resource necessary for</p>	

the good performance of the HoR.	
Article 10	
The HoR member shall represent the entire people. The respective voters may not limit such representation with any restriction or condition. Voting shall be a personal right for the member and may not be delegated or waived.	
Article 11	
Membership of the HoR may not be combined with any position at an executive authority institution. The HoR member may not be a member of or advisor to committees or boards of directors of companies, bodies or public institutions.	
Article 12	
Without prejudice to the Rules of Procedure of the HoR, the member of the HoR shall not be held accountable for the opinions he/she expresses in the House or its committees.	
Article 13	
Every member of the HoR shall enjoy parliamentary immunity. In cases other than in flagrante delicto, the HoR member may not be arrested or subjected to any criminal proceedings without the permission of the HoR in accordance with its Rules of Procedure. If an HoR member is arrested in flagrante delicto, the Speaker of the HoR shall be notified within forty-	

eight (48) hours.	
Article 14	
Membership in the HoR shall expire with resignation, death, loss of eligibility, or inability of the member to perform duties, or if the member no longer meets one of the membership conditions based on which he/she was elected, or if the member fails to fulfil duties. The Rules of Procedure shall set out the procedures related to the vacant seat. A decision of termination of membership shall be issued by a majority of two thirds of the HoR members.	
Article 15	
If a seat of a HoR member becomes vacant, the alternative candidate shall be selected in accordance with the electoral law, provided that the HoR notifies the High National Elections Commission (HNEC) within a maximum period of ten (10) days from the date the vacancy is confirmed. The term of the new member shall expire with the expiration of the HoR term.	
Article 16	
The HoR shall enact legislations, grant a vote of confidence and a motion of censure to the Council of Ministers, monitor the executive authority, approve the public budget, and endorse the general policy presented by the government.	
Article 17	

Law proposals shall be submitted at an initiative of at least ten (10) HoR members and draft laws shall be submitted by the Council of Ministers. The Prime Minister shall submit the draft laws related to ratification of international treaties and the draft general budget law. The priority shall be for consideration of draft laws.

Article 18

The HoR shall not discuss a draft or proposed law before its consideration by the competent committees according to the Rules of Procedure unless this is agreed by the absolute majority of the HoR members before presenting the draft law or proposal for discussion.

Article 19

The Prime Minister shall submit to the HoR the draft general budget law at least thirty (30) days before the beginning of the fiscal year for review and adoption. It shall be voted on chapter by chapter, provided that the budget is issued by a law that defines the fiscal year and includes provisions for the budgets and accounts of institutions, bodies and local administration units, and provisions for transfers between lines of the approved budget, as well as provisions for settlement of any additional or contingent expenditures not previously included in the approved allocations

Article 20

The government shall not have the right to close a public loan or pledge that may entail extra-budgetary financial obligations except with the

approval of the HoR.	
Article 21	
<p>Fact-finding committees shall be formed by a decision of the Speaker and may not be formed on incidents subject of judicial investigation as long as such investigation is ongoing. The work of each previously formed fact-finding committee shall end upon opening a judicial investigation in the incidents that necessitated its formation.</p> <p>Parliamentary investigation committees shall be formed at the request of the President of State or one third of the HoR members. The work of the investigation committee shall end with the submission of its report to the HoR.</p>	
Article 22	
Every HoR member may address a question or interpellate the Prime Minister or any of the Ministers, as established by the Rules of Procedures.	
Article 23	
<p>If the HoR decides, by absolute majority of its members, on a motion of censure for the government, the latter shall be deemed to have resigned and shall continue to function in care-taking capacity until a new government is designated. If the decision concerns one of the ministers, the latter shall be deemed to have resigned.</p> <p>The HoR shall only consider the request for a motion of censure at the request of one fourth of the HoR members. This request shall only be</p>	

presented for discussion after eight (8) days from the day of its submission, and voting shall only take place after two (2) days from completion of the discussion.		
Chapter Two: The Executive Authority		
Article 24		
The executive authority shall consist of the President of State and the Council of Ministers.		
Article 25		
The Head of State shall be the symbol of its unity, and shall protect the interests of the people, preserve the independence and territorial integrity of the homeland, observe the balance of powers, and shall exercise prerogatives as described in the Constitutional Declaration herein.		
Article 26		
Indirect Election	Direct Election	
<p>The HoR shall elect the President of State by secret ballot. Each candidate shall be required to obtain two endorsements from each constituency. The candidate who receives a two-thirds majority of the HoR members shall be considered the winner in the elections in the first round.</p> <p>If none of the candidates wins the first round, a second round shall be organized within a maximum</p>	<p>The President of State for the transitional period shall be elected through public, free and secret suffrage and by absolute majority of the voters. In the event that none of the candidates receives the required majority in the first round, a second round shall be organized within two weeks from the date of announcement of the final results of the first round. The two candidates who receive the highest votes shall participate in this round.</p>	<p><u>The LC was unable to reach a consensual solution regarding this Article and other articles related to the President of State. Two main opinions appeared within the LC; the first demands a provision on direct election of the president, while the second demands that the President is elected by the Parliament unless a permanent constitution is adopted. The LC members agreed to refer the issue to the LPDF plenary.</u></p>

of seven (7) days during which the two candidates who received the highest votes in the first round shall participate. The secret ballot for the HoR members shall be organized per constituency. The candidate who receives the majority of votes shall be considered winner, provided that these [votes] include at least half of the HoR members representing each constituency.

If no candidate wins the first two rounds, candidacy shall be re-opened and elections shall be repeated according to the same procedures within a maximum of two (2) weeks. The candidate who receives the highest votes in the second round shall be considered the winner.

If it is not possible to elect the President of State within a maximum of ninety (90) days, the HoR shall be considered to have dissolved automatically, and legislative elections shall take place within a maximum of ninety (90) days from the date of the last election round.

Article 27

The candidate for Presidency of State must:

1. Be a Libyan Muslim.
2. Not hold a nationality of another country.
3. Not be married to a non-Libyan.
4. Not be less than thirty-five (35) years of age on the day of

There is a request to establish general conditions and non-exclusion except based on final court rulings, and to leave the technical conditions to the electoral law. In all cases, the LC members recorded the close connection between this Article and the preceding Article and agreed to refer the issue to the LPDF plenary.

candidacy.

5. Not have been previously convicted of financial corruption or violation of human rights or International Humanitarian Law.
6. Submit a disclosure of immovable and movable properties inside and outside Libya as well as those of spouse and minor children.
7. Be endorsed by no less than five thousand (5000) citizens in accordance with the law.
8. Meet any other conditions prescribed by the law.

Article 28

PROPOSAL

The Head of State shall take the following oath before the Supreme Court in an open session attended by the HoR Presidency:

"I swear by God Almighty to preserve the independence and territorial integrity of the country, to respect the Constitutional Declaration and the law, to fully protect the interests of the people, and to pursue achievement of the goals and principles of the 17 February Revolution.

There is a reservations on the phrase “and work to achieve the principles and goals of the February Revolution” on the basis that its, “a loose phrase, and there is no official document issued by an official authority that defines these principles and goals, and the oath on respecting the Constitutional Declaration is sufficient because its Preamble refers to the February Revolution. If the Preamble does not clearly include the objectives and principles, it should be amended.”

Article 29

The President of State shall:

1. Represent the State in its foreign relations:
2. Select and assign the Prime Minister to form the government after consultation with the HoR.
3. Exercise the functions of the Supreme Commander of the Libyan Army.
4. Appoint and remove from office the head of General Intelligence Service after approval of the House of Representatives.
5. Appoint ambassadors and representatives of Libya at international organizations based on a proposal from the Minister of Foreign Affairs.
6. Appoint senior officials and relieve them of duties based on a nomination by the Council of Ministers.
7. Accredite representatives of foreign countries and bodies to Libya.
8. Issue laws approved by the House of Representatives.
9. Conclude international agreements and treaties, provided that these are to be ratified by the HoR.
10. Declare a state of emergency, war and peace, and take exceptional measures provided that the matter is submitted to the HoR for endorsement within a period not exceeding ten (10) days by an absolute majority of its members. The HoR must convene

immediately upon declaration of the state of emergency.

The state of emergency shall be declared for a period not exceeding three (3) months to be extended for the same period on the basis of a 60% majority vote of the Parliament members. Its subsequent extension shall require a two-thirds majority of the Parliament members.

11. Preside over the meetings of the Council of Ministers when attending its sessions.
12. Relieve the Prime Minister of duties after consultation with the HoR and relieve the ministers of duties after consultation with the Prime Minister.
13. Exercise any prerogatives provided for in the Constitutional Declaration and the law.

Article 30

The financial remuneration of the Head of State shall be determined in accordance with Article 48. The Head of State may not receive any other salary or remuneration, or engage during his tenure in any other business, or commercial, financial or industrial activity, nor may he buy or rent any of the state properties or sue it thereon, or conclude contracts of obligation, supply, or building contracts. In the event that the Head of State receives, personally or through an intermediary, a cash or in-kind gift, the ownership of the same shall devolve to the public treasury, all as regulated by the law.

Article 31

In the event that the position of the President becomes vacant due to resignation, death, permanent disability, or any other reason, the Prime Minister shall temporarily assume the functions of the Head of State, provided that the vacancy of the position is announced by the Speaker of the HoR.

A new president shall be elected within thirty (30) days from the announcement of the vacant position.

The Head of State shall submit his resignation in writing to the Speaker of the HoR.

[LC] members noted that this text is designed on the basis of indirect election of the president. They considered that in the case of direct election, the necessary period for holding new presidential elections should be reviewed.

Article 32

The Head of State shall enjoy judicial immunity throughout his term in presidency. All statutory limitation and preclusive deadlines shall be suspended. Proceedings may be resumed after the end of his term.

Subject to Article 33, the Head of State shall not be accountable for his acts while exercising duties.

Article 33

Accusation of high treason against the Head of State shall be based on a request signed by at least the majority of the HoR members. The decision to refer the matter to the Prosecutor General shall only be taken by a two-thirds majority of the HoR members. Once such decision is issued, the Head of State shall be suspended from duties. This shall prevent the Head of State from exercising functions until a court order is issued.

The Head of State shall be tried before the Supreme Court and all its chambers collectively. Prosecution shall be undertaken by the Prosecutor General. The rulings of the Court shall be final and not subject to appeal.

Should the Head of State be convicted, he shall be relieved of duties without prejudice to the other penalties.	
Article 34	
The Head of State may address the HoR directly or through messages read on his behalf; these messages shall not be subject to discussion.	
Article 35	
Within seven (7) days from the date of adoption of a law, the Head of State may request the HoR, through a reasoned note, to reconsider the said law. The HoR shall re-discuss the law within one (1) week. If re-adopted, the law shall be referred for promulgations and publication.	
Article 36	
If the Head of State is unable to perform duties temporarily, he may delegate some of his prerogatives to the Prime Minister for a period not exceeding thirty (30) days, except for the prerogative related to Article 29/9. The Head of State shall inform the Speaker of the HoR of the same.	
<u>The Council of Ministers</u>	
Article 37	
The Council of Ministers shall consist of a prime minister, one or more deputies, and ministers. It shall be entrusted with administering the internal and external affairs of the State. The Prime Minister shall supervise the work of the Council and guide it to perform its functions, provided that this shall be in consultation with the Head of State with regards to the ministries of Foreign Affairs and Defense.	

Article 38

The Prime Minister and ministers shall be collectively accountable before the HoR for the policy of the State. Each minister shall be accountable for the work of the respective ministry.

Article 39

Except for the functions assigned to the Head of State, the Council of Ministers shall exercise executive authority, manage the affairs of the State, and ensure the normal functioning of State institutions and public structures in accordance with the laws in force. The Head of State shall in particular:

- 1 . Establish priorities of government activities.
- 2 . Propose the general policy of the State in consultation with the President and oversee its implementation after approval.
- 3 . Propose draft laws.
- 4 . Prepare the draft general budget and the final account of the State.
- 5 . Issue regulations, decrees, and directives for the purpose of implementing laws.
- 6 . Negotiate international treaties and agreements.
7. Exercise any other prerogatives stipulated in the legislation in force.

Article 40

<p>The appointed Prime Minister or Minister must:</p> <ol style="list-style-type: none"> 1. Be Libyans and enjoy civil and political rights. 2. Be of integrity and good reputation and have not been convicted through a final court ruling of a crime involving honor or honesty. 3. Be no less than thirty (30) years of age on appointment date for the Prime Minister and twenty-five (25) years of age for the Minister. 4. Not hold a nationality of another country. 5. Submit a disclosure of immovable and movable properties, as well as those of spouse and minor children. 	<p>- Three LC members had reservations on the issue of nationality.</p>
<p>Article 41</p>	
<p>The Prime Minister and ministers shall take the following oath before the Head of State in an open session:</p> <p>"I swear by God Almighty to preserve the independence and territorial integrity of the country, to respect the Constitutional Declaration and the law, to fully protect the interests of the people, and to pursue achievement of the goals and principles of the February Revolution".</p>	<p>There is a reservations on the phrase “and work to achieve the principles and goals of the February Revolution” on the basis that its, “a loose phrase, and there is no official document issued by an official authority that defines these principles and goals, and the oath on respecting the Constitutional Declaration is sufficient because its Preamble refers to the February Revolution. If the Preamble does not clearly include the objectives and principles, it should be amended.”</p>
<p>Article 42</p>	

<p>The Prime Minister shall in particular:</p> <ol style="list-style-type: none"> 1. Invite the Council of Ministers for a meeting and chair its meetings. 2. Propose the composition of the Council of Ministers to the Head of State for approval, then submit the same to the HoR for a vote of confidence. 3. Issue decisions taken by the Council of Ministers. 4. Appoint deputy ministers upon a proposal from the competent minister. 	
Article 43	
<p>The Prime Minister shall submit his resignation in writing to the Head of State, and the resignation of the minister shall be submitted to the Prime Minister. The resignation of the Prime Minister shall entail the resignation of the entire government. The outgoing government shall continue in care-taking capacity until a new government is formed.</p>	
Article 44	
<p>The financial treatment of the Head of State, HoR members, Prime Minister, ministers, and those of similar status shall be determined by a law based on a draft law presented by the Council of Ministers and endorsed by the HoR within a period not to exceed one (1) month from taking the legal oath.</p> <p>In all cases, the remuneration of the Head of State, Prime Minister, ministers, HoR members and those of similar status may not exceed twenty times the minimum wage.</p>	<p>One reservation on determining the remunerations.</p>

Chapter Three: General Provisions

Article 45

The local administrative organization shall be based on the principle of decentralization within the framework of unity of the State. The governorates and municipalities, their respective competences and financial allocations shall be regulated by the law to ensure decentralized services, transparent spending, and sovereign nature of state resources, with the aim of sustaining balanced and sustainable development across the country.

Article 46

Possession of weapons and the army, police and security institutions shall be a State monopoly in accordance with the law in the public interest. The Army shall defend the homeland and shall commit to not violating the constitutional system and shall be subject to civil authority. The Army shall be prohibited from engaging in political action. Personnel of the army, police and security services shall have the right to vote in elections without being candidates. It shall be prohibited for any individual, entity or group to establish military or paramilitary formations, groups, or organizations outside the legitimacy of the State.

Chapter Four: Completion of Constitutional Process after Legislative Elections

Article 47

Within a period not exceeding two (2) years from the date of convening its first session, the elected HoR shall form a technical committee whose

<p>composition shall take into account representation of cultural components.</p> <p>The committee shall coordinate with the CDA to forge binding solutions regarding the objections on the Draft [Constitution].</p> <p>The HoR, in coordination with HNEC, shall take the necessary actions to complete the referendum on the amended Draft before the expiration of its term.</p>	
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Second Article

<p>Under the Amendment herein, all the above-outlined provisions of the Constitutional Basis shall become an integral part of the Constitutional Declaration.</p>	
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Third Article

<p>The Amendment herein shall enter into force as of the date of promulgation. Any contradictory provisions shall be abolished. All authorities and individuals shall abide by it and put it in place.</p>	
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Issued in.....

Date2021

The House of Representatives