

**Constitutional Basis Proposal agreed upon by the LPDF Legal Committee
Tunis, 9 April 2021**

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	
Article 30/12/1 of the Constitutional Declaration shall be amended to read as follows: Within regulatory periods, the Draft Constitution shall be amended by a technical committee designated by the LPDF with defined controls. The technical committee shall, by absolute majority, forward the amended Draft Constitution to the CDA for endorsement by proportional majority	

in a session held in Ghadames with absolute majority quorum chaired by the oldest member if the elected presidency is absent, provided that [the Draft Constitution] is submitted for referendum by the people according to the Constitutional Declaration and its amendments and the Referendum Law agreed upon by the relevant institutions before 30 October 2021.

In all cases, the parliamentary election shall be held as scheduled on 24 December 2021 in accordance with the Constitution, if approved by the people, or the Constitutional Basis annexed to the Constitutional Declaration without affecting the constitutional process.

Chapter One: Legislative Authority

Article 1

The Legislative Authority shall be undertaken by the National Assembly (House of Representatives/Senate) elected through public, free and secret suffrage. The law shall guarantee no less than 30% representation of women and shall also guarantee the representation of each cultural components in the concerned sub-constituencies at a percentage of 3% of the total number of seats.

Article 2

The seat of the two chambers of the National Assembly shall be in Tripoli and Benghazi.

Article 3

Within two (2) weeks from the announcement of the final results of the elections, each chamber of the National Assembly 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 two chambers of the National Assembly 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."

Article 4

The first session of the National Assembly shall only be valid with the presence of two-thirds majority of its members and absolute majority for other sessions.

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

Article 5

The National Assembly 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.

5.

<p>4. Amendment of the Constitutional Declaration shall require approval of the Presidency of the State.</p>	
<p>Article 6</p>	
<p>The term of the new National Assembly shall begin from the date of its first session and shall expire with the lapse of two (2) years, or with the election of the legislative authority in accordance with the Permanent Constitution, whichever is earlier. The Assembly 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> <p>The Article herein may not be amended</p>	
<p>Article 7</p>	
<p>Within no later than fifteen (15) days from its first session, each chamber of the National Assembly shall elect a president and two deputies [to serve] for one (1) year non-renewable.</p>	
<p>Article 8</p>	
<p>Within a maximum of thirty (30) days from its first meeting, the National Assembly 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</p>	

shall be regulated by law and published in the official gazette.

The National Assembly sessions shall be public, and its deliberations shall be recorded in minutes published in accordance with its Rules of Procedure. The Assembly may convene a closed session at the request of its President, President of State, Prime Minister, or at the request of one third of its members.

Broadcasting the sessions in the media shall be in accordance with conditions prescribed in the Rules of Procedure

Article 9

The National Assembly shall enjoy administrative and financial independence under the general budget of the State. The expenditures of the National Assembly 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.

The State shall allocate the human and financial resource necessary for the good performance of the National Assembly.

Article 10

The National Assembly 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

<p>Membership of the National Assembly may not be combined with any position at an executive authority institution. The National Assembly member may not be a member of or advisor to committees or boards of directors of companies, bodies or public institutions.</p>	
<p style="text-align: center;">Article 12</p>	
<p>Without prejudice to the Rules of Procedure of the National Assembly, the member of the National Assembly shall not be held accountable for the opinions he/she expresses in the House or its committees.</p>	
<p style="text-align: center;">Article 13</p>	
<p>Every member of the National Assembly shall enjoy parliamentary immunity. In cases other than in flagrante delicto, the National Assembly member may not be arrested or subjected to any criminal proceedings without the permission of the National Assembly in accordance with its Rules of Procedure. If a National Assembly member is arrested in flagrante delicto, the Speaker of the HoR shall be notified within forty-eight (48) hours.</p>	
<p style="text-align: center;">Article 14</p>	
<p>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</p>	

the HoR members.	
Article 15	
If a seat of a National Assembly member becomes vacant, the alternative candidate shall be selected in accordance with the electoral law, provided that the National Assembly notifies the High National Elections Commission (HNEC) within no later than ten (10) days from the date the vacancy is confirmed, except in cases of assassination where the replacement shall be elected by the people. The term of the new member shall expire with the expiration of the National Assembly term.	
Article 16	
The National Assembly shall enact legislations, oversee the executive authority, approve the public budget, endorse the general policy presented by the government, hold accountable, suspend and withdraw confidence from the ministers based on a report from oversight authorities or upon request from the Prime Minister and grant a vote of confidence to the ministers.	
Article 17	
Law proposals shall be submitted at an initiative of at least ten (10) 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 National Assembly 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 National Assembly 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

Fact-finding committees shall be formed by a decision of the President of the Senate 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.

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 National Assembly.

Article 22

Every National Assembly member may address a question or interpellate the Prime Minister or any of the Ministers, as established by the Rules of Procedures.

Article 23

The Senate shall be competent with endorsement of the decisions and legislations promulgated by the HoR or rejection of the same specifying the reasons in a manner not in contravention to the provisions of the Constitutional Declaration.

Chapter Two: The Executive Authority

Article 24

Until referendum on the amended Draft Constitution and adoption of the same by the people, the executive authority shall be temporary and shall consist of a presidency council and a Prime Minister. The LPDF shall commit to convening the Plenary in September 2021 to evaluate the performance of the Executive Authority in accordance with the Roadmap and agreeing on whether or not to grant a second term for the remaining

<p>period and taking the necessary actions in case the LPDF decides to develop or change the Authority.</p>		
<p>Article 25</p>		
<p>The Presidency 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.</p>		
<p>Article 26</p>		
<p>Indirect Election</p>	<p>Direct Election</p>	
<p>Denying the right of the people to choose the president until the referendum on and adoption of the Constitution is rejected.</p>	<p>Denying the right of the people to choose the president through the Constitution is rejected.</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. (That is why we are presenting this proposal as a compromise.)</u></p>
<p>Article 27</p>		
<p>The criteria should be determined by the people through referendum on a permanent constitution.</p>		

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".

PROPOSAL

Article 29

The Presidency of State shall:

1. Represent the State in its foreign relations:
2. Exercise the functions of the Supreme Commander of the Libyan Army.
3. Appoint and remove from office the head of General Intelligence Service after approval of the National Assembly.
4. Appoint ambassadors and representatives of Libya at international organizations based on a proposal from the Prime Minister and accredit the diplomatic missions abroad and others of the same status.
5. Appoint senior officials and relieve them of duties based on a nomination by the Council of Ministers.
6. Accredite representatives of foreign countries and bodies to Libya based on a nomination by the Prime Minister.
7. Conclude international agreements and treaties, provided that these are to be ratified by the National Assembly.
8. Declare a state of emergency, war and peace, and take exceptional measures provided that the matter is submitted to the National Assembly 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 National

<p>Assembly members.</p> <p>9. Exercise any prerogatives provided for in the Constitutional Declaration and the law.</p>	
Article 30	
<p>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.</p>	
Article 31	
<p>In the event that the position of the President becomes vacant due to resignation, death, permanent disability, or any other reason, the Council of Ministers shall collectively assume the functions of the Head of State, provided that the vacancy of the position is announced by the Speaker of the HoR.</p>	
Article 32	
<p>The Presidency of State and Prime Minister shall enjoy judicial immunity throughout the term in presidency. All statutory limitation and preclusive deadlines shall be suspended. Proceedings may be resumed after the end</p>	

<p>of his term.</p> <p>Subject to Article 33, the Head of State shall not be accountable for his acts while exercising duties</p>	
Article 33	
<p>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.</p> <p>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.</p> <p>Should the Head of State be convicted, he shall be relieved of duties without prejudice to the other penalties.</p>	
Article 34	
<p>The Presidency of State may address the National Assembly directly or through messages read on its behalf; these messages shall not be subject to discussion.</p>	
Article 35	
<p>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 transmitted for promulgations and publication.</p>	
Article 36	

<p>If the Presidency of State is unable to perform duties temporarily, it may delegate some of its 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.</p>	
<u>The Council of Ministers</u>	
Article 37	
<p>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.</p>	
Article 38	
<p>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.</p>	
Article 39	
<p>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:</p> <ol style="list-style-type: none">1 . Establish priorities of government work.	

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

The appointed Prime Minister or Minister must:

1. Be Libyan and enjoys civil and political rights.
2. Be of integrity and good reputation and have not been convicted in a final court ruling of a crime involving honor or integrity.
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 in accordance with the legislation in force.

Article 41

In a public session, the Prime Minister and ministers shall take the following oath before the Head of State:

"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".

Article 42

The Prime Minister shall in particular:

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

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, which shall continue in care-taking capacity until a new government is formed.

Article 44

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.

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.

Chapter Three: General Provisions

Article 45

The local organization shall be based on the principle of local government within the framework of unity of the State and its sovereignty over natural resources. The service/administrative units and development local units, their respective competences, financial allocations, asset management and regulations shall be regulated by a complementary law to ensure spatial development and transparent spending, 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.	
<u>Chapter Four: Completion of Constitutional Process after Legislative Elections in case of non-adoption of a permanent constitution before holding the elections</u>	
<u>Article 47</u>	
The elections for the 200 members of the HoR shall be held in accordance with Law 10 (2014), and elections for the 45 members of the Senate shall be held according to the list system on the basis that Libya [is divided into] three (3) constituencies according to the proportional or closed system so as to ensure defined representation of women and cultural components.	
Second Article	
Under the Amendment herein, all the above-outlined provisions of the Constitutional Basis shall become an integral part of the Constitutional Declaration.	
Third Article	
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.	

Issued in.....

Date2021

House of Representatives

PROPOSAL