



**USAID**  
FROM THE AMERICAN PEOPLE

# Beyond Constitutional Reform to Elections

## *Libya Electoral Legal Framework Analysis*



**November 2019**

This publication was produced by IFES for the U.S. Agency for International Development concerning Associate Cooperative Agreement No. 720767018LA00001, under Leader with Associates Cooperative Agreement No. AID-OAA-L-15-00007.



# **Beyond Constitutional Reform to Elections**

## ***Libya Electoral Legal Framework Analysis***

November 2019

Katherine Ellena  
Senior Global Legal Advisor

Alexandra Brown  
Legal and Research Officer

As Libya inches toward a new Constitution and national elections – whether in that order or not – this legal framework analysis considers the foundations for future elections in Libya and what can be done to strengthen the constitutional, legal and regulatory framework on which Libyan democracy rests. The analysis is designed to provide stakeholders with a holistic snapshot of the electoral legal framework and outline concrete recommendations for reform.





Beyond Constitutional Legal Framework Analysis: Libya Electoral Legal Framework Analysis  
Copyright © 2019 International Foundation for Electoral Systems. All rights reserved.

Permission Statement: No part of this publication may be reproduced in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without the written permission of IFES

Requests for permission should include the following information:

- A description of the material for which permission to copy is desired.
- The purpose for which the copied material will be used and the manner in which it will be used.
- Your name, title, company or organization name, telephone number, fax number, email address, and mailing address.

Please send all requests for permission to:

International Foundation for Electoral Systems  
2011 Crystal Drive, 10th Floor  
Arlington, VA 22202  
Email: [editor@ifes.org](mailto:editor@ifes.org)  
Fax: 202.350.6701

*This report is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The opinions expressed herein are those of the author(s) and do not necessarily reflect the views of USAID or the United States Government.*

## Table of Contents

Introduction and Background: Libyan Transition and Elections .....	1
Methodology for Electoral Legal Framework Analysis .....	4
Findings and Recommendations .....	5
Legal Framework Analysis .....	12
<i>Electoral System and Constituency Delimitation</i> .....	12
<i>Referendum Process</i> .....	17
<i>Institutional Framework</i> .....	19
<i>Election Budgeting and Funding</i> .....	21
<i>Voter Registration</i> .....	22
<i>Political Parties and Candidates</i> .....	26
<i>Media</i> .....	30
<i>Political and Campaign Finance</i> .....	31
<i>Election Observation and Oversight</i> .....	34
<i>Election Operations</i> .....	36
<i>Counting, Aggregation and Certification of Final Results</i> .....	37
<i>Election Dispute Resolution</i> .....	39
Annex I: Pros and Cons of Electoral Systems Tried or Proposed in Libya .....	43
Annex II: Libya Legal Electoral Framework .....	45
<i>International Legal Commitments</i> .....	45
<i>Constitutional Framework</i> .....	45
<i>Legislative Framework</i> .....	46
<i>Council of Ministers Decisions and Presidential Council Decisions</i> .....	47
<i>Regulations and Procedures</i> .....	48
<i>Relevant Jurisprudence</i> .....	48

## Introduction and Background: Libyan Transition and Elections

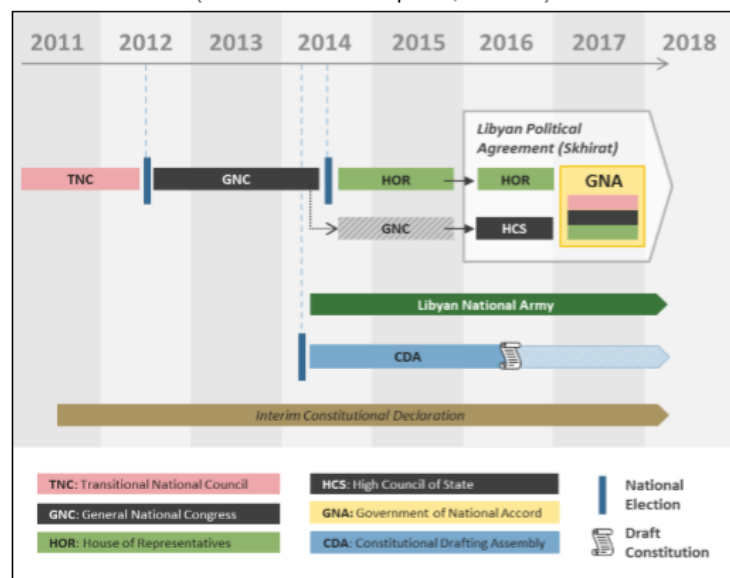
Libya has been in transition since 2011, when an armed uprising brought an end to the decadeslong dictatorship of Muammar al Qadhafi, and a National Transitional Council (NTC) took over. The NTC oversaw the development of an Interim Constitutional Declaration in August 2011, and in 2012 elections were held to establish a General National Congress (GNC), with the responsibility of legislating and selecting the members of a constituent assembly to write a new constitution. However, the NTC instead decreed that a Constitution Drafting Assembly (CDA) would be directly elected to develop the Constitution, and this body was subsequently elected in February 2014. As part of the transition roadmap, parliamentary elections for the House of Representatives (HoR) then took place in June 2014 to replace the GNC. The election was contested by GNC members, which resulted in two competing legislative bodies in the East and West of the country that remain at odds.

In December 2015, a United Nations- (UN) brokered political agreement created a Government of National Accord (GNA) to oversee the completion of the Libyan transition. The agreement called for a nine-member GNA Presidency Council that would have authority over national security and economic decision-making, while the HoR would retain legislative power – in consultation with a newly established High Council of State (HCS) made up in part of former GNC members.<sup>1</sup> However, neither this agreement or the GNA itself have been approved by the HoR, which has resulted in continuing questions about their legality. A 2017 UN-led Action Plan seeks to complete the political transition, but implementation of the plan is still being debated, including the timing and sequencing of elections and a constitutional referendum. An illustration of the transition is provided in Figure I.

A draft Constitution was completed by the CDA in 2017, and in November 2018, the HoR passed the Constitution Referendum Law to pave the way for a referendum on the new draft Constitution. At the same time, to implement the Referendum Law, the HoR also amended the 2011 Constitutional Declaration to divide Libya into three regions, with a requirement of 50 percent plus one votes in

favour in each of the three regions and two-thirds in favor nationwide to approve the Constitution. The 11th amendment to the Constitutional Declaration, also adopted in November 2018, incorporates the modified Libya political agreement – which sets out a Presidency Council composed of a president, two

**Figure I. Libya's Contested Transition**  
(Select Actors and Developments, 2011-2018)



Source: Congressional Research Service.

<sup>1</sup> Congressional Research Service, <https://fas.org/sgp/crs/row/RL33142.pdf>



vice presidents and a prime minister – into the existing constitutional framework. However, the text of the modified agreement has not been released publicly, so the legal implications of incorporating it into the amendment by reference are unclear.

At the local level, the Ministry of Local Government drafted the Local Administration Law 59/2012, which was endorsed by the NTC and later enacted by the GNC in 2013.<sup>2</sup> This law and the Council of Ministers Decision 130/2013 established the institutional structure of local government and thematic areas of competency for municipal councils. The creation of these municipal councils was part of a greater push for decentralization following Gaddafi's centralized hold on power for 42 years. These councils are made up of seven or nine directly elected members – depending on the population of the municipality and including the reserved seats for women and revolutionaries with disabilities – and the councillors then elect the mayor from within the council membership.<sup>3</sup> A large number of municipal council elections were held in 2014. These local elections resumed in 2018 and are expected to continue throughout 2019 and 2020 until all municipal councils are in place.

The current legal framework also provides for provincial councils, which are to be made up of a minimum of five members plus all of the mayors of the municipalities within the province.<sup>4</sup> Provincial councils are to elect a governor from their membership. To date, however, elections have never been held for provincial councils or governors. The new Draft Constitution commits to “expanded decentralization,” with two levels of local government – governorates and municipalities – and the potential for “other administrative units.”<sup>5</sup>

In terms of election administration, the current legal framework places national elections under the responsibility of the High National Elections Commission (HNEC), while local elections are the responsibility of the Central Committee for Municipal Council Elections (CCMCE). The framework provides for the independence of the HNEC,<sup>6</sup> but the CCMCE functions “under the supervision of the Minister of Local Government.”<sup>7</sup> Different electoral systems have been used for the different transitional elections at the national level, and for the municipal council elections.

Libya's legal framework for elections currently exists as a patchwork of provisions with varying legal authority, promulgated by several political and governmental institutions.

Hence, throughout Libya's transition process, the governance model and electoral system has been in flux, as has the legal framework for democratic elections. This means that Libya's legal framework for

<sup>2</sup> <https://pdfs.semanticscholar.org/f280/ea6d0001df9d40664422408b288c729c3b51.pdf>

<sup>3</sup> Law 59/2012 (NTC) Concerning the Local Administration System, Art. 26, and Executive Regulations of Law 59/2012, Art. 32

<sup>4</sup> Law 59/2012 (NTC) Concerning the Local Administration System, Art. 7, and Executive Regulations of Law 59/2012, Art. 31. Provincial Councils are to consist of five members (for provinces of less than 500,000 citizens), and an additional representative for every 100,000 citizens above that, along with a female member, a member of the revolutionary community with a disability and the mayors of all municipalities in the province.

<sup>5</sup> 2017 Draft Constitution, Arts. 143 and 144.

<sup>6</sup> Law 8 (2013) On the Establishment of The High National Election Commission, Art. II

<sup>7</sup> Decision 160/2013 On the Establishment of the Central Committee for the Preparation and Supervision of Municipal Council Elections, Art. 1

both national and local elections exists as a patchwork of provisions with varying legal authority, promulgated by several political and governmental institutions.

The legal framework for local elections is more robust than what exists for national elections and provides for periodic elections. However, this framework will need an overhaul once the new Constitution enters into force to provide for the two levels of local government. Or, if the Constitution is not passed, the current legal framework still needs to provide for gubernatorial and provincial council elections. At the national level, a series of election-specific laws and rules technically remain in force but are defunct in practice as they pertain to governing bodies elected for Libya's transitional period.

The Constitution Referendum Law is currently the only piece of national election legislation in force that pertains to a future national electoral event. Should the Draft Constitution pass, the HoR will have 90 days to put in place laws governing the election of the new president, Senate and HoR, as well as the restructuring of the HNEC.<sup>8</sup> This paper analyzes the electoral legal framework currently in place, highlighting gaps and providing recommendations to help consolidate Libya's democracy and bolster its resiliency after the transitional period.

---

<sup>8</sup> 2017 Draft Constitution, Art. 183

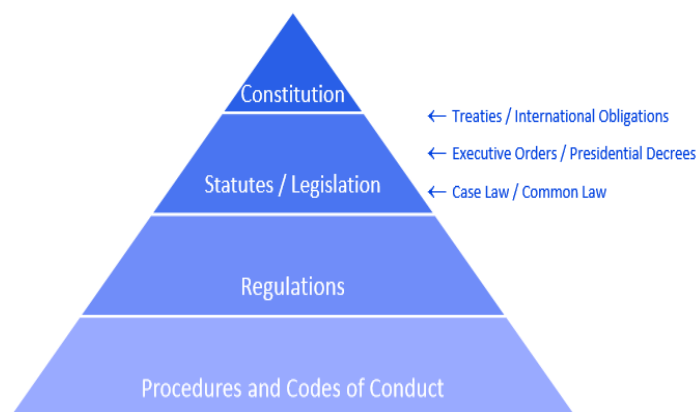


## Methodology for Electoral Legal Framework Analysis

An electoral legal framework consists of a hierarchy of laws and rules that together govern the process for electing members of the political institutions defined in a country's constitution or institutional framework.<sup>9</sup> These frameworks are the foundation for the democratic electoral process, and as such can impact greatly on the credibility and resiliency of the electoral process and system. In a transitional context, such as Libya's, sound electoral system design and robust legal reform can go a long way to steadying democratic processes over the longer term, mitigating polarization, strengthening democratic institutions and ensuring the inclusion of otherwise marginalized groups. For these reasons, an electoral legal framework needs to be unambiguous, understandable and transparent – ensuring that candidates are able to compete on the basis of equal treatment and voters are free to express their preferences at the ballot box.<sup>10</sup>

Regardless of the overall structure of the electoral process, a legal framework for elections should be solidified no less than one year before an election to allow for harmonization of the regulatory framework, if needed, as well as adequate training and education of stakeholders about the rules.<sup>11</sup> Predetermined standards can also avoid the perception of political manipulation and limit arbitrary decisions when political pressure rises during the election period. For a legal framework to be credible and effective, the parties that function within the framework must also understand and have notice of what the laws are and what they mean in practice.<sup>12</sup>

Because the electoral legal framework has a hierarchy of laws, each governing or influencing the electoral process in varying ways (see the graphic below), it is important to assess the hierarchy holistically, rather than simply looking at specific election laws in isolation. To take the latter approach may miss certain inconsistencies that exist across laws, and lead to an incomplete picture of the electoral framework. A “hierarchy” approach to legal analysis also helps to formulate a multilayered strategic reform approach that identifies different levels of reform needed, entry points and degrees of traction. For example, in most countries constitutional amendments are



<sup>9</sup> International IDEA, Electoral Management Design: The International Idea Handbook 326 (2006).

<sup>10</sup> International Institute for Democracy and Electoral Assistance (IDEA), Guidelines for Reviewing the Legal Framework of Elections 15 (2001)]; and Electoral Management Design: The International IDEA Handbook 49 (2006).

<sup>11</sup> Venice Commission, Code of Good Practice in Electoral Matters, 52nd Session, Op. No. 190/2002, at para. 65 (2002).

<sup>12</sup> Rachel Kleinfeld Belton, Competing Definitions of the Rule of Law, Implications For Practitioners 16 (Carnegie Endowment for International Peace, 2005) available at <https://carnegieendowment.org/files/CP55.Belton.FINAL.pdf>.

difficult to achieve, legislative reform can be more attainable depending on political will and institutional regulations provide a way of achieving steady reform progress and entrenching norms while other areas may be stuck. This can also help challenge a prevailing narrative that reform cannot be achieved in difficult environments, when in fact slow and steady reform is possible at different levels and different times. Finally, the hierarchy structure presupposes that differing levels of specificity and flexibility can be built into the law so that the election management body (EMB) can develop and update specific regulations, while protecting fundamental rights in the constitution and legislation, which are more difficult to amend.<sup>13</sup>

For this electoral legal framework analysis, the International Foundation for Electoral Systems (IFES) reviewed and considered various laws, rules and decisions or decrees making up the framework in Libya, using 12 categories of the electoral process: electoral system and constituency delimitation; referendum process; institutional framework; election budgeting and funding; voter registration; political parties and candidates; media; political and campaign finance; election observation and oversight; election operations; counting, aggregation and certification of final results; and election dispute resolution (EDR).

The analysis considers the legal framework both for national and local elections. Where relevant, the analysis considers laws or rules developed for specific elections that have since passed, as these may provide lessons or insights for future reform – for example, on electoral systems and boundary delimitation. The analysis also seeks to consider provisions of the 2017 Draft Constitution, which is not yet in force, but does not consider other draft laws and regulations that exist as the status and content of these drafts are unclear. As far as possible, the analysis focuses on the legal and regulatory framework currently in force in Libya. A succinct summary of the components of the current electoral legal hierarchy are outlined in Annex II. Following a summary of key findings and recommendations below, the report considers each of the 12 thematic categories listed above in turn, assessing these against international principles and identifying recommendations for improvement.

## Findings and Recommendations

### ***1. There is an urgent need to establish a legal reform group to begin developing a unified electoral code to govern future elections in Libya.***

As a result of the ongoing transitional process, Libya's legal framework for elections is scattered across numerous declarations, laws, rules and amendments. The framework for national elections is qualitatively different to that for local elections, with the former centered around a series of transitional, election-specific laws with accompanying regulations, and the latter a more consolidated framework that applies to periodic municipal council elections but does not cover provincial council elections, which have yet to be held in Libya. A unified electoral code is recommended, as this approach

---

<sup>13</sup> Id. at 11-20; International IDEA, Electoral Management Design: The International Idea Handbook 12 (2006). For a discussion regarding the structure and hierarchy of laws within an electoral framework see the IFES publication The Hierarchy of Laws: Understanding and Implementing the Legal Frameworks that Govern Elections, [https://www.ifes.org/sites/default/files/2016\\_ifes\\_hierarchy\\_of\\_laws.pdf](https://www.ifes.org/sites/default/files/2016_ifes_hierarchy_of_laws.pdf).

safeguards consistency in electoral administration and practices, and the unified implementation of the law in connection with all elections.<sup>14</sup> This also simplifies the drafting process in cases where amendments to legislation are needed.<sup>15</sup>

If the 2017 Draft Constitution is adopted, it provides only 90 days for the legislature to put in place laws governing elections for the new Libyan political institutions.<sup>16</sup> Given the significance of this legislative framework, work should begin now, ideally to develop a unified electoral code. To this end, a legal reform group, made up of different political, legislative, technical, election administration, judicial and civil society stakeholders, is recommended. This group could use this legal framework analysis as a starting point to map all reforms needed at the constitutional, legislative and regulatory levels, and develop proposals which can be shared for public consultation. Specific areas of reform that are critical and highly sensitive – such as electoral system design, which is discussed below – could be subject to specific processes of consultation, supplemented with expert technical support. The legal reform process should aim to achieve the following:

Reform Topic	Recommendations
Harmonization of laws and rules	Avoid conflicting provisions between national elections, subnational (provincial or state), local elections and referendums and ensure that all provisions are consistent with the Constitution and international obligations.
Ensuring the appropriate level of regulation	Carefully determine the content and level of detail included in law versus regulation, procedure or codes of conduct. It is important that the election process is not over-regulated with little flexibility to adjust to circumstances as needed. Conversely, some key electoral principles, such as the independence of the HNEC and CCMCE, must be codified in law to avoid political manipulation.
Clarity of the legal framework	Keep the goals of clarity and simplicity in mind. The ICCPR notes that laws must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. <sup>17</sup>
Timing of reform	Establish the legal and regulatory framework well in advance of an election – ideally one year <sup>18</sup> – so that there is time for people to understand it and for training to take place.
Mechanisms for inclusion	Ensure inclusivity and transparency so that stakeholders have the opportunity to provide input and bolster broad-based buy-in and acceptance.

***2. There is a need to consider and address key gaps in the current Draft Constitution, whether through amendments to the draft or through subsequent electoral legislation.***

The existing piecemeal legal framework is further complicated by the uncertainty of the contents of the future Libyan constitution. If the Draft Constitution is adopted, gaps exist that will need to be rectified

<sup>14</sup> <http://www.osce.org/odihr/elections/104573?download=true>

<sup>15</sup> Ibid.

<sup>16</sup> 2017 Draft Constitution, Art. 183.

<sup>17</sup> ICCPR, General Comment 34

<sup>18</sup> Venice Commission, Code of Good Practice in Electoral Matters, 52nd Session, Op. No. 190/2002, at para. 65 (2002).

either at the constitutional or legislative level. The following chart details the gaps and recommendations identified through our analysis.

Category	Recommendations
Electoral System and Boundary Delimitation	The Draft Constitution would establish a Shura Council made up of two houses – the HoR and the Senate – but does not establish the number of HoR representatives or the method of electing them. A consultative examination of the best electoral system for Libya, both nationally and locally, should be a priority well ahead of a constitutional referendum. In addition, while the intention behind the Draft Constitutional requirement for a presidential candidate to win a regional spread of votes is sound – to ensure broad support across the country – the application of such a provision will be complex and needs to be clarified in law.
Referendum Process	If the Draft Constitution is adopted, the Shura Council will have to pass new legislation to govern the types of referendums that it contains: amending the Constitution and dissolving the House of Representatives or the Senate under specific circumstances.
Institutional Framework	The Draft Constitution establishes the HNEC as an independent constitutional body responsible for the management and organization of all national <i>and</i> local elections. If the Draft Constitution is adopted, the administration of local elections will need to be transferred to the HNEC, either directly or by situating the CCMCE under the authority of the HNEC.
Political Parties and Candidates	The Draft Constitution includes the requirement for a candidate not to have previously held another nationality unless they renounce it at least a year prior to the election. If the Draft Constitution is adopted, it will be necessary to ensure that there is enough time for all those seeking to be candidates, including many who sought political asylum abroad, to have the opportunity to renounce their foreign citizenship and be able to compete in the election.
Election Observation and Oversight	The Draft Constitution guarantees the right to association and includes a specific protection of requiring a judicial order to suspend civil society organization (CSO) work or a court ruling to disband them. However, there is no law governing the regulation of CSOs, and the current Ministry of Culture and Civil Society Order violates these protections. New legislation will need to be passed to respect these constitutional protections, and the Draft Law on Associations put forward by CSO members should be considered.
Election Dispute Resolution	The framework for challenging the results of a presidential election in the future remains unclear and must be clarified well ahead of the first post-constitutional presidential election.

### ***3. There is a need for the legal reform process to consider important facets of institutional independence.***

A key aspect of electoral integrity is ensuring the independence of the institutions that are responsible for managing elections. At the national level, the HNEC was established as an independent institution with legal provisions that provide for financial independence in its operations. While the legal framework governing the HNEC is generally sound, there are issues that should be considered during a legal reform process. On the other hand, the CCMCE, which administers local elections, has far less *de jure* institutional independence than the HNEC, even though the institution has largely *de facto*

demonstrated independence. The following issues should be addressed in the legal framework to protect the independent and impartial administration of local elections:

Institution	Recommendations
HNEC	Currently, the Law on the Establishment of the HNEC rightly vests the appointment power in the legislative body rather than the executive. However, because the appointment criteria are vague, the process may be vulnerable to political manipulation. A reform process should further specify required credentials as well as provide a clear articulation of the application procedures, which could help ensure that women also have access to these positions. In addition, while the law provides the HNEC with financial independence, in practice the release of funding has been an ongoing challenge. Rather than having its budget developed transparently in accordance with established standards and then included in the annual general budget of the state as established in law, the HNEC relies on funding provided through emergency measures.
CCMCE	The formation of the CCMCE was provided for in executive regulation, and although the structure was formalized in Council of Ministers Decision 160/2013, the CCMCE operates under the supervision of the Ministry of Local Government, which undermines its independence and impartiality. These provisions should be amended or clarified to strengthen the independence of the CCMCE. Note that as mentioned above, per the Draft Constitution, the responsibility for national and local elections will be the responsibility of the HNEC. So unless the CCMCE is disbanded in the event that the Constitution passes, it would need to be brought under the HNEC.

***4. HNEC and CCMCE regulations and procedures and their related legislation should be revised to form a clear, comprehensive and harmonized legal framework that complies with international standards.***

At the regulatory level, it is positive that the existing legal framework sets out the authority of the EMBs – the HNEC and CCMCE – to promulgate regulations and procedures to implement the electoral process. This helps reinforce the independence of these institutions, and ensure the regulatory framework is developed by expert election administrations. As the legal reform process progresses, it will be important for regulations and procedures to clarify and supplement the legal framework in a way that is comprehensive and harmonized – i.e., without overlapping or contradictory provisions. This section also outlines areas in which incompatible regulations could benefit from the articulation of general standards in new or revised legislation – ideally in a unified election code.

Category	Gaps and Recommendations
Electoral System and Boundary Delimitation	<ul style="list-style-type: none"> <li>A clear and consistent electoral system for Libya needs to be enshrined in law that ensures representation of women and minority and marginalized groups, while entrenching democratic norms and a multiparty system.</li> <li>Depending on the design of the electoral system for Libya, the law needs to clearly set out a timely, periodic, appealable, transparent and democratic process for redistricting and for the allocation of seats.</li> </ul>

Referendum Process	<ul style="list-style-type: none"> <li>The 2018 Referendum Law does not include provisions on either equality of opportunity<sup>19</sup> or freedom of voters to form an opinion,<sup>20</sup> which are both included in the Venice Commission's Code of Good Practices on Referendums.<sup>21</sup></li> <li>In addition, the HNEC should finalize procedures to implement the 2018 Referendum Law.</li> </ul>
Institutional Framework	<ul style="list-style-type: none"> <li>If the administration of local elections is transferred to the HNEC under the Draft Constitution, the laws and rules governing local elections will need to be amended, and any structural changes in the election management model will need to be codified.</li> </ul>
Election Budgeting and Funding	<ul style="list-style-type: none"> <li>The HNEC is required by law to keep "regular accounts of revenue and expenditure," but no timeframe is specified in the law, nor are there any requirements for making this information public. The process for auditing and reporting on local election expenditure also needs to be made clear in the law.</li> </ul>
Voter Registration	<ul style="list-style-type: none"> <li>While, the Law on the Establishment of the HNEC broadly empowers the Commission to register voters, election-specific laws have all included their own voter registration provisions, and at the local level, there is a separate voter registration system organized by the CCMCE. The legal reform process should consider establishing a comprehensive voter registration system that can be continuously maintained throughout Libya for both local and national elections.</li> <li>While there has not thus far been a residence requirement for voter registration at the national level, there is a residence requirement at the municipal level. However, the current system used to track legal residence in Libya is the family book system, which ties an individual's legal residence to his or her father's until marriage. A civil registry may be needed to effectively enforce a residency requirement without unreasonably restricting the right to vote.</li> </ul>
Political Parties and Candidates	<ul style="list-style-type: none"> <li>While the Political Isolation Law has been canceled by the HoR, this decision has not been accepted throughout the country and should be clarified in any future law reform process. Additionally, merely canceling the law has not answered specific questions about which individuals who worked in the prior regime will be accepted to serve in leadership roles moving forward. This must be clarified and must not violate international human rights standards.</li> <li>A Gaddafi-era law, which remains in effect, strips Libyan citizenship from those who have accepted citizenship from another country without receiving the approval of the relevant government authorities. Prior to the revolution, many high-profile opposition leaders fled the country, and while losing their citizenship made them ineligible for candidacy under current election laws, these requirements have not been universally enforced, as most opposition leaders returned to the country after the revolution and have held high-ranking positions in the transitional government. These nationality requirements are also included in the Draft Constitution (see above). This issue must be clarified and uniformly enforced.</li> <li>The 2019 Municipal Councils Elections Regulation specifies that the candidate lists shall "[take] into consideration that the list shall include the diversity in the social and regional components within each electoral constituency and that the list shall not have any tribal</li> </ul>

<sup>19</sup> Venice Commission Code of Good Practice on Referendums (2006), Art. 2.2.

<sup>20</sup> Id. at Art. 3.1.

<sup>21</sup> Ibid.



	<p>or family character.”<sup>22</sup> However, there is no guidance on how this provision should be implemented. More detailed criteria and transparent and inclusive procedures should be developed.</p>
Political and Campaign Finance	<ul style="list-style-type: none"> <li>• Election-specific laws have included inconsistent provisions for campaign funding and expenditure. To harmonize rules in campaign finance for future elections, legislators should consider providing additional information about bookkeeping and publication requirements, consider setting a deadline for post-election reporting that is longer than two weeks after Election Day, explicitly state that the identity of those making donations should be included in the financial report and consider introducing a consistent requirement for candidates to submit information about their financial assets as part of the nomination process.</li> <li>• The law could also specify that winning electoral candidates cannot assume office until they have submitted their post-election financial report.</li> <li>• Regarding public funding, the law does not specify whether the 3 percent vote threshold only applies to certain types of elections, and there is lack of clarity about how the eligibility criteria for the public funding should be interpreted. There is also a missed opportunity to shape eligibility criteria in a way that encourages women’s political participation.</li> </ul>
Election Observation and Oversight	<ul style="list-style-type: none"> <li>• The Ministry of Culture and Civil Society Decree currently in place to govern CSOs and other nongovernmental organizations is vague and restrictive, violating international standards. Legislation should be passed that develops clear standards that can inform new regulation to replace this decree. Civil society members presented a Draft Law on Associations to the Ministry to be submitted to the GNC; however, the law was never passed.</li> </ul>
Media	<ul style="list-style-type: none"> <li>• Existing election laws prohibit candidates from campaigning through non-Libyan media and make the offense punishable by fine, imprisonment or revoking candidacy. However, it is unclear how this prohibition was intended to be monitored, especially considering that most television stations are not run from Libya even when they are perceived as being Libyan.</li> <li>• The current legal framework provides for equal use and allocation of the media but does not include details on how this is to be guaranteed.</li> <li>• There is a lack of provisions related to government censorship, paid advertising and the adjudication of electoral media complaints.</li> <li>• The legislation or regulations could also include specific provisions on gender, public opinion surveys, public forums and social media. It could also clarify differing requirements between public and private media and the role of the Ministry of Media.</li> </ul>
Election Operations	<ul style="list-style-type: none"> <li>• Overall, there is very little detail in the legal framework on issues of accessibility of polling stations, polling station set-up and management or the procedures used for out-of-country voting. For future national elections, legislation should include these principles, with further operational detail provided in regulations and procedures to ensure consistent practices that meet international standards.</li> </ul>
Counting, Aggregation and	<ul style="list-style-type: none"> <li>• Procedures for counting and aggregating are not clear in the existing legal framework, and additional information on what criteria are used to determine invalid votes are necessary to ensure the transparency needed for credible results. There are also no</li> </ul>

<sup>22</sup> Presidential Council Decision No. 18 (2019), Art. 6.

Certification of Results	procedures for the safe and secure transport of election materials in the existing laws and regulations.
Election Dispute Resolution	<ul style="list-style-type: none"> <li>• It is critical that provisions regarding the power to annul elections are clarified in Libya's legal framework for both national and local elections. This includes a requirement to clarify the grounds on which an election can be annulled, and the standard of evidence to prove these grounds. Additionally, it is necessary to clarify distinct roles for the HNEC, CCMCE and judiciary in annulling or withholding results.</li> <li>• The legal framework at the national level generally does not set different procedures or timelines for different types of disputes, which may require different handling.</li> <li>• At the local level, there appears to be wider legal standing in procedure than in law, along with overlapping jurisdiction, which could lead to forum shopping or concurrent adjudication of the same dispute.</li> <li>• There are no clearly defined burdens of proof or standards of evidence established in the law or regulations for elections, and this should be clarified, along with the specific circumstances that can lead to an annulment.</li> <li>• Judicial remedies need to be clarified in the legal framework for elections at both the national and local level, and sanctions for violations and crimes need to be consistent, effective and proportional.</li> </ul>

***5. Any law reform process needs to carefully consider monitoring and enforcement mechanisms to ensure the effectiveness of the law in practice.***

Several legal provisions are currently in place that are not consistently enforced in practice. As Libya attempts to regain rule of law and foster respect for professional and accountable government institutions, including an effective judiciary, it is important that electoral legislation and regulation can be implemented and enforced consistently. Reform efforts should aim to address these issues.

***6. The legal framework for future elections in Libya should include provisions that ensure meaningful – not just token – inclusion of women and marginalized groups in electoral and political processes.***

Libya has experimented with various electoral system configurations, and different mechanisms for the inclusion of women and other marginalized groups in political life. The importance of putting in place a fit-for-purpose electoral system cannot be overstated, particularly in a post-conflict, transitional environment where democratic norms are yet to take root, and where the careful inclusion of different groups can help guard against future instability. A careful and consultative examination of the best electoral system for Libya – both nationally and locally – should be a priority even well ahead of a constitutional referendum. Expert technical advice on electoral system design should be provided to Libya stakeholders, along with options to facilitate an inclusive, evolving electoral process. For example, sunset clauses can be provided in the law to allow for overrepresentation of certain groups until Libya's political system stabilizes.

## Legal Framework Analysis

### *Electoral System and Constituency Delimitation*

In a democracy, the electoral system defines the rules of the game for political competition. At its core, the electoral system “translates the votes cast...into seats won by parties and candidates.”<sup>23</sup> Although many observers believe the electoral system is itself “the easiest political institution to manipulate, for good or for bad...”<sup>24</sup> there is no optimal choice of systems for all countries. In selecting an electoral system, “the choices made may have consequences that were unforeseen, as well as predicted effects.”<sup>25</sup> In addition, for majoritarian electoral systems specifically, the integrity of the system is fundamentally tied to the fairness of the boundary delimitation process. That is, if constituent boundaries are drawn in a way that gives one party or group an unfair advantage over its rivals, the integrity of the process is undermined.<sup>26</sup> According to the Venice Commission, the “maximum admissible departure from the distribution...should seldom exceed 10% and never 15%” for population-based electoral constituencies.<sup>27</sup>

#### *National Elections*

In Libya, the electoral system at the national level has been somewhat in flux given the lengthy transition period. The TNC was established primarily from representatives of the local councils, although the Constitutional Declaration provided that “it must be taken into consideration in determining the representatives [from] each Local Council the population density and the geographical standard of the city or the area which it represents. The Council had the right to add ten (10) members for the sake of national interest.”<sup>28</sup> The election of the president and first and second vice presidents was “effected by relative majority of those present.”<sup>29</sup>

#### **Electoral Systems Used in Libya’s Transition**

##### **Transitional National Council (TNC)**

Indirect election from local councils

##### **General National Congress (GNC)**

Mixed parallel system – 200 seats, 80 elected using closed-list PR, 120 elected using FPTP for single-member constituencies and SNTV for multimember constituencies. Vertical and horizontal zipper system.

##### **Constitution Drafting Assembly (CDA)**

60 seats, mixed FPTP and SNTV system with six reserved seats for women and two seats reserved for each of three ethnic components – Amazigh, Tawaregh and Tebu

##### **House of Representations (HoR)**

200 seats, FPTP and SNTV system, 13 electoral constituencies, 16 percent seats reserved for women

##### **Municipal Councils**

Closed-list party block vote (PBV) plus FPTP for reserved seats for women and revolutionaries with disabilities

<sup>23</sup> Andrew Reynolds et al., *Electoral System Design: the New International IDEA Handbook*, International IDEA (2005), 5, <https://www.idea.int/publications/catalogue/electoral-system-design-new-international-idea-handbook>.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> ACE: The Electoral Knowledge Network, *Guiding Principles of Boundary Delimitation*, <http://aceproject.org/ace-en/topics/bd/bd20>.

<sup>27</sup> Venice Commission Code of Good Practice in Electoral Matters, at §2.2, ¶ 15.

<sup>28</sup> Constitutional Declaration, Art.18

<sup>29</sup> Ibid.

According to the Constitutional Declaration, the TNC's mandate included promulgating an election law for the General National Congress (GNC).<sup>30</sup> The TNC established an election committee for the 2012 GNC elections consisting of eight TNC members who were tasked with drafting the election law, identifying the electoral districts, and distributing GNC seats across the district.<sup>31</sup> Ultimately, the election-specific law<sup>32</sup> provided for 200 seats, elected using a mixed-parallel system. Eighty members were elected using a closed-list proportional representation (PR) system, and 120 were elected with two different majoritarian systems – first-past-the-post (FPTP)<sup>33</sup> in single-member constituencies and single non-transferable vote (SNTV)<sup>34</sup> in multimember constituencies. A vertical and horizontal zipper system required political parties to alternate genders on their candidate lists and to place a woman candidate at the top of half of their lists.<sup>35</sup>

The law for the GNC election provided that “the country shall be divided into constituencies based on population and geography criteria. A special law in this regard shall be issued within two weeks of the issuance of this law.”<sup>36</sup> Constituency demarcation and seat distribution was ultimately decided according to a consensus-based political process that aimed to ensure the peaceful participation and representation of all districts in Libya.<sup>37</sup> Originally based on population, geographic area was included into the seat distribution formula to address the opposition of the large, yet relatively sparsely populated, Fezzan and Cyrenaica districts.<sup>38</sup>

On paper, the distribution of seats was done on a proportional basis, with vacant seats distributed by the highest-remainder method,<sup>39</sup> although as the Carter Center observers noted, the law was silent on what would happen in the case of two or more parties having the same number of votes or remainder

---

<sup>30</sup> Id. at Art. 30.

<sup>31</sup> Kjaerum, A., Lust, E., Pedersen, L. & Wichmann, J., “Libyan Parliamentary Election Study.”

<sup>32</sup> Law 4/2012 (NTC) On the Election of the General National Congress (2012)

<sup>33</sup> The FPTP system is a simple majority system in which the candidate who garners the most votes is awarded the seat.

<sup>34</sup> Under the SNTV system, each voter casts a vote in a multimember district, and members are elected by plurality vote.

<sup>35</sup> Law 4/2012 (NTC) On the Election of the General National Congress, Art. 15

<sup>36</sup> Ibid.

<sup>37</sup> Kjaerum, A., Lust, E., Pedersen, L. & Wichmann, J., “Libyan Parliamentary Election Study.” See also Law no. 14 for 2012 on Electoral Constituencies amended by law no. 34 for 2012.

<sup>38</sup> Ibid.

<sup>39</sup> According to Art. 7 of NTC Law 2/2012, the distribution of seats will be according to the following steps:

- 1- The electoral average for each constituency shall be determined by dividing the total number of valid votes of a constituency by the total number of seats allocated to that constituency.
- 2- The total sum of the votes for a political entity in that constituency shall be divided by the electoral average; the number of seats shall be distributed among political entities based on the nearest integer to the quotient.
- 3- If seats are still vacant in a constituency, they will be distributed on the basis of the largest remainder.
- 4- In winning lists, seats are allocated in a descending order.
- 5- After the allocation of seats, those seats shall be for political entities and independent lists and not for candidates.

after the first distribution of seats, which did not happen for this election.<sup>40</sup> Following the calculation, there was further negotiation between the election committee and the TNC, and seats were traded among districts in order to ensure consensus on the distribution.<sup>41</sup> Additionally, districts and subdistricts negotiated the distribution of individual and list-based seats among the districts, which resulted in subdistricts with many different tribal groups, rival towns and remote areas having a higher proportion of individual seats, resulting in further imbalance.<sup>42</sup>

Because there was a separate law on boundary delimitation,<sup>43</sup> the seat allocation process was de-linked from the districting process, and therefore complex to implement.<sup>44</sup> As observers from the Carter Center noted, “[t]he law does not explain the logic behind the drawing of the electoral boundaries and the apportionment of seats assigned to them... While it may have met political interests, the electoral system failed to fulfil Libya’s obligations under international public law to ensure equal suffrage by according each voter and vote equal weight.”<sup>45</sup>

A different system was used to elect the Constitution Drafting Assembly (CDA) in February 2014 under the provisions of Law 17/2013 On the Election of the Constituent Assembly in Charge of Drafting the Constitution. Under this law, the 60-member CDA was elected using a mixed FPTP and SNTV electoral system, with 20 seats in each of the three electoral regions, including six seats total reserved for women across the three regions. However, several seats remained unelected or vacated due to fighting and the Amazigh and Tebu communities boycotting the elections; some were later filled.<sup>46</sup> The law for these elections provided that the process of apportionment of seats also account for “representation of components with cultural and linguistic character.”<sup>47</sup> While efforts to ensure representation of minority or traditionally marginalized groups in political institutions is important, particularly in transitional contexts, this legal formulation caused confusion in practice.<sup>48</sup> This is despite the fact that a table for seat distribution was included in the law – it confused stakeholders as women were elected across multiple constituencies.

Parliamentary elections for the HoR took place in June 2014 to replace the GNC. While the law for this election stated that elections would take place using “the individual electoral system, based on the

---

<sup>40</sup> Carter Center GNC EOM Final Report 2012, [https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/libya-070712-final-rpt.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/libya-070712-final-rpt.pdf), p.22

<sup>41</sup> Kjaerum, A., Lust, E., Pedersen, L. & Wichmann, J., “Libyan Parliamentary Election Study.”

<sup>42</sup> Ibid.

<sup>43</sup> Law 14/2012 (TNC) on Electoral Constituencies amended by Law 34/2012.

<sup>44</sup> Carter Center GNC EOM Final Report 2012, [https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/libya-070712-final-rpt.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/libya-070712-final-rpt.pdf), p.22

<sup>45</sup> Ibid.

<sup>46</sup> Id. at p. 3

<sup>47</sup> Law 10/2014 (GNC) On the Election of the Council of Representatives During the Transitional Period, Arts. 5

<sup>48</sup> Carter Center CDA EOM Final Report 2014, [https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/libya-06112014-final-rpt.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/libya-06112014-final-rpt.pdf), p. 4.

single non-transferable vote,”<sup>49</sup> the election actually involved two majoritarian systems, FPTP and SNTV, similar to the GNC elections, and this was stated elsewhere in the law.<sup>50</sup> Two hundred seats were distributed across 13 electoral constituencies, and 32 of the 200 seats reserved for women, allocated to particular subconstituencies.<sup>51</sup>

The Draft Constitution, if adopted, establishes a “Shura Council” made up of two houses – the House of Representatives and the Senate<sup>52</sup> – but does not establish the number of HoR representatives or the method of electing them. Rather, this is to be established in laws promulgated with 90 days of the Draft Constitution coming into force.<sup>53</sup> This provides an opportunity to craft a clear and consistent electoral system and boundary delimitation process for Libya that ensures representation of women and minority and marginalized groups, which also entrenches democratic norms, a multiparty system and avoids instability that may arise from certain winner-take-all systems. The Draft Constitution also provides for the direct election of the president, but with a distribution requirement to ensure a regional spread of votes: “The President shall be elected by public, free, secret, and direct ballot, with the absolute majority of the valid votes of voters, and ensuring the equal value of the votes and their distribution on constituencies in accordance with the percentage defined by the law.” While the intention behind the distribution requirement is sound (to ensure broad support across the country), the application of such a provision will be complex and needs to be clarified in law.

### *Local Elections*

For municipal elections, Article 4 of the Regulation on the Basis and criteria related to the Municipal Councils Elections, annexed to the Presidential Council Decision 18 on Municipal Elections (2019) provides that members of municipal councils shall be elected through the “secret, direct general ballot” according to the “absolute closed list system” for the general seats, and to the “system of the first winner” for the reserved seats that are designated for women and revolutionaries with disabilities – one seat per council for each group.<sup>54</sup> Absolute closed list is defined as “the electoral system in which the voter has one vote, he/she uses it to exercise his/her choice between the candidate lists for the general category...The list that receives the highest number of votes wins all the seats allocated for the general category in the Municipal Council.” This is known as a party block vote (PBV). The “first winner” system is essentially a FPTP system, so

“Electoral systems are not a panacea, but they are central to the structuring of stability in any polity. Skilful electoral system engineering may not prevent or eradicate deep enmities, but appropriate institutions can nudge the political system in the direction of reduced conflict and greater government accountability. In other words, while most of the changes that can be achieved by tailoring electoral systems are necessarily at the margins, it is often these marginal impacts that make the difference between democracy being consolidated or being undermined.”

– Ace Knowledge Network

<sup>49</sup> Law 10/2014 (GNC) On the Election of the Council of Representatives During the Transitional Period, Art. 18

<sup>50</sup> Id. At Art. 21.

<sup>51</sup> Id. at Arts. 18 and 19.

<sup>52</sup> 2017 Draft Constitution, Art. 67

<sup>53</sup> Id. at Art. 183.

<sup>54</sup> Executive Regulations of Law 59/2012 Concerning the Local Administration System, Art. 32



together this is a parallel system for municipal councils. Each municipality is considered an electoral constituency.<sup>55</sup>

The new 2019 regulation on municipal elections also provides that lists must not include candidates “related up to the fourth degree,” must take into consideration “the diversity in the social and regional components within each electoral constituency,” and “not have any tribal or family character.”<sup>56</sup> However, it should be noted that the criteria for revolutionaries with disabilities in this regulation is unclear. Because there are reserved seats for this group, it is important to clearly articulate in the law who qualifies as a revolutionary with a disability to prevent candidates without disabilities from securing nominations for these seats as a means of gaining power. Without this clarity, there will likely continue to be a heavy reliance on EDR mechanisms to determine which candidates qualify under this category.

PBV is a new system for 2019. The previous electoral system used for municipalities in 2014 was a mixed FPTP and SNTV system. As set out previously by IFES,<sup>57</sup> the advantages of the PBV system are that it is simple for officials to administer and for voters to understand and to cast their votes, and it is likely to strengthen political groups by promoting more unified decision-making in municipal councils.<sup>58</sup> The PBV system also has several major disadvantages:

- A political group can win all the seats in a municipality without winning more than half the valid votes.
- Because the winning list is awarded all seats in the municipality, parts of the electorate can feel unrepresented.
- There is no incentive for smaller political groups to nominate lists for the election since they are unlikely to succeed, and no incentive for supporters of smaller political groups to vote in the election.
- Voters do not elect their individual representatives directly, because of the use of closed lists.

Looking ahead, a system needs to be designed or refined at the national and local levels that best suits the Libyan context and must be clearly articulated in the legal and regulatory framework. A well-designed electoral system can serve not only as a mechanism for choosing leaders and legislatures but also as a tool of conflict management within a society.<sup>59</sup> However, often an electoral system can be put in place that is inappropriate to a new democracy’s needs but has been inherited or carried over without any thought as to how it will work within a new political reality.<sup>60</sup> A table setting out the pros and cons of the different systems used to date in Libya is included in Annex I.

---

<sup>55</sup> Regulation on the Basis and criteria related to the Municipal Councils Elections, annexed to the Presidential Council Decision 18 on Municipal Elections (2019), Art. 7

<sup>56</sup> Id. at Art. 6.

<sup>57</sup> IFES Libya Analysis of Presidential Council Decision No. 18 Concerning Libya’s Municipal Council Elections, issued in January 2019

<sup>58</sup> However, in the absence of a strong political party structure, there is no guarantee that all members on a list will always agree once elected to office. Article 24 of Decision No. 18 seems to recognize that individual candidates may promote their own opinions and programs in their election campaigns.

<sup>59</sup> <http://aceproject.org/ace-en/topics/es/esg/default>

<sup>60</sup> Id.

## *Referendum Process*

The 2018 Constitution Referendum Law is the only legal mechanism currently in place to govern referendums in Libya. This legislation was enacted specifically for the adoption of the permanent Constitution; however, if the Draft Constitution is adopted, the legislature will have to pass new legislation to govern other types of referendums provided for in the Draft Constitution. It is conceivable that the legislature may draw on the 2018 Referendum Law to the extent that it is applicable and effective. Therefore, this section will assess gaps under the 2018 Referendum Law with the understanding that it applies directly only to the referendum on the Draft Constitution but may eventually influence the development of future referendum legislation.

There are several important elements to the legal framework that should be clearly established before a referendum is called,<sup>61</sup> including initiation procedures and timelines for implementation, the legal effect of the referendum, voter requirements and registration process, equality of opportunity, freedom of voters to form an opinion, and procedures for challenging the results. The 2018 Referendum Law includes provisions on many of these elements, including the following:

- *Initiation:* The HoR shall determine the day of the referendum based on the proposal from the HNEC.<sup>62</sup>
- *Legal Effect:* To cast an informed vote, voters must be informed of the legal effect of the referendum.<sup>63</sup> According to the 2018 Referendum Law, the results of the referendum on the adoption of the Draft Constitution are binding if a majority of two-thirds of the valid votes approve with a percentage of at least 51 percent of the registered voters in each of the three constituencies (Tripoli, Barqa and Fezzan).<sup>64</sup> In the case of a “yes” vote, the results must be referred to the CDA for endorsement and endorsed by the HoR.<sup>65</sup>
- *Voter Requirements and Registration:* The law requires voters to have Libyan nationality, be 18 years of age by the date of registration, have legal competence and have a national number.<sup>66</sup> The HNEC is tasked with organizing the voter register, and regulations for voter registration, in accordance with the provisions of this law.<sup>67</sup>
- *Challenging the Results:* While the 2018 Referendum Law allows for procedural challenges to the referendum process, including against the preliminary results, to be heard by the Partial Court, with a right to appeal to the Head of the Primary Court,<sup>68</sup> the court is not explicitly empowered to annul the results of the referendum under the law. On the other hand, the HNEC has the authority to withhold and cancel results from any referendum center “if it is proven that the violation of

---

<sup>61</sup> See Venice Commission Code of Good Conduct on Referendums (2006) and the Explanatory Memorandum.

<sup>62</sup> Referendum Law (2018), Art. 11.

<sup>63</sup> Explanatory Memorandum on the Venice Commission Code of Good Conduct on Referendums (2006), para. 53.

<sup>64</sup> Referendum Law (2018), Art. 6.

<sup>65</sup> Ibid.

<sup>66</sup> Id. at Art. 10.

<sup>67</sup> Id. at Art. 9.

<sup>68</sup> Id at Arts. 25-27.

procedures could affect the results of the referendum process”<sup>69</sup> irrespective of a formal complaint being lodged. According to best practice, the appeal body can be the EMB or the courts, but a final appeal to a court should be available, and the appeal body should have the authority to annul the results in full or in part and to order a recount or rerun.<sup>70</sup>

The 2018 Referendum Law does not include provisions on either equality of opportunity<sup>71</sup> or freedom of voters to form an opinion,<sup>72</sup> which are both included in the Venice Commission’s Code of Good Practices on Referendums.<sup>73</sup> Equality of opportunity applies to both supporters and opponents in regard to the referendum campaign, coverage by the media, public funding and advertising.<sup>74</sup> This principle can be supported through limitations on spending by campaigns or other parties involved in the referendum debate and application of sanctions for the breach of the duty of neutrality of administrative authorities.<sup>75</sup> Administrative neutrality is also important in providing the freedom of voters to form an opinion; but this principle additionally requires that authorities provide objective information and that an explanatory report or balanced campaign materials from both the supporters and opponents are made available to voters sufficiently in advance.<sup>76</sup>

If the Draft Constitution is adopted through the process outlined under the 2018 Referendum Law, legislation will need to be enacted to enable holding the referendums outlined under the Constitution. The Draft Constitution enables referendums to be held for the following purposes:

- To dissolve the HoR or the Senate based on valid reasons related to the “obstruction of the general policy of the State, or the development plan, or disruption of the budget without substantial justifications, or breach of the Constitution”<sup>77</sup>
- To amend the Constitution<sup>78</sup>

For each of these cases, there are separate initiation procedures laid out in the Draft Constitution. The president can initiate a referendum to dissolve the HoR or the Senate by referring the justification to the Constitutional Court for an “advisory opinion on the seriousness and relevance of the reasons.”<sup>79</sup> If the Constitutional Court finds that there has been a violation of the Constitution, then the president can hold a general referendum.<sup>80</sup> A referendum to amend the Constitution can be initiated by one-third of

---

<sup>69</sup> Id at Arts. 21-24.

<sup>70</sup> Venice Commission Code of Good Practice on Referendums (2006), Art. 3.3.

<sup>71</sup> Id at Art. 2.2.

<sup>72</sup> Id. at Art. 3.1.

<sup>73</sup> Ibid.

<sup>74</sup> Id. at Art. 2.2.

<sup>75</sup> Ibid.

<sup>76</sup> Id at Art. 3.1.

<sup>77</sup> Draft Constitution (July 2017), Art. 109.

<sup>78</sup> Id. at Art. 195(6).

<sup>79</sup> Draft Constitution (July 2017), Art. 109.

<sup>80</sup> Id. at Art. 109.

either the HoR or the Senate, in addition to the president.<sup>81</sup> Both of these types of referendums would be binding under the Draft Constitution.

### *Institutional Framework*

Independent and impartial EMBs are necessary to ensure the proper conduct of elections, or at a minimum eliminate serious suspicions of irregularity. Public confidence in the fairness of the electoral process and the accuracy of electoral results depends in large measure on both the actual and perceived independence and impartiality of the EMB, its subnational institutional structures and other state bodies responsible for supporting the electoral process. Generally, the Libyan framework for election management is sound. The Libyan High National Elections Commission (HNEC) is responsible for conducting national elections in Libya and was reestablished as a permanent body in 2013.<sup>82</sup> The Law On the Establishment of the HNEC explicitly establishes the HNEC as an “independent institution” that is also financially independent in its operations,<sup>83</sup> both of which are important protections in the legal framework.

The HNEC is made up of a chairperson and six full-time members, appointed by the GNC,<sup>84</sup> on the basis that they are “highly regarded, characterized 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.”<sup>85</sup> Of the original members appointed, there are currently only four remaining in the role. It is positive that the law vests appointment power in a legislative body rather than the executive, which can open the process up to political manipulation. There would be benefit in further specifying required credentials, given the vague and subjective criterion of “highly regarded,” and articulating the application process – particularly to ensure access for women to these positions.

Security of tenure is somewhat protected in the law, as a commissioner can only be removed under specific circumstances,<sup>86</sup> although one circumstance – repeated absence for three meetings without an acceptable excuse – leaves room for manipulation in practice by the president of the GNC. The law also requires the appointment of a new commissioner within 15 days,<sup>87</sup> which may undermine the process of selecting an appropriately qualified and independent candidate. Commissioners have immunity from criminal proceedings,<sup>88</sup> which protects against politically motivated prosecution. Neutrality of HNEC personnel is enshrined in the law, with employees prohibited from holding concurrent jobs, running as

---

<sup>81</sup> Id. at Art. 195.

<sup>82</sup> Law 8 (2013) On the Establishment of The High National Election Commission

<sup>83</sup> Id. at Art. II

<sup>84</sup> According to General National Congress Decision 40/2013, the High National Elections Commission is comprised of seven members. However, immediately after being named, one member withdrew without replacement and two members, including former Chairman Nuri Elabbar, resigned from their posts following the Constitution Drafting Assembly Elections in April 2014. They have not been replaced.

<sup>85</sup> Law 8 (2013) On the Establishment of The High National Election Commission, Art. V

<sup>86</sup> Id. at Arts. X and XI

<sup>87</sup> Id. at Art. X

<sup>88</sup> Id. at Art. XIV

candidates in elections, engaging in political advocacy or affiliating with any political entity.<sup>89</sup> To the extent that these provisions could infringe on individual political rights, it should be clarified in the law that employees can engage in political events outside of official work hours or on leave, and can run for office if they resign from their position with the HNEC. However, in the Libyan context, these provisions do help to preserve public trust in HNEC's independence and impartiality.

In terms of the decision-making, while some key aspects may be covered by the electoral law, it is customary for the details of the EMB's decision-making processes to be defined in standing orders or administrative procedures determined by the EMB members. EMB decision-making is often hierarchal, but it should still operate according to democratic rules. An EMB should act democratically and "within the rules set down in its legal constitutive instrument and by procedures agreed by its members by the stipulated decision-making formula."<sup>90</sup> For the HNEC, the law specifies that board decisions require a quorum of over half its members to be present and are made by majority vote. This is positive structure that avoids (a) instances of inaction or paralysis due to absences or a requirement for consensus decision-making; and (b) co-option of decision-making by a single member or subset of members. Importantly, the law also provides the HNEC Board with the authority to determine the structure of the commission,<sup>91</sup> and to have full oversight over the secretariat, called the "General Administration,"<sup>92</sup> the director general and the electoral committees established in the regions.<sup>93</sup> This is extremely important to the independence and effectiveness of the HNEC. The law would be improved by setting out qualifications and a selection process for members of electoral committees in the regions, to avoid instances of nepotism and marginalization of women candidates.

At the local level, the Executive Regulations of Law 59/2012 Concerning the Local Administration System provided for the formation of a central election committee and subcommittees to manage local elections.<sup>94</sup> Council of Ministers Decision 160/2013 formalized this structure, establishing a Central Committee for the Preparation and Supervision of Municipal Council Elections (CCMCE), specifically naming seven members including a chairperson.<sup>95</sup> However, this decision did not set out key aspects for members of the CCMCE such as selection process, qualifications, tenure and immunity. This decision also provided that subcommittees for each constituency be established "by a decision from the Minister of Local Government based on a proposal by the Chairman of the Central Committee,"<sup>96</sup> which could undermine the independence or impartiality of subcommittees. The 2019 Regulation on the Basis and

---

<sup>89</sup> Id. at Art. XVII

<sup>90</sup> Carl W. Dundas, *Exploring Best Electoral Practices* (Indiana: Authorhouse, 2015); see also ACE: The Electoral Knowledge Network, *Electoral Management: Kenya: The Independent Electoral and Boundaries Commission*, <http://aceproject.org/aceen/topics/em/annex/electoral-management-case-studies/kenya-compromised-independence-of-the-emb>.

<sup>91</sup> Law 8 (2013) On the Establishment of The High National Election Commission, Art. IV

<sup>92</sup> Id. at Art. XV

<sup>93</sup> Ibid.

<sup>94</sup> Executive Regulations of Law 59/2012 Concerning the Local Administration System, Art. 37

<sup>95</sup> Council of Ministers Decision 160/2013, Art. 1

<sup>96</sup> Id. at Art. 3

Criteria Related to the Municipal Councils Elections<sup>97</sup> provides that the central committee are responsible for the electoral process for all local elections across Libya.<sup>98</sup> In addition, the CCMCE has the authority to issue procedures for the implementation of the elections, and these are not subject to executive or legislative review.<sup>99</sup> However, provisions of the Executive Regulations of Law 59/2012 that effectively place the CCMCE under the supervision of the Minister of Local Government remain in force and should be amended or clarified to strengthen the independence of the CCMCE. Provisions are also needed for future appointment of new members of the CCMCE and its subcommittees.

The Draft Constitution includes the HNEC as an independent constitutional body, which “shall enjoy legal personality as well as administrative, financial, and technical independence.”<sup>100</sup> Under the Draft Constitution, the HNEC is exclusively responsible for the management and organization of referendums and general and local elections, including the announcement of the final results.<sup>101</sup> This means that if the Draft Constitution is adopted, the administration of local elections will have to be transferred to the HNEC, either directly or by situating the CCMCE under the authority of the HNEC instead of the Ministry of Local Government. Additionally, the Draft Constitution would increase the number of commissioners from seven to nine, with the legislature selecting the chairperson from among them.<sup>102</sup> Commissioners would have a single six-year term, and one-third of the terms of the members shall be renewed every two years.<sup>103</sup>

### *Election Budgeting and Funding*

The extent of an EMB’s financial independence is a strong predictor of that institution’s independence from the government and ability to function autonomously. A clear legal and regulatory framework governing the EMB’s use of its financial resources is also essential to ensuring consistent management of the election process and governance within the EMB.<sup>104</sup> In addition, the fundamental principles of independence, transparency, efficiency, accountability and integrity should govern EMB financial policies and procedures. For national elections, Law 8 (2013) On the Establishment of The High National Election Commission provides the HNEC with financial independence, noting that it “shall have an independent budget to be developed according to the standards adopted by the state... for inclusion within the annual general budget of the state.”<sup>105</sup> The law does not impose any other restrictions in terms of government approval of the budget or restrictions on the release of funding tranches. However, in practice the release of funding for electoral activities is an ongoing challenge, and the HNEC

---

<sup>97</sup> Annexed to Presidential Council Decision 18 on Municipal Elections 2019

<sup>98</sup> Regulation on the Basis and Criteria Related to the Municipal Councils Elections, annexed to the Presidential Council Decision 18 on Municipal Elections (2019)

<sup>99</sup> Id. at Art. 53

<sup>100</sup> Draft Constitution (2017), Art. 154.

<sup>101</sup> Draft Constitution (2017), Art. 157.

<sup>102</sup> Id. at Art. 157.

<sup>103</sup> Id. at Art. 157.

<sup>104</sup> Principles for EMB Financial Management, ACE: The Electoral Knowledge Network, <http://aceproject.org/aceen/topics/em/emg/emg07>

<sup>105</sup> Law 8 (2013) On the Establishment of The High National Election Commission, Art. XVIII



currently relies on funding provided through emergency measures whereby the GNA and the Central Bank agree on a budget amount.

The HNEC is required by law to keep “regular accounts of revenue and expenditure,” but no timeframe is specified in the law, nor are there any requirements for making this information public. This is an important measure for transparency, accountability and public trust in the institution. However, Law 8 (2013) On the Establishment of The High National Elections Commission does emphasize the importance of communicating with stakeholders and bolstering transparency in the functions and competencies of the commission and refers to a website “through which all electoral data and information are disseminated.” The HNEC is also required to undergo an audit at the end of every fiscal year, conducted by the National Audit Chamber.<sup>106</sup> Again, the law should specify that this audit report be made public.

At the local level, the Regulation on the Basis and Criteria Related to the Municipal Councils Elections, annexed to the Presidential Council Decision 18 on Municipal Elections (2019) notes that central committees for local elections are responsible for providing “budgetary estimates” for the electoral process to the Minister of Local Government to take necessary steps in providing funding.<sup>107</sup> The CCMCE has its own budget line in the national budget. The Executive Regulations of Law 59/2012 Concerning the Local Administration System provide that costs for local elections must be included in the budget for the Minister of Local Government “once per electoral cycle.”<sup>108</sup> However, any costs for by-elections have to be “borne by the Ministry from its administrative allocations,”<sup>109</sup> which may impact the ability of the CCMCE to run by-elections in practice. The process for auditing and reporting on local election expenditures is not clear in the law.

### *Voter Registration*

Article 21 of the Universal Declaration of Human Rights underscores the right to take part in government, access public services, and vote in elections by way of universal and equal suffrage.<sup>110</sup> Voter registration can serve as either a bridge or a barrier to upholding the principle of universal and equal suffrage; a country’s legal and administrative adoption of inclusive voter registration practices can lower rates of political marginalization and enhance electoral integrity.

Under the existing Libyan legal framework, there are no constitutional provisions regarding voter registration; although, if adopted, the Draft Constitution would include a provision that provides every eligible citizen the right to vote or run as a candidate.<sup>111</sup> Instead, voter registration provisions have been included in the specific legislation for each national election; although, it should be noted that the GNC, CDA and HoR elections have already passed, leaving the Constitutional Referendum Law as the only election-specific legislation with practical implications for future national elections. While, the Law on

---

<sup>106</sup> Ibid.

<sup>107</sup> Council of Ministers Decision No (161) of 2013 On the Adoption of Principles and Procedures for Municipal Elections, Art. 2

<sup>108</sup> Executive Regulations of Law 59/2012 Concerning the Local Administration System, Art. 40.

<sup>109</sup> Ibid.

<sup>110</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), art. 21.

<sup>111</sup> Draft Constitution (July 2017), Art. 39.

the Establishment of the HNEC broadly empowers the commission to “register voters, develop records and lists of their particulars and review them in accordance with the procedures and mechanisms determined by the Commission for this end,”<sup>112</sup> the existence of separate election-specific provisions is problematic. Establishing uniform provisions that cover all periodic elections would help to maintain an accurate and continuous register of voters. Since voter registration is not usually compulsory, the election management authority needs to obtain changes in voter information – for example, changes of address or eligibility to vote. If voters are not required by law to notify the election management authority when they move, the voter list may quickly lose currency.<sup>113</sup>

While the election-specific laws do not contain uniform language, they do all incorporate a few common elements: (1) mandating the HNEC to be responsible for managing the voter registry;<sup>114</sup> (2) authorizing the HNEC to set the procedures and conditions for registration by issuing regulations; and (3) providing for registration inside and outside Libya.<sup>115</sup> Additionally, the CDA Election Law and the 2018 Constitutional Referendum Law both contain additional provisions enabling the HNEC to determine registration centers.<sup>116</sup> The CDA Election Law also required that registration centers “be announced well in advance prior to the commencement of the electoral process in all available TV, radio and printed mass media;”<sup>117</sup> while the Constitutional Referendum Law of 2018 states that “the commission shall work on identifying the referendum centers so that voters can easily access and register for the purpose of exercising their right to participate in a referendum.”<sup>118</sup> These provisions are important for facilitating broad voter enfranchisement.

Each of the four pieces of legislation for national elections also establishes the right to vote given the following four requirements: (1) be a Libyan citizen; (2) at least 18 years of age on the day of registration; (3) legally competent; and (4) registered to vote.<sup>119</sup> These voter eligibility requirements were reflected in the 2014 HNEC HoR Regulations, which state the following requirements for a voter to be included in the voter register: (1) be Libyan and legally eligible; (2) be 18 years old by the time of registration; (3) hold a national number and be recorded in the system of the national number.<sup>120</sup> There

---

<sup>112</sup> Law 8 of 2013 on the Establishment of the High National Elections Commission, Art. 3.

<sup>113</sup> ACE: The Electoral Knowledge Network, Voter Registration: Voters’ Register Maintenance, <http://aceproject.org/ace-en/topics/vr/vrb/vrb14>.

<sup>114</sup> HNEC is also authorized to “register voters, develop records and lists of their particulars and review them in accordance with the procedures and mechanisms determined by the Commission” under Article III (4) of Law 8 of 2013 on the Establishment of the High National Elections Commission.

<sup>115</sup> See Referendum Law of 2018, Art. 9; Law No. (10) of 2014 on the Election of the Council of Representatives during the transitional period, Art. 4; Law (17) of 2013 on the Election of the Constituent Assembly in Charge of Drafting the Constitution, Art. 7; Law No. (4) of 2012 on the Election of the General National Congress, Art. 8.

<sup>116</sup> See Referendum Law of 2018, Art. 9; Law (17) of 2013 on the Election of the Constituent Assembly in Charge of Drafting the Constitution, Art. 7.

<sup>117</sup> Law (17) of 2013 on the Election of the Constituent Assembly in Charge of Drafting the Constitution, Art. 7.

<sup>118</sup> Referendum Law of 2018, Art. 9.

<sup>119</sup> See Referendum Law of 2018, Art. 10; Law No. (10) of 2014 on the Election of the Council of Representatives during the transitional period, Art. 5; Law (17) of 2013 on the Election of the Constituent Assembly in Charge of Drafting the Constitution, Art. 8; Law No. (4) of 2012 on the Election of the General National Congress, Art. 9.

<sup>120</sup> Voter Registration Regulation for the Elections of the Council of Representatives (2014), Art. 3.

was no residence criteria referenced in the law, so voters decided which location or constituency to vote in.<sup>121</sup>

On the other hand, local elections have a residency requirement. According to the Council of Ministers Decision 160 of 2013, establishing the CCMCE, the CCMCE is tasked with voter registration.<sup>122</sup> According to the 2019 Regulation for Municipal Council Elections, eligibility for voter registration includes all of the requirements for national elections in addition to “[registration] in the final register of voters of the constituency in which he/she has the right to vote.”<sup>123</sup> Accordingly, additional voter data required for registration includes “a permanent residential address recorded in the family booklet or recorded in a certificate, issued by one of the offices of the civil status confirming that he/she is registered within the constituency in which he/she intends to register” and “the registration number in the civic registry.”<sup>124</sup>

Libya’s family book system is used to track legal residence, tying an individual’s legal residence to his or her father’s residence until marriage. Perhaps due in part to challenges establishing residency under this system, only approximately 1.25 million are registered to vote with the CCMCE, while HNEC has 2.5 million registered. Therefore, adding a residency requirement for national registration would likely lead to extremely challenging issues for adjudication. It might be necessary for a civil registry to be created before a residency requirement could be effectively introduced at the national level.

The process of creating the voter register at the national level was further detailed in the 2014 HNEC Regulation for the HoR elections, which provided that, at the end of the registration period, the commission develop a preliminary voter register.<sup>125</sup> This preliminary register was to be published at polling centers to “enable stakeholders to review it and lodge challenges.”<sup>126</sup> In order to challenge a procedure related to the registration process, a stakeholder was required to submit the challenge to the local court in the electoral constituency in which the voter was registered “within 48 hours from the date of the incident subject of the challenge.”<sup>127</sup> However, it is unclear in the text of the regulation if this meant 48 hours from the date the preliminary voter register is published or 48 hours from the time that the complainant viewed the register. While the opportunity to examine the voter list and lodge challenges is important, there was no regulation providing the opportunity for a voter to correct an error directly with the HNEC. However, in practice, there was an administrative procedure and a call center in place to enable this. Once the “period dedicated to adjudicating appeals” had passed, although

---

<sup>121</sup> To facilitate this, the HNEC allocated unique numbers to all 1,643 polling centers across Libya: 1,606 regular centers, 17 for internally displaced persons, 19 for voters working in oilfields and one at a rehabilitation center. [https://www.ifes.org/sites/default/files/2014\\_ifes\\_libya\\_council\\_of\\_representative\\_elections\\_faqs.pdf](https://www.ifes.org/sites/default/files/2014_ifes_libya_council_of_representative_elections_faqs.pdf)

<sup>122</sup> Decision (160/2013), Establishment of Central Committee for the Preparation and Supervision of Municipal Councils Elections, Art. 2.

<sup>123</sup> The Regulation on the Basis and criteria related to the Municipal Councils Elections (2019), Art. 11.

<sup>124</sup> *Id.* at Art. 10.

<sup>125</sup> Voter Registration Regulation for the Elections of the Council of Representatives (2014), Art. 5.

<sup>126</sup> *Ibid.*

<sup>127</sup> Voter Registration Regulation for the Elections of the Council of Representatives (2014), Art. 6.

the amount of time allocated was not specified, the HNEC incorporated amendments resulting from the challenges and conduct a final revision of the voter register.<sup>128</sup>

There is a different and more comprehensive framework in place to contest or correct the preliminary voter registry at the local level. While the HNEC is responsible for voter registration for national elections, the CCMCE is responsible for voter registration for municipal council elections.<sup>129</sup> The 2019 Regulation for Municipal Council Elections provides that any person whose name has not been included in the voter registry, whose registration included an error or who wishes to object to the registration of another who has no right to vote can submit an objection to the subcommittee – responsible for implementing electoral process in the municipality – in writing within three days of the publication of the preliminary voter registry.<sup>130</sup> If the objection relates to the registration of another person, they must be notified and have an opportunity to make a defense.<sup>131</sup> The decision of the subcommittee can be appealed to the CCMCE, but the CCMCE's decision is final and not subject to appeal.<sup>132</sup> On paper, this contradicts the right under Libyan law and international commitments to seek judicial review of administrative decisions. However, in practice, “final” decisions issued by the CCMCE may be appealed in court.

In terms of the inclusivity of the voter register, the HNEC Regulation for the HoR Elections includes some provisions to support inclusivity in the voter registration process. For example, the regulation provides for the text messaging registration system, while requiring that the HNEC provide support to “[enable] voters, who were not able to use the digital registration system, to be registered in the voter register.”<sup>133</sup> Similarly, the legislation noted above charges the HNEC with enabling out-of-country voter registration.<sup>134</sup> The specific procedures are detailed in a separate regulation. The HNEC Regulation for the HoR Elections also states that the HNEC will “[adopt] special measures to enable [internally displaced persons] to register in the voter register;”<sup>135</sup> however, the details of these special measures are not included in the regulation.

Finally, the voter registration procedures in the referenced legislation and regulation provide that a voter must have reached 18 years of age prior to the date of registration. This has the potential to deny the right to vote to those who turn 18 in the time between registration and Election Day. There is no provision for supplementary registration before Election Day.

---

<sup>128</sup> Ibid.

<sup>129</sup> Decision (160/2013), Establishment of Central Committee for the Preparation and Supervision of Municipal Councils Elections, Art. 2.

<sup>130</sup> The Regulation on the Basis and criteria related to the Municipal Councils Elections (2019), Art. 11.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

<sup>133</sup> Voter Registration Regulation for the Elections of the Council of Representatives (2014), Art. 1, 3.

<sup>134</sup> See Referendum Law of 2018, Art. 9; Law No. (10) of 2014 on the Election of the Council of Representatives during the transitional period, Art. 4; Law (17) of 2013 on the Election of the Constituent Assembly in Charge of Drafting the Constitution, Art. 7; Law No. (4) of 2012 on the Election of the General National Congress, Art. 8.

<sup>135</sup> Voter Registration Regulation for the Elections of the Council of Representatives (2014), Art. 4.

## *Political Parties and Candidates*

The International Covenant on Civil and Political Rights (ICCPR) provides that every citizen should have the right to freedom of association with others, and the right and opportunity to be elected at genuine, periodic elections.<sup>136</sup> Political parties and candidates are key stakeholders of the electoral process and can help to ensure the integrity of an election by meeting their own legal and regulatory obligations and by holding election officials accountable to their mandates. As outlined by the Venice Commission in 2010, political parties must be protected as an integral expression of individuals' right to freely form associations but, given their unique role in the electoral process and democratic governance, it is "commonly accepted for states to regulate their functioning insofar as is necessary to ensure effective, representative, and fair democratic governance."<sup>137</sup>

In Libya, the freedom to form political parties is enshrined in the Constitutional Declaration,<sup>138</sup> which states that Libya is a multiparty democracy and is reflected and expanded upon in the 2017 Draft Constitution, which states, "Every citizen shall have the right to choose his political leanings. The State shall guarantee the freedom to form political parties based on national unity, transparent financing, renunciation of violence and hate speech. Every citizen shall have the right to join or withdraw from them without discrimination."<sup>139</sup> However, as previously reported by IFES,<sup>140</sup> the wording of the 2013 CDA Election law gave another message: while the election law "did not explicitly ban political parties from participating in the Constitutional Drafting Assembly elections, it was interpreted by party leaders and the general public alike as having done so."<sup>141</sup> During the 2014 CDA and HoR elections, political parties were not included, and all representatives were elected as independent candidates.<sup>142</sup>

Political party activities in Libya are governed through the 2012 Political Parties Act, though there are indications that this act has not been implemented and the Political Affairs Committee is dormant.<sup>143</sup> The law states that all Libyan citizens have the right to establish and join political parties and that all parties are equal before the law.<sup>144</sup> However, the law also prohibits members of military bodies, the civil service and the judiciary from belonging to any political party.<sup>145</sup>

---

<sup>136</sup> UN High Commissioner for Human Rights, International Covenant on Civil and Political Rights C/21/Rev.1/Add.7s, December 7, 1996, General Comment No. 25, arts. 22 and 25.

<sup>137</sup> Venice Commission, Guidelines on Political Party Regulation, CDL-AD(2010)024, 6, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)024-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)024-e).

<sup>138</sup> 2011 Constitutional Declaration, Art. 15.

<sup>139</sup> 2017 Draft Constitution, Art. 40.

<sup>140</sup> IFES Libya (Magnus Ohman), Political Finance in Libya, Jan 2017

<sup>141</sup> Carter Center CDA EOM Final Report 2014, [https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/libya-06112014-final-rpt.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/libya-06112014-final-rpt.pdf), p. 5

<sup>142</sup> Report on Workshop on Political Party Legislation (March 2019).

<sup>143</sup> One challenge in the Libyan context regards the concepts of "political entities" and "political parties". The GNC law referred to "entities" as it was drafted before the Political Parties Act. This made it difficult to implement the act in practice.

<sup>144</sup> Law 29 of 2012 on the Regulation of Political Parties, Art. 2,7.

<sup>145</sup> Id. at Art. 6.

The Political Parties Law includes the requirements for being registered as a political party and outlines the registration process. To be registered, a political party must have at least 250 founding members; make its principles, objectives, methods and funding sources public; and possess a charter and a political platform, as described in the law.<sup>146</sup> Additionally, the party's principles, objective, platforms and methods "may not conflict with the principles upheld in the Constitutional Declaration" and it cannot be linked to a non-Libyan political party.<sup>147</sup> To register, a political party must submit an application to the Political Affairs Committee including a registration application signed by the president of the party and at least 50 founding members, a list of founding members with ID numbers, the party charter, a legal residence of the party, and sample slogans and symbols to be used by the party.<sup>148</sup> The requirements for the charter are listed in Article 12. The committee must submit an approval within five days of submission; a lack of a decision will be considered approval. If it rejects an application, the committee is required to submit a letter clarifying the reasons for rejection.<sup>149</sup> The party has the right to contest the rejection within five days before a judicial commission to be formed by the Supreme Court for this purpose, which must be adjudicated within 15 days of filing.<sup>150</sup>

Political parties are prohibited from the following: "(1) Establishing military or paramilitary formations or aiding in their establishment; (2) using violence or any kind, threats thereof, or incitement to it; (3) including in their platforms, publications, or printed materials incitement to violence, hatred, or civil discord; or (4) circulating or publishing any idea that violates Islamic law or advocates political tyranny."<sup>151</sup> The Political Affairs Committee is tasked with monitoring the administration of the Political Parties Law, and the president of the committee can submit a petition to the courts to dissolve or suspend a political party.<sup>152</sup> The competent court is required to adjudicate a petition for suspension within 15 days and a petition for dissolution within 30 days.<sup>153</sup> If a party rectifies a violation within the 30 days, the court can fine the party for between 10,000 and 50,000 dinars (7,000 – 35,000 USD) instead of dissolution.<sup>154</sup>

The 2011 Constitutional Declaration does not include any provisions regarding the right to run for election, but the 2017 Draft Constitution would include this right.<sup>155</sup> Additionally, the Draft Constitution includes specific requirements for presidential, HoR and Senate candidates. The requirements for presidential candidates include: (1) being a Libyan Muslim born to Libyan Muslim parents; (2) not previously possessing other nationality, unless renounced a year prior to date of candidacy; (3) not being married to foreigner; (4) in possession of a university degree or its equivalent; (5) not less than 35 years of age; (6) enjoy civil and political rights and not have been "convicted of a premeditated felony or a

---

<sup>146</sup> Id. at Art. 8.

<sup>147</sup> Id. at Art. 8.

<sup>148</sup> Id. at Art. 11.

<sup>149</sup> Id. at Art. 14.

<sup>150</sup> Id. at Art. 14.

<sup>151</sup> Id. at Art. 9.

<sup>152</sup> Id. at Art. 30.

<sup>153</sup> Id. at Art. 31, 32.

<sup>154</sup> Id. at Art. 32.

<sup>155</sup> Draft Constitution (July 2017), Art. 39.



dishonorable or treacherous misdemeanor, even if rehabilitated;” and (7) able to perform the functions of the office.<sup>156</sup> HoR candidates are similarly required to be a Libyan Muslim with an educational qualification who does not possess any other nationality, enjoys civil and political rights, and is not younger than 25 years of age.<sup>157</sup> Additionally, candidates are required to reside in the electoral constituency for which he or she is running.<sup>158</sup> Senate candidates have the same requirements as for the HoR, except they are required to be at least 40 years of age.<sup>159</sup> Additionally, for the HoR elections, candidates were required to agree to a binding candidate code of conduct, which included commitments to transparency and the freedom of opinion and thought of participants, and refraining from using threat or violence to influence voters.<sup>160</sup>

Of the above listed requirements, both the requirement to be born to Libyan parents and the prohibition against being married to a foreigner violate international legal standards.<sup>161</sup> It should also be noted that the requirement that candidates possess only Libyan nationality is not uncontroversial; it has been the legal basis for annulment. Elected on April 22, 2014, as the head of the Constituent Assembly, Ali Tarhouni was removed from his position by the Bayda Appeals Court on November 28, 2016, which ruled that Tarhouni did not meet the requirements for candidacy under Law No. 17 of 2013 for having dual nationality. Ali Tarhouni, like many high-profile opposition leaders during the Gaddafi era, fled Libya and settled in the United States as a political refugee.<sup>162</sup> Law No. 24 of 2010 stated that any Libyan who gains another citizenship without written permission from the Ministry of Interior loses his or her Libyan citizenship.<sup>163</sup> However, this law has not been universally enforced, as most opposition leaders returned to the country after the regime was overthrown and have held high-ranking positions without recovering their Libyan citizenship<sup>164</sup> or formally renouncing their foreign citizenship.<sup>165</sup> Similarly, the Political Isolation Law, passed by the GNC in 2013, broadly banned Ghaddafi-era officials from participating in politics regardless of whether or not they later defected from the regime or supported the revolution.<sup>166</sup> While it has since been repealed or suspended by the HoR based in Tobruk, it remains in effect outside of the East of the country.<sup>167</sup> However, because Libya’s revolution was led by prominent defectors of the regime, including Mahmoud Jibril, Mohammed Magarief and Mustafa-Abdel Jalil, the

---

<sup>156</sup> 2017 Draft Constitution, Art. 99.

<sup>157</sup> *Id.* at Art. 69.

<sup>158</sup> *Id.* at Art. 69.

<sup>159</sup> *Id.* at Art. 76.

<sup>160</sup> Code of Conduct for Candidates for the Council of Representatives in the transitional phase.

<sup>161</sup> See International Convention on the Elimination of All Forms of Racial Discrimination (1969), Arts. 1, 5(c).

<sup>162</sup> Mustafa Fetouri, “Landmark ruling could have big implications for Libya’s leaders,” (2017), <https://www.al-monitor.com/pulse/ru/originals/2017/10/libya-opposition-dual-citizenship-leaders-law.amp.html>.

<sup>163</sup> *Ibid*; Law No. 24 of 2010 (Libya), Art. 5.

<sup>164</sup> Law No. 24 of 2010 (Libya), Art. 8.

<sup>165</sup> Mustafa Fetouri, “Landmark ruling could have big implications for Libya’s leaders,” (2017), <https://www.al-monitor.com/pulse/ru/originals/2017/10/libya-opposition-dual-citizenship-leaders-law.amp.html>.

<sup>166</sup> Mark Kersten, “Libya’s Political Isolation Law: Politics and Justice or the Politics of Justice?,” (2014), <https://www.mei.edu/publications/libyas-political-isolation-law-politics-and-justice-or-politics-justice>

<sup>167</sup> BBC News, “Libya Revokes bill which banned Gaddafi-era officials from office,” <https://www.bbc.com/news/world-latin-america-31104099>.

implementation of this law has always been politically fraught.<sup>168</sup> Additionally, it is generally uncontroversial that senior officials responsible for human rights abuses or severe corruption be excluded from political office; however, the Political Isolation Law was criticized broadly for having too wide of scope.<sup>169</sup>

As Libya works to uphold the rule of law and create a strong, respected judiciary, the Political Isolation Law and the nationality requirement should be reexamined and narrowed to reflect enforceable requirements that respect and bolster human rights.

At the local level, the CCMCE is responsible for establishing the rules and mechanisms for candidacy, specifying the application forms, and setting the submission deadline.<sup>170</sup> The applications are submitted to the appropriate subcommittee, which is entitled to review the application and has the right to request clarifications and additional documentation.<sup>171</sup> Under Law 59/2012, there are similar candidate requirements to those listed above, such as Libyan citizenship, 25-year age requirement, legal competency and the lack of a criminal record.<sup>172</sup> However, there are additional requirements: candidates must not hold another official position during their term as a council member; must submit a financial disclosure for both themselves and their family members; must not have been dismissed from a government job by a final disciplinary action; and must not have accepted bribes in any previous official positions.<sup>173</sup> They are also required to be “of commendable conduct and good reputation,” believe in the principles and goals of the February 17 Revolution, and must not have “previously affiliated with the Revolutionary Guard Corps, revolutionary committees, or internal or external security forces” nor “tortured, killed or harmed the opponents of the former oppressive regime or assumed a high leadership position under such regime, unless he took part in the February 17 Revolution or joined the Revolution after its outbreak.”<sup>174</sup>

The Draft Constitution would prohibit members of the armed forces and the police from running as candidates.<sup>175</sup> Previous election-specific legislation has also included blanket candidacy prohibitions for members of the GNC or interim government,<sup>176</sup> members of the HNEC or its employees – including of its central administration, subcommittees or polling centers –<sup>177</sup> and security or military servicemen.<sup>178</sup> Additionally, candidacy requirements for municipal elections, under the 2019 Municipal Councils

---

<sup>168</sup> Mark Kersten, “Libya’s Political Isolation Law: Politics and Justice or the Politics of Justice?,” (2014), <https://www.mei.edu/publications/libyas-political-isolation-law-politics-and-justice-or-politics-justice>

<sup>169</sup> Ibid.

<sup>170</sup> GNA Decree 18/2019, Art. 15.

<sup>171</sup> Ibid.

<sup>172</sup> Law No. 59/2012, Art. 8.

<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

<sup>175</sup> 2017 Draft Constitution, Art. 178, 180.

<sup>176</sup> CDA Election Law, Art. 9; GNC Election Law, Art. 10

<sup>177</sup> CDA Election Law, Art. 9; GNC Election Law, Art. 10; HoR Election Law, Art. 6.

<sup>178</sup> CDA Election Law, Art. 9.

Elections Regulation, exclude members of the CCMCE and its subcommittees, a judicial body, the national army or statutory bodies from candidacy.<sup>179</sup>

Additionally, at the local level, the 2019 Municipal Councils Elections Regulation specifies that the candidate lists shall “[take] into consideration that the list shall include the diversity in the social and regional components within each electoral constituency and that the list shall not have any tribal or family character.”<sup>180</sup> However, there is no guidance on how the CCMCE should implement this provision, except that “candidates on the lists shall not be related up to the fourth degree”<sup>181</sup> which could lead to accusations of political bias. Currently, the lists are published, and if there is backlash, then local meetings are held to reconcile the issue. More detailed criteria and transparent and inclusive procedures should be developed to effectively implement this provision to prevent damaging the CCMCE’s impartiality.

## Media

Fair and equitable access to media by election contestants under the law, uniform treatment by media regulatory bodies and impartial practices by media outlets are significant contributors to a level playing field in elections. Accessible, unbiased and accurate media plays a critical role in providing citizens with the necessary information to cast their vote in an informed manner. Article 19 of the Universal Declaration of Human Rights states that everyone has the right to freedom of opinion and expression; this right includes “the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”

Libya’s constitutional framework generally enshrines these international principles. The 2011 Constitutional Declaration provides for the “freedom of communication” and “liberty of the press, printing, publication and mass media,”<sup>182</sup> while the 2017 Draft Constitution, if adopted, would protect the freedom and independence of the press and media.<sup>183</sup> Additionally, the 2012 Political Parties Act provides that “parties have the right to own media to express their opinions and stances and achieve their goals in accordance with constitutional principles and existing legislation.”<sup>184</sup>

The Libyan legal framework for elections also includes various provisions guaranteeing free and equal access to media. For example, the 2012 Political Parties Act provides “the right to equal access to society-owned media, with other existing parties.”<sup>185</sup> Similarly, while drafted for specific elections, both the CDA Election Law (2013) and HoR Election Law (2014) state that candidates should use media for their campaigns on “equal footing,”<sup>186</sup> with the CDA Election Law (2013) stating that the HNEC will set the rules and procedures for campaigning in a “manner that guarantees equal airtime in the programs

---

<sup>179</sup> Presidential Council Decision No. 18 (2019), Art. 16.

<sup>180</sup> *Id.* at Art. 6.

<sup>181</sup> *Ibid.*

<sup>182</sup> 2011 Constitutional Declaration (Libya), Art. 14.

<sup>183</sup> 2017 Draft Constitution, Art. 38.

<sup>184</sup> Law 29 of 2012 on the Regulation of Political Parties, Art. 28.

<sup>185</sup> *Ibid.*

<sup>186</sup> Law No. (10) of 2014 on the Election of the Council of Representatives during the transitional period, Art. 10.

dedicated for all candidates and the distribution of airtime on all mass media.”<sup>187</sup> The GNC, CDA and HoR election laws also prohibit candidates from campaigning through non-Libyan media and make the offense punishable by fine, imprisonment or deprivation from candidacy.<sup>188</sup> However, it is unclear how this prohibition was intended to be monitored, especially considering that most television stations are not run from Libya even when they are perceived as being Libyan. Enforcement should be considered further if this prohibition is maintained in future legislation.

Through regulation, the HNEC Regulation of Candidate and Political Entities Parliamentary Election Campaigning in Public and Private Media (2014) illustrates how these legal provisions are implemented. According to the regulation, the HNEC collaborates with public media outlets – those financed by the Libyan state budget – “to set and divide the total amount of time devoted to election campaigns, distribute it evenly on the candidates and arrange the order of their appearance in accordance with the relevant format and regulations.”<sup>189</sup> The regulation also requires that any paid campaign advertisements in private media include “the name of the candidate as well as his/her contact information and the paid amount must be clearly mentioned.”<sup>190</sup> Additionally, the regulation provides restrictions for journalists, editors and reporters, including (1) a prohibition to participate in campaigns, (2) a requirement to separate information from opinion and (3) a responsibility to ensure campaign information is presented accurately and impartially.<sup>191</sup>

At the local level, the 2019 Regulation on Municipal Elections states that the CCMCE shall determine the rules of propaganda and media on the basis of equality to ensure equal quotas in the time and programs allocated.<sup>192</sup>

The current legal framework provides for equal use and allocation of the media but does not include details on how this is to be guaranteed. Additionally, there is a lack of provisions related to government censorship, paid advertising and the adjudication of electoral media complaints. The legislation or regulations could also include specific provisions on gender, public opinion surveys, public forums and social media. It could also clarify differing requirements between public and private media and the role of the Ministry of Media.

### *Political and Campaign Finance*

Transparent and accountable systems of political finance are vital to the integrity of the political process and help establish a level playing field for parties and candidates. Establishing a cohesive campaign finance legal framework is not only an accepted international practice but is essential to mitigating the

---

<sup>187</sup> Law (17) of 2013 on the Election of the Constituent Assembly in Charge of Drafting the Constitution, Art. 14.

<sup>188</sup> See Law No. (10) of 2014 on the Election of the Council of Representatives during the transitional period, Art. 37; Law No. (4) of 2012 on the Election of the General National Congress, Art. 12; Law (17) of 2013 on the Election of the Constituent Assembly in Charge of Drafting the Constitution, Art. 16.

<sup>189</sup> Regulation of Candidate and Political Entities Parliamentary Election Campaigning in Public and Private Media with HNEC Council Decision No. (59) 2014, Art. 11.

<sup>190</sup> Id. at Art. 15,

<sup>191</sup> Id. at Arts. 4, 8.

<sup>192</sup> The Regulation on the Basis and criteria related to the Municipal Councils Elections, Art. 25.

negative role that money can play in electing officials.<sup>193</sup> Similarly, legal certainty and consistent application of the law are integral to upholding the rule of law according to international standards.<sup>194</sup>

### *Funding and Expenditure for Political Parties*

In terms of political funding in Libya, the 2012 Political Parties Act, developed by the NTC, forbids political donations from any non-Libyan body, Libyan governmental body or any company partially or wholly owned by the government.<sup>195</sup> There is no cap on contributions from other groups or individuals. The Political Parties Act also provides for direct public funding to political parties, where half of the public funding available goes equally to all registered parties, and the other half is given to parties receiving at least 3 percent of the vote in proportion to votes received.<sup>196</sup> However, the law does not specify whether this threshold only applies to certain types of elections, and there is uncertainty regarding how the eligibility criteria for the second half of the public funding should be interpreted. In practice, as political parties have not been allowed to participate in recent national Libyan elections, no party has arguably qualified for this funding. This means that the only portion of the funding that would be operational is the half provided equally to all registered political parties. Not having eligibility criteria at all is unusual and opens the risk that political parties are created with the sole purpose of accessing public funding.<sup>197</sup> With respect to political spending, the Political Parties Act states that parties must only spend on activities that will achieve their goals, but the law does not provide any further detail on what constitutes a legitimate goal.<sup>198</sup>

While some countries place restrictions on the fundraising and spending of political parties, unless political parties maintain and submit accurate financial records, it is next to impossible to judge if such restrictions are being adhered to. The 2012 Political Parties Act provides that Libyan political parties are required to “maintain organized account books that include their revenues and expenditures in accordance with the rules to be defined by the implementing regulations and the party’s charter.”<sup>199</sup> Parties must also submit an annual financial report to the Unit for Financial Oversight and Auditing of the Parties Affairs Committee, but the law does not specify when or what exactly should be submitted – and whether donor identity is required.<sup>200</sup> It does also not require such reports to be public. The Unit for Financial Oversight and Auditing is authorized to audit parties’ accounts. The committee may review and audit the parties’ records by appointing a certified accountant, who shall submit their report to the party. Such audits must remain confidential unless a violation is discovered that must be resolved in the courts. Parties must also submit annual inventories of their property that must be registered in the unit’s registry. Ideally, future electoral reforms should introduce deadlines for annual financial reports

---

<sup>193</sup> American Bar Association, *International Election Principles* (2009), 366.

<sup>194</sup> UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, para. 6, UN Doc. S/2004/616 (23 August 2004).

<sup>195</sup> Political Parties Act 2012, Art. 18

<sup>196</sup> *Ibid.*, Art. 20. So, if one party received 13 percent of the votes in the last election, it should receive 13 percent of the funds distributed proportionally.

<sup>197</sup> IFES Libya (Magnus Ohman), *Political Finance in Libya*, Jan 2017, p. 12

<sup>198</sup> Political Parties Act 2012, Art. 23

<sup>199</sup> *Ibid.*

<sup>200</sup> *Ibid.*

by political parties; details about the information to be included and the information should be published on the oversight institution's website.

### *Funding and Expenditure for Election Campaigns*

To date, election-specific laws have included inconsistent provisions on campaign funding and expenditure. The GNC Election Law stated that candidates must notify the HNEC on campaign finances, but specified that they must provide on-going updates,<sup>201</sup> whereas the CDA Election Law did not explicitly require regular or ongoing reports. Conversely, the CDA Election Law mandated that candidates submit detailed statements within seven days of Election Day,<sup>202</sup> whereas the GNC Election Law, HoR Election Law and Council of Ministers Decision on Municipal Council Elections all had a deadline of statements to be submitted within 15 days of the announcement of the final election result. These deadlines were largely respected. The responsibility for overseeing campaign finance lies with HNEC. Unfortunately, Law 8 (2013) On the Establishment of High National Elections Commission does not specifically mention campaign finance oversight as part of the HNEC mandate, although it does state that it "shall be the only institution that undertakes the implementation of the electoral process, preparations for and oversight of the process and announcement of the results."<sup>203</sup> Nor does the law provide any information on how HNEC should carry out its oversight, other than noting that it can issue regulations, establish committees "to be in charge of the completion and conduct of any electoral tasks"<sup>204</sup> and that other public institutions are required to support the commission.

To harmonize rules in this area for future elections, legislators should consider providing additional information about bookkeeping and publication requirements, consider setting a deadline for post-election reporting that is longer than two weeks after Election Day, explicitly state that the identity of donors should be included in the financial report and consider introducing a requirement for candidates to submit information about their financial assets as part of the nomination process.<sup>205</sup> The law could also specify that winning electoral candidates cannot assume office until they have submitted their post-election financial report.

At the municipal level, the new 2019 Regulation on the Basis and Criteria related to the Municipal Council Elections requires the CCMCE to determine "the expenditure ceiling on electoral propaganda activities of each list, specifying the sources of funding for its propaganda."<sup>206</sup> As IFES has reported previously, this will require very careful management and coordination among the candidates on a list to ensure that the sum of spending by the individual candidates does not exceed the limit.<sup>207</sup> Furthermore, it will require significant capacity within the CCMCE to ensure lists and candidates are aware of the

---

<sup>201</sup> GNC Election Law, Art. 24

<sup>202</sup> CDA Election Law, Art. 20

<sup>203</sup> Law 8 (2013) On the Establishment of High National Elections Commission, Art. 3

<sup>204</sup> Ibid.

<sup>205</sup> Currently on the latter issue, at the municipal level elected officials must only submit financial disclosures of their families and property prior to commencement of membership in the municipal council, not prior to elections.

<sup>206</sup> 2019 Regulation on the Basis and Criteria related to the Municipal Council Elections, Art. 28

<sup>207</sup> IFES Libya Analysis of Presidential Council Decision No. 18 Concerning Libya's Municipal Council Elections, issued in January 2019

controls on campaign spending, to receive reports and to take any necessary enforcement action. It is not clear in the 2019 regulation whether (a) individuals who are not candidates, and (b) organizations<sup>208</sup> are permitted to promote support for a list through the same kinds of electoral propaganda activities that candidates and lists may undertake.<sup>209</sup> This needs to be clarified in a way that does not circumvent the expenditure ceiling that applies to lists, but equally does not limit freedom of speech.

For *political party* finance, there are no sanction provisions in the 2012 Political Parties Law, except that public funding will not be provided to parties that fail to submit annual financial reports.<sup>210</sup> However, sanctions for *campaign* finance violations have been relatively well codified in the laws for each specific national election. For example, there were codified sanctions for vote buying, receiving foreign funding, campaigning by public employees, exceeding the spending limit, campaigning in foreign media and campaigning in public buildings in the elections laws for the GNC, CDA and HoR elections.<sup>211</sup> Punishments include banning candidature, fines or prison. One area that has been less well developed in the legal framework to date is misusing public resources during election campaigns, with only the 2012 GNC Election Law and 2019 Regulation on Municipal Council Elections explicitly prohibiting this.<sup>212</sup>

### *Election Observation and Oversight*

Credible, well-trained election observers who have full access to election activities – both through a clear legal and regulatory mandate, as well as in practice with local authorities and polling officials – have a valuable role to play in the election process. The widely accepted Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations (hereafter the “Declaration of Global Principles”) outlines the basic conditions that must be met by governments and EMBs to facilitate credible and effective observation. One such condition is that “non-partisan citizen election observation and monitoring organizations can exercise the freedom to associate with other organizations, both domestic and international, and cooperate with and/or receive assistance and support from them, including financial assistance, in order to pursue non-partisan election observation/monitoring activities.”<sup>213</sup>

While there are no existing constitutional provisions that guarantee freedom of association, the 2011 Constitutional Declaration guarantees the freedom to form civil society organizations.<sup>214</sup> However, it also prohibits generally “the establishment of clandestine or armed societies, or societies in violation of

---

<sup>208</sup> 2019 Regulation on the Basis and criteria related to the Municipal Council Elections, Arts. 24-33

<sup>209</sup> Other forms of campaign publicity may also be possible, such as advertisements that promote a cause or policy without explicitly mentioning a particular list (e.g., “Vote for better roads”). Such advertisements can sometimes appear to be supporting a list that has a similar policy.

<sup>210</sup> Political Parties Act, 2012, Art.22

<sup>211</sup> See Arts. 35, 38, 39, and 41 in the 2012 GNC Election Law, Arts. 31, 34, 35, and 37 in the 2013 CDA Election Law, and Arts. 31, 34, 35, and 37 in the 2014 HoR Election Law.

<sup>212</sup> 2012 GNC Election Law, Art. 39, and 2019 Regulation on the Basis and criteria related to the Municipal Council Elections, Art. 27

<sup>213</sup> Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations, Art 18(e), available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)018-e).

<sup>214</sup> 2011 Constitutional Declaration (Libya), Art. 15.

public system or of public morals and others which may be detriment to the State or the unity of the State.”<sup>215</sup> Additionally, while there is no law governing nongovernmental organizations (NGOs) currently in place, the Ministry of Culture and Civil Society introduced an order entitled “Controls on the Activities of International Organizations Supporting Civil Society in Libya.”<sup>216</sup> Human Rights Watch has described this order as “vague” and “restrictive” and calls for revisions, “particularly with regard to provisions that allow the government to cancel NGOs’ authorizations to work, limit their activities, and prevent foreign organizations from funding activities of local organizations.”<sup>217</sup> Similarly, the International Center for Not-for-Profit Law (ICNL) has stated that while the decree “presents an improvement over prior CSO regulations in Libya... [it] will pose major obstacles to freedom of association in Libya, and will harm the ability of CSOs—particularly [international NGOs]—to carry out their work.”<sup>218</sup> Foreign funding to local organizations is “restricted to specific projects according to controls” including a requirement that the recipient organization be registered with the Ministry’s Civil Society Support Center, the program activities and budget be submitted to the center, and the program be advertised for three days in newspapers determined by the center.<sup>219</sup> ICNL has published detailed comments on the decree, highlighting areas that do not align with international standards, and provides recommendations for revision.<sup>220</sup> Libya’s penal code also still includes Gaddafi-era laws with severe punishments that infringe on the freedom of association.<sup>221</sup>

These provisions do not explicitly prevent citizen election observation, but they also do not clearly support or guarantee citizens’ right to participate in election observation. In February 2012, civil society members presented a Draft Law on Associations<sup>222</sup> to the Ministry of Culture and Civil Society to be submitted to the GNC.<sup>223</sup> This law has not yet been adopted, but could clarify and strengthen protections for CSOs engaging in citizen election observation activities, including clarifying the rights of associations to “evaluate the performance of state entities and submit proposals for improving performance” and “publish reports and information.”<sup>224</sup> The draft law contains clear requirements for

---

<sup>215</sup> Ibid.

<sup>216</sup> Controls on the Activities of International Organizations Supporting Civil Society in Libya, Ministry of Culture and Civil Society, 2012, <http://www.icnl.org/research/library/files/Libya/foreign-org-control-en.pdf>.

<sup>217</sup> Human Rights Watch, “Priorities for Legislative Reform: A human rights roadmap for a new Libya,” (2014), <https://www.hrw.org/report/2014/01/21/priorities-legislative-reform/human-rights-roadmap-new-libya>

<sup>218</sup> International Center for Not-for-profit Law, “Comments on Libya’s Decree 286 of 2019 to Regulate Civil Society Organizations,” (April 2019), p. 1.

<sup>219</sup> Controls on the Activities of International Organizations Supporting Civil Society in Libya, Ministry of Culture and Civil Society, 2012, <http://www.icnl.org/research/library/files/Libya/foreign-org-control-en.pdf>.

<sup>220</sup> International Center for Not-for-profit Law, “Comments on Libya’s Decree 286 of 2019 to Regulate Civil Society Organizations,” (April 2019).

<sup>221</sup> Human Rights Watch, “Priorities for Legislative Reform: A human rights roadmap for a new Libya,” (2014), <https://www.hrw.org/report/2014/01/21/priorities-legislative-reform/human-rights-roadmap-new-libya>

<sup>222</sup> Draft Law on Associations (Libya), 2012, available at <http://www.icnl.org/research/library/files/Libya/draft-libyan-law-on-associations-ENG.pdf>.

<sup>223</sup> Human Rights Watch, “Priorities for Legislative Reform: A human rights roadmap for a new Libya,” (2014), <https://www.hrw.org/report/2014/01/21/priorities-legislative-reform/human-rights-roadmap-new-libya>

<sup>224</sup> Draft Law on Associations (2012), Art. 7, available at <http://www.icnl.org/research/library/files/Libya/draft-libyan-law-on-associations-ENG.pdf>.



the establishment of associations and prohibited activities as well as for receiving funds from international entities.<sup>225</sup> Additionally, if the 2017 Draft Constitution was ratified, it would guarantee the right to association<sup>226</sup> and the right to form and join CSOs;<sup>227</sup> prevent the suspension of a CSO's work without a judicial order or disbanding of a CSO without a court ruling;<sup>228</sup> and guarantee citizens and CSOs the right to democratic participation.<sup>229</sup>

Aside from the foundational right to association, it is best practice, as described in the Declaration of Global Principles, for legal frameworks governing election observation to include: (1) clear accreditation procedures and requirements and (2) allowances for observers to access to the entire electoral process.<sup>230</sup> Under the Law on the Establishment of the HNEC, the HNEC is responsible for “accredit[ing] national and international observers, media representatives and candidates’ agents”<sup>231</sup> The Law on the Establishment of HNEC also states that accreditation should be provided “in a fashion that ensures the fairness and transparency of the electoral process.”<sup>232</sup> Similarly, the 2018 Referendum Law explicitly states that observers should monitor voting procedures, polling stations and the sorting and counting of votes, without reference to activities before or after Election Day.<sup>233</sup> The CDA Election Law and the HoR Election Law both provided for citizen and international election observation, but did not include any more detail on how this observation was to be facilitated.

### *Election Operations*

Sufficient ballot integrity measures, as well as appropriate efforts to ensure the secrecy of the vote, are essential features of a credible Election Day operation. The key foundational document for the United Nations system of conventions and treaties relating to human rights, democracy and governance, the Universal Declaration on Human Rights, states: “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”<sup>234</sup>

As there is not yet a single piece of legislation covering the administration of periodic elections, existing legal provisions for election operations and services for Libya are contained in election-specific legislation. However, the GNC, CDA and HoR elections have already passed, leaving the Constitutional Referendum Law as the only election-specific legislation with practical implications for future elections. Under the 2018 Constitutional Referendum Law, the HNEC is tasked with appointing the head of each

---

<sup>225</sup> Draft Law on Associations (Libya), 2012, available at <http://www.icnl.org/research/library/files/Libya/draft-libyan-law-on-associations-ENG.pdf>.

<sup>226</sup> Draft Constitution (July 2017), Art. 43.

<sup>227</sup> Id. at Art. 41.

<sup>228</sup> Ibid.

<sup>229</sup> Id. at Art. 42.

<sup>230</sup> Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations, Art 18, available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)018-e).

<sup>231</sup> Law 8 of 2013 on the Establishment of the High National Elections Commission, Art. III (6).

<sup>232</sup> Ibid.

<sup>233</sup> Referendum Law (2018), Art. 30.

<sup>234</sup> UN General Assembly, Universal Declaration of Human Rights, art. 21(3).

polling center and the director for each referendum station to “implement and manage the process of voting.”<sup>235</sup> The Referendum Law provides that voters shall cast votes in “complete secrecy” and prohibits voting by proxy or by correspondence.<sup>236</sup>

According to international best practice, EMBs should provide adequate voting services to enable all members of the electorate, including minorities, persons with disabilities and other marginalized groups, to participate fully and equally in the electoral process.<sup>237</sup> The law includes provisions on inclusion and accessibility, allowing persons with disabilities who are unable to cast their vote on the ballot paper to bring an assistant of their choice – with the approval of the director of the referendum station<sup>238</sup> – and tasking the HNEC with taking measures to allow out-of-country voters to participate.<sup>239</sup> The laws for the GNC, CDA, and HoR elections include similar provisions but more detail when it comes to voters with disabilities, specifying “people who cannot cast their votes on ballot cards or orally.”<sup>240</sup> Additionally, these laws allow assistance for those who are illiterate.<sup>241</sup> However, casting a vote orally to election officials may breach international standards regarding secret ballots.

At the local level, the Regulation on the Municipal Councils Elections also includes similar provisions; however, it also provides more detail regarding secrecy of the vote. The regulation states that the CCMCE shall assign a number of “isolated places...to enable each voter to vote in complete secrecy” according to the number of registered voters for the election.<sup>242</sup> The exact specifications for these spaces are to be determined by the CCMCE.<sup>243</sup>

Overall, there is very little detail in the legal framework on issues of accessibility of polling stations, polling station setup and management, or of the procedures used for out-of country voting. For future national elections, these principles should be included in legislation, with further operational detail provided in regulations and procedures to ensure consistent practices that meet international standards.

### *Counting, Aggregation and Certification of Final Results*

An accurate count provides the essential foundation upon which a credible results system is built. Key principles governing the ballot counting process include accuracy, transparency and timeliness.<sup>244</sup> To ensure acceptance of the results, the aggregation and certification process must be transparent, accurate and conducted within set timelines according to a clear, well-understood process. Experienced teams of international and domestic observers should be given access, candidates and political parties

---

<sup>235</sup> 2018 Constitutional Referendum Law, Art. 13.

<sup>236</sup> Id. at 17.

<sup>237</sup> ACE: The Electoral Knowledge Network, Voting Operations, <http://aceproject.org/ace-en/topics/vo/onePage>.

<sup>238</sup> 2018 Constitutional Referendum Law, Art. 18.

<sup>239</sup> Id. at Art. 19.

<sup>240</sup> GNC Election Law, Art. 28; CDA Election Law, Art. 23; HoR Election Law, Art. 24

<sup>241</sup> Ibid.

<sup>242</sup> Regulation on the Municipal Councils Elections, Art. 37.

<sup>243</sup> Ibid.

<sup>244</sup> ACE: The Electoral Knowledge Network, Results Management Systems, <http://aceproject.org/ace-en/topics/vc/onePage>.

should keep their own records, and clear explanations must be given by the EMB for variances between publicly available precinct records and final results.<sup>245</sup>

As there is not yet a single piece of legislation covering the administration of periodic elections, existing legal provisions counting, aggregation and certification of results are contained in election-specific legislation. However, the GNC, CDA and HoR elections have already passed, leaving the Constitutional Referendum Law as the only election-specific legislation with practical implications for future elections. Under the 2018 Constitutional Referendum Law, the HNEC is tasked with appointing the head of each polling center and the director for each referendum station to “implement and manage the process of voting, sorting, counting and organizing the arrangement of observers and media representatives.”<sup>246</sup> Additionally, the law requires that the High Council of Judicial Bodies assign a judicial representative to each referendum center “to supervise and monitor the voting, sorting, and counting process” and who must endorse the results.<sup>247</sup> Once the head of the referendum center announces the completion of the voting process, the law provides that “the sorting and counting of the votes shall start immediately inside the referendum station in the presence of the director of the station, observers and the designated judge.”<sup>248</sup> HNEC Regulations on Polling, Sorting, and Counting provide more specific guidance, including definitions of valid, invalid, canceled, and spoiled ballots.<sup>249</sup>

Additionally, it provides that each referendum center individually announce its results,<sup>250</sup> that the commission will announce and publish the preliminary results no later than 10 days from Referendum Day,<sup>251</sup> and that final results of each constituency in official media outlets and on its website no more than 14 days from the announcement of preliminary results.<sup>252</sup>

At the local level, the Regulation on the Municipal Councils Elections provides that the CCMCE will set the procedures for polling, sorting and counting.<sup>253</sup> Once the voting and counting procedures have finished, the head of the polling centers submits a report on the procedures carried out and the findings along with the minute forms to the subcommittees.<sup>254</sup> However, there are no regulations for the secure transportation of the election materials and the aggregation process is unclear. The regulations state that members of the CCMCE, candidates, candidate representatives, accredited local and international observers and accredited journalists and media are entitled to monitor the collection and preparation of preliminary results.<sup>255</sup> Once the subcommittee sends the election results to the CCMCE it publishes them as preliminary results. However there are no requirements for the preliminary results to be displayed at

---

<sup>245</sup> Chad Vickery ed., *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections* (GUARDE), IFES (Washington, DC: 2011), [http://www.ifes.org/sites/default/files/guarde\\_final\\_publication\\_0.pdf](http://www.ifes.org/sites/default/files/guarde_final_publication_0.pdf).

<sup>246</sup> 2018 Constitutional Referendum Law, Art. 13.

<sup>247</sup> *Id.* at Art. 14.

<sup>248</sup> *Id.* at Art. 15.

<sup>249</sup> HNEC Regulation on Polling, Sorting, and Counting (2014).

<sup>250</sup> 2018 Constitutional Referendum Law, Art. 5.

<sup>251</sup> *Id.* at Art. 16.

<sup>252</sup> *Id.* at Art. 20.

<sup>253</sup> Regulation on the Municipal Councils Elections (2019), Art. 34.

<sup>254</sup> *Id.* at Art. 44.

<sup>255</sup> *Ibid.*

the polling center or published by the subcommittee.<sup>256</sup> The CCMCE then verifies the results through an examination of the “minutes, papers and materials attached to them, and the reports organized by the subcommittees.”<sup>257</sup> The verification process can be observed by the same parties, and then the official results are announced, including the total number of voters registered in the final lists; number of voters who participated and voted according to the register; number of ballot papers found at ballot boxes; number of valid papers, invalid papers and blank papers; the names and symbols of the candidates and the number of votes obtained in descending order; the date and time of the process of checking the correctness of the counting; and signatures of the members of the CCMCE.<sup>258</sup>

Procedures for counting and aggregating have been developed by the CCMCE, and it is important that they are made widely available to the public and used consistently by all the branch committees. Additional information on the criteria used to determine invalid votes is necessary to ensure the transparency needed for credible results. There are also no procedures for the safe and secure transport of election materials in the existing laws and regulations.

### *Election Dispute Resolution*

The effective resolution of electoral disputes is integral to guaranteeing the integrity and legitimacy of an election. The core function of an electoral complaints body is to maintain credibility and reliability through the application of a clear and consistent legal regime that is available to all injured parties.

#### *Institutional Framework for Election Dispute Resolution*

The HNEC has an express legal mandate for EDR during national elections,<sup>259</sup> and receives administrative complaints in its district offices by EDR “sub-committees” and at the central level by the “High Committee” on EDR.<sup>260</sup> The High Committee is comprised of one HNEC board member and two staff members, who review complaints that are referred by the subcommittees, and then submits proposals to the Board of Commissioners for decision.<sup>261</sup> Subcommittees in each district electoral committee are made up of three members, one of whom is the district electoral committee chair and two who are staff members – provided that at least one of the three members has a legal background to be in charge of EDR.<sup>262</sup> All HNEC decisions can be appealed to the relevant local court, which can be further appealed to the relevant Primary Court. Primary Court decisions are final and binding on HNEC to implement.<sup>263</sup>

For local elections, the present regulatory framework, which was updated in 2019, vests the CCMCE and subcommittees with jurisdiction over a range of electoral disputes and complaints, including on voter

---

<sup>256</sup> Regulation on the Municipal Councils Elections (2019), Art. 44-45.

<sup>257</sup> Ibid.

<sup>258</sup> Regulation on the Municipal Councils Elections (2019), Art. 45.

<sup>259</sup> GNC Law 8 (2013) On the Establishment of The High National Elections Commission, Art. III(8) “Set up appropriate mechanisms for receipt of electoral complaints and grievances and decide on them in accordance with the provisions of the electoral laws and implementing regulations.”

<sup>260</sup> These structures were created by the HNEC in Decisions no. 4 and 5, 2014.

<sup>261</sup> Ibid.

<sup>262</sup> Decision no. 5, 2014 On the Amendments of Electoral Dispute Resolution

<sup>263</sup> Regulation on Electoral Dispute Resolution Annexed to Board of Commissioners Decision 47/2013, Art. 5

registration,<sup>264</sup> candidate registration,<sup>265</sup> election campaigning<sup>266</sup> and results.<sup>267</sup> However, complications are introduced by the new Procedures for Objections and Electoral Appeals in Municipal Council Elections that were annexed to the Presidential Decree of the Government of National Accord No. 404/2019. Article 2 of these procedures provide that “any interested party” can object to any stage of the municipal elections within 48 hours of “the occurrence of the incident” before the subcommittee or central committee, while Article 3 provides that any interested party can also appeal an incident within 48 hours to the temporary judge of the Partial Court within the jurisdiction of the polling station. This appears to allow for wider legal standing than what exists in GNA Decree 18/2019 – for example, in the decree, results petitions are limited to candidates and agents – along with overlapping jurisdiction, which could lead to forum shopping or concurrent adjudication of the same dispute. These procedures also refer to two levels of appeal – to the Partial Court and then on to the president of the District Court. While the procedure notes that the decision of the appeal shall be final, it is not clear what remedies the court can provide.

These new procedures appear to contradict – and presumably therefore repeal – Article 2 of Law 88/1971 and Article 10 of Decision 84/2013, which designated the Administrative Chamber of the Court of Appeals to directly hear challenges against CCMCE decisions. However, it is unclear whether such procedures have the authority to repeal prior laws and regulations.

It is also important to note that an appeal was heard in the Tripoli Court of Appeals in July 2019 challenging the procedure by which the Presidential Council of the GNA issued Decision 18/2019, which changed the basis and rules for municipal council elections. The court found in favor of the complainant on the basis that Decision 18/2019 should have been initiated by a proposal from the minister of local governance instead of being issued directly by the Presidential Council. The court did not examine the legitimacy of the GNA’s authority to issue the decision nor did it address how the holding would impact the results of previous elections administered under Decision 18/2019. Hence, this may lead to further uncertainty and litigation. The GNA may now appeal the case – which seems likely, in which case the GNA decision is frozen until the appeal is determined – or reinstate the issuance of the decision through the proper administrative procedures.

#### *Rules and Procedures for Resolving Complaints and Disputes*

Previous Libyan election legislation for the TNC, CDA and HoR elections has generally been silent on fundamental due process guarantees, such as the right to a hearing, the right to defense and the right to adduce evidence. The legal framework also generally does not set different procedures or timelines for different types of disputes, which may require different handling. For example, a voter registration objection will likely require less time and consideration of evidence, versus a petition against results. While Libya’s Code of Civil and Commercial Procedure enshrines due process protections, upholding

---

<sup>264</sup> GNA Presidential Council Resolution No. 18/2019, On Amending the Regulation on the Basis and Criteria Related to the Municipal Councils’ Election, Art. 11 and 13.

<sup>265</sup> Id. at Art. 20.

<sup>266</sup> Id. at Art. 29.

<sup>267</sup> Id. at Art. 45.

these protections in the election context is practically impossible within the EDR deadlines imposed by existing election laws and regulations: generally three days for adjudication by HNEC or by the courts, although the HoR Election Law provides for different timelines – 48 hours to file and five days to appeal.<sup>268</sup> The rules of evidence in the Code of Civil and Commercial Procedure are also unsuitable for election petitions – for example, these rules declare inadmissible unauthenticated photocopies of documents and electronic evidence such as videos. This could hamper timely fact-finding on EDR petitions, as HNEC and petitioners would have to produce all documents in original, which could be close to impossible in a results petition. However, this code is explicitly incorporated in a number of election laws, including the new 2018 Constitution Referendum Law.<sup>269</sup>

Prior and existing election laws and regulations also do not have well-defined procedures in place for filing electoral complaints and disputes. There are no clearly defined burdens of proof or standards of evidence established in the law or regulations. As mentioned above, laws and rules variously refer to “any interested party,” “all concerned”<sup>270</sup> or “any stakeholder”<sup>271</sup> to bring any electoral complaint, which is a very wide provision of legal standing. The framework for challenging the results of a presidential election in the future remains unclear and must be clarified well ahead of the first post-constitutional presidential election.

### *Remedies, Sanctions and Enforcement of Decisions*

It is critical that provisions regarding the power to annul elections are clarified in Libya’s legal framework for both national and local elections. This includes a requirement to clarify the ground on which an election can be annulled and the standard of evidence to prove these grounds. Disparate interpretations of the EDR framework could provoke partial or even wholesale annulment of elections, even if future elections are held in accordance with the legal framework and if their results are not measurably impacted by irregularities. Inconsistencies between the patchwork of laws and procedures and the Constitutional Declaration, or with the Draft Constitution once adopted, could attract wholesale election annulments, despite the fact that such a judicial decision may undermine the expressed will of the voter. For example, in May 2019, the Sabha Appeals Court annulled the results of the April 27, 2019, municipal election in Sabha for failure of police to secure the electoral process as required under Article 43 of Decree No. 18 of 2019, failure to announce the Election Day with sufficient notice and failure to display voter lists. The petitioner was not required to prove that any of these grounds had a measurable impact on the result of the election. As discussed above under “political parties and candidates,” at the national level the requirement that candidates possess only Libyan nationality has also been the legal basis for annulment. Elected on April 22, 2014, as the head of the Constituent Assembly, Ali Tarhouni was removed from his position by the Bayda Appeals Court on November 28, 2016, which ruled that Tarhouni did not meet the requirements for candidacy under Law No. 17 of 2013 for having dual nationality.

---

<sup>268</sup> Regulation on Electoral Dispute Resolution Annexed to Board of Commissioners Decision 47/2013

<sup>269</sup> 2018 Constitution Referendum Law, Art. 27

<sup>270</sup> Article 10 of Decision 84/2013

<sup>271</sup> Regulation on Electoral Dispute Resolution Annexed to Board of Commissioners Decision 47/2013

There is also a lack of clarity regarding the authority of the HNEC and CCMCE to annul, and the authority of the courts. For example, Article 48 of GNA Decree 18/2019 provides that “the Central Committee shall have the right to cancel the results of the electoral process, which is proved to be rigged by fraud, manipulation or an act *that would prejudice the results of the electoral process* [emphasis added].” This implies that the CCMCE must be confident that any fraud, manipulation or other act must be outcome determinative. However, preliminary results from municipal elections can be appealed by “any interested party” before the Partial Court and then the president of the District Court, but no grounds for appeal or types of remedies are articulated.<sup>272</sup> Similarly the 2018 Constitutional Referendum Law explicitly provides that the HNEC can only cancel results “if it is proven that the violation could affect the results of the Referendum process,”<sup>273</sup> while provisions dealing with results petitions and appeals to the courts do not set out any grounds or remedies. The EDR provisions for the 2018 Constitutional Referendum Law are particularly challenging, as interested parties can challenge the preliminary results of the referendum – not at the central level via a national court – but through the Partial Court “under which jurisdiction the Referendum center falls.”<sup>274</sup> Conceivably, where there is a close result in the referendum, this decentralized appeal system could be used to target a select few select areas to swing the outcome nationally.

Sanctions for electoral violations and crimes have been set out in the various election laws, and include coercion, vote buying, manipulation and campaign finance violations. Sanctions include imprisonment fines, or a ban from candidacy, but sanctions have been uneven across different election-specific laws and are not always proportional to the violation. It will be important for Libya to enact a comprehensive set of provisions regarding administrative and criminal election violations, with effective and proportionate sanctions. Clarifying a concurrent administrative and criminal jurisdiction for certain election violations would allow the HNEC to be able to put in place timely and dissuasive sanctions – such as injunctions or fines – as the electoral process is unfolding, while still providing for criminal prosecution after the election, should a violation rise to that level.

---

<sup>272</sup> GNA Presidential Council Procedures for Objections and Electoral Appeals in Municipal Council Elections annexed to the Presidential Decree of the Government of National Accord, No. 404/2019.

<sup>273</sup> Article 23

<sup>274</sup> 2018 Constitution Referendum Law, Art. 27

## Annex I: Pros and Cons of Electoral Systems Tried or Proposed in Libya

Electoral System	Pros	Cons
<b>Party Block Vote</b>	<ul style="list-style-type: none"> <li>▪ Easy to use and understand</li> <li>▪ Encourages strong parties</li> <li>▪ Allows parties to put up mixed slates of candidates to facilitate minority representation</li> </ul>	<ul style="list-style-type: none"> <li>▪ A political group can win all the seats without winning more than half the valid votes.</li> <li>▪ Because the winning list is awarded all seats, parts of the electorate can feel unrepresented.</li> <li>▪ There is no incentive for smaller political groups to nominate lists for the election since they are unlikely to succeed, and no incentive for supporters of smaller political groups to vote in the election.</li> <li>▪ Voters do not elect their individual representatives directly, because of the use of closed lists.</li> </ul>
<b>Closed-List Proportional Representation (PR)</b>	<ul style="list-style-type: none"> <li>▪ Better able to produce a representative legislature</li> <li>▪ Encourages or requires the formation of political parties</li> <li>▪ Few wasted votes</li> <li>▪ Facilitates minority access to representation</li> <li>▪ Encourages parties to campaign beyond the districts in which they are strong</li> <li>▪ Restricts the growth of “regional fiefdoms”</li> <li>▪ Can lead to greater continuity and stability of policy</li> <li>▪ Makes power-sharing between parties and interest groups more visible</li> </ul>	<ul style="list-style-type: none"> <li>▪ Weak links between elected legislators and their constituents</li> <li>▪ Excessive entrenchment of power within party headquarters and in the hands of senior party leaders</li> <li>▪ Needs some kind of recognized party or political groupings</li> </ul>
<b>Single Non-Transferable Vote (SNTV)</b>	<ul style="list-style-type: none"> <li>▪ Easy to use and understand</li> <li>▪ Facilitates representation of minority parties and independents</li> <li>▪ Encourages parties to become organized</li> </ul>	<ul style="list-style-type: none"> <li>▪ Parties whose votes are widely dispersed will win fewer seats, and larger parties can receive a substantial seat bonus.</li> <li>▪ Internal party fragmentation and discord may be accentuated and may promote clientelistic politics.</li> <li>▪ Few incentives for political parties to appeal to a broad spectrum of voters</li> <li>▪ High number of “wasted” votes</li> </ul>
<b>First Past the Post (FPTP)</b>	<ul style="list-style-type: none"> <li>▪ Easy to use and understand</li> <li>▪ Provides a clear-cut choice between two main parties</li> <li>▪ Gives rise to single-party governments, which may be more stable, and a coherent opposition in the legislature</li> <li>▪ Excludes extremist parties from representation</li> </ul>	<ul style="list-style-type: none"> <li>▪ Excludes smaller parties from “fair” representation</li> <li>▪ Excludes minorities from fair representation.</li> <li>▪ Excludes women from the legislature</li> <li>▪ Can encourage the development of political parties based on clan, ethnicity or region</li> <li>▪ Exaggerates the phenomenon of “regional fiefdoms” where one party wins all the seats in a province or area</li> </ul>



	<ul style="list-style-type: none"> <li>▪ Promotes link between representatives and constituents</li> <li>▪ Allows voters to choose between people rather than just between parties</li> <li>▪ Provides an opportunity for popular independent candidates to be elected</li> </ul>	<ul style="list-style-type: none"> <li>▪ Large number of wasted votes</li> <li>▪ Can cause vote splitting</li> <li>▪ May be unresponsive to changes in public opinion</li> <li>▪ Dependent on fair drawing of electoral boundaries</li> </ul>
--	---	---

*Source: Ace Knowledge Network*

## Annex II: Snapshot of Libya Legal Electoral Framework

The following is a snapshot of the legal framework governing elections in Libya, following a “hierarchy of laws” approach that outlines international commitments, supreme (constitutional) provisions, laws; executive orders, regulations and relevant jurisprudence.

### *International Legal Commitments*

Libya has signed and ratified a number of international conventions that govern its obligations with respect to democratic elections, including but not limited to the following:

- International Covenant on Civil and Political Rights (ICCPR),<sup>275</sup>
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>276</sup>
- Convention on the Rights of Persons with Disabilities (CRPD),<sup>277</sup>
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW),<sup>278</sup>
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),<sup>279</sup> and
- the United Nations Convention Against Corruption (UNCAC).

Together, these conventions commit Libya to protecting fundamental political and electoral rights.

### *Constitutional Framework*

The first Libyan Constitution was put in place in 1951, just prior to its formal declaration of independence. This Constitution was usurped by Muammar Gaddafi’s political philosophy, encapsulated in *The Green Book*, which was published in 1975. Following the fall of Gaddafi in 2011, the Constitutional Declaration 2011 was put in place by the NTC to govern Libya and remains in force. This Constitutional Declaration outlines the constitutional and legal framework governing the transitional period between the end of Libya’s revolution and the adoption of a new constitution by an elected government.

There have been various amendments to the Constitutional Declaration relevant to elections. The seventh amendment to the Constitutional Declaration was adopted by the GNC<sup>280</sup> three years after the Constitutional Declaration was written, but ultimately declared unconstitutional by the Supreme Court (See Decision No. 17 of 2014, below). It attempted to establish the grounds for HoR elections, the mandate of the new legislative body, and to give power to the TNC to enact the GNC electoral law, form the HNEC and call for elections of the GNC.

The 10th amendment, adopted in November 2018, outlines a referendum process to adopt a new permanent constitution. A complaint regarding this amendment has been submitted to the Supreme Court and registered, but has not been formally dealt with in a hearing as the Constitutional Chamber of the Supreme Court has been frozen for several years. The 11th amendment, also adopted in November

---

<sup>275</sup> Ratified May 15, 1970

<sup>276</sup> Ratified May 16, 1989

<sup>277</sup> Ratified February 13, 2018

<sup>278</sup> Ratified June 18, 2004

<sup>279</sup> Ratified July 3, 1968

<sup>280</sup> 7/2014 (March 11, 2014)

2018, incorporates the modified Libya political agreement that sets out a Presidency Council composed of a president, two vice presidents and a prime minister into the Constitutional Declaration. However, this modified political agreement has not been published or disseminated in any way, and therefore, its legality is uncertain.

The new Draft Constitution was approved to move forward to a referendum during the CDA's 74th Plenary Session in Beidha City on July 29, 2017. The Draft Constitution assures the right to run as a candidate,<sup>281</sup> vote,<sup>282</sup> and join political parties for Libyan citizens,<sup>283</sup> as well as the right to vote out of country.<sup>284</sup> The document references women's rights<sup>285</sup> and disability rights.<sup>286</sup> The provisions on the Shura Council (Congress) assure representation of cultural and linguistic components in the country,<sup>287</sup> and establishes the Shura Council's authority to nominate judges to the Constitutional Court.<sup>288</sup> While the draft sets out parameters for a presidential electoral system, it is silent on the system to be used for elections to the Senate and House of Representatives. The draft constitution will be voted on via referendum according to the 2018 Constitution Referendum Law.

### *Legislative Framework*

The following laws structure the national and municipal electoral systems, and would apply to future all future elections unless new legislation or amendments were enacted:

- Law on the Establishment of HNEC<sup>289</sup>
- Law on Political and Administrative Isolation and Amendment<sup>290</sup>
- Law on the Regulation of Political Parties<sup>291</sup>
- Law Concerning the Local Administration System<sup>292</sup>

The following laws governing specific transitional and periodic elections in Libya. While none of the legislation has been officially repealed, the elections they govern have passed, rendering the legislation practically void. However, to the extent that their provisions are illustrative, these laws are used in the following analysis:

- Law on the Election of the General National Congress ("GNC Election Law")<sup>293</sup>

---

<sup>281</sup> 2017 Draft Constitution, Art. 39.

<sup>282</sup> 2017 Draft Constitution, Art. 39.

<sup>283</sup> 2017 Draft Constitution, Art. 40.

<sup>284</sup> Id. at Art. 45.

<sup>285</sup> Id. at Art. 49.

<sup>286</sup> Id. at Art. 60.

<sup>287</sup> Id. at. 68.

<sup>288</sup> Id. at Art. 80.

<sup>289</sup> 8/2013 (March 28, 2013). This law superseded Law no. 3 of 2012 on the Establishment of the High National Election Commission, which was passed by the National Transitional Council

<sup>290</sup> 13/2013 (May 5, 2013) (repealed in the East, still valid in the West)

<sup>291</sup> 29/2012, passed by the National Transitional Council

<sup>292</sup> 59/2012

<sup>293</sup> 4/2012, including Amendment 28/2012

- Law on the Election of the Constituent Assembly in Charge of Drafting the Constitution (“CDA Election Law”)<sup>294</sup>
- Law on the Election of the House of Representatives during the transitional period (“HoR Election Law”)<sup>295</sup>

The only exception with respect to a specific election law that is applicable to future electoral events is the 2018 Constitution Referendum Law, which applies to the upcoming referendum process only (not all referendum events).

Other relevant laws that impact on specific parts of elections (and particularly with the resolution of different types of electoral disputes and violations) are as follows:

- The Civil Code
- The Code of Civil and Commercial Procedure
- The Law on the Provisions of Libyan Nationality<sup>296</sup>
- The Penal Code
- The Criminal Procedure Code
- The Law on the Supreme Court
- The Law on the Judiciary<sup>297</sup>
- The Law on the Administrative Judiciary<sup>298</sup>
- The Law on the High Commission for the Implementation of the Integrity and Patriotism Standards

### *Council of Ministers Decisions and Presidential Council Decisions*

The GNA created through the 2015 UN-brokered political agreement is comprised of the Council of Ministers and Presidential Council, which together exercise the state’s executive powers.<sup>299</sup> The nine-member Presidency Council carries out the function of the head of state, including commanding the Libyan army and conducting foreign relations, while chairing the Council of Ministers.<sup>300</sup> The Council of Ministers ensures the normal functioning of the state institutions, including setting priorities for government programs, issuing administrative decisions and directives and preparing the draft general budget for the state.<sup>301</sup> However, it should be noted, that prior to 2014 the Council of Ministers referred to the GNC.<sup>302</sup>

Council of Ministers and Presidential Council decisions have legal status similar to that of an executive order or presidential decree – that is, they are legally binding directives to an executive agency or to

---

<sup>294</sup> 17/2013

<sup>295</sup> 10/2014 (March 31, 2014) and Amendment Ref. 782/2014 (Amending Article 29 of Election Law 10/2014)

<sup>296</sup> 24/2010

<sup>297</sup> 6/2006

<sup>298</sup> 88/1971, and Amendment Law no. 6 of 1371 PD

<sup>299</sup> Libyan Political Agreement (2015), Art. 1.

<sup>300</sup> Congressional Research Service, <https://fas.org/sgp/crs/row/RL33142.pdf>

<sup>301</sup> Libyan Political Agreement (2015), Art. 9.

<sup>302</sup> See Council of Ministers Decision No. 130 of 2013.

implement an executive action, which enable the executive body to act when approval from the legislature is unnecessary. The following decisions impact Libya's current electoral legal framework:

- Council of Ministers Decision on the Establishment of Central Committee for the Preparation and Supervision of Municipal Council Elections<sup>303</sup>
- Council of Ministers Decision on the Adoption of Principles and Procedures for Municipal Elections<sup>304</sup>
- Council of Ministers Decision – Amendment of the Regulations Concerning the Election of Municipal Councils<sup>305</sup>
- Presidential Council Decision on Municipal Elections<sup>306</sup>

### *Regulations and Procedures*

Regulations – sometimes called rules or bylaws – are issued under the authority of a statute by a division of the government or by a special body, such as an EMB. For this reason, they are sometimes referred to as “delegated” legislation. They provide administrative and technical detail to carry out the purpose of the statute. As with some of the election laws in Libya, a number of regulations have been developed in Libya for specific elections, rather than for periodic elections. However, some regulations apply to all elections, including but not limited to the following:

- Executive Regulations Concerning the Local Administration System<sup>307</sup>
- HNEC Decision on the Amendment of the Electoral Dispute Resolution<sup>308</sup>
- HNEC Decision on the Establishment of a High Committee to Consider Complaints and Grievances<sup>309</sup>
- HNEC Regulation on Polling, Sorting, and Counting
- HNEC Regulation on Media Representatives<sup>310</sup>
- HNEC Regulation on the Registration of Candidates<sup>311</sup>
- HNEC Regulation on Voter Registration<sup>312</sup>

### *Relevant Jurisprudence*

In many countries, legislation can be interpreted, challenged and amended through the courts. A law, or even a constitutional amendment, can be challenged based on its constitutionality, or on the basis that it was not properly enacted. Certain cases can also produce jurisprudence that governs future electoral events, so are important to consider as part of any analysis of the legal framework for elections. There have been a few key judgments pertaining to elections in Libya, including:

---

<sup>303</sup> 160/2013

<sup>304</sup> 161/2013

<sup>305</sup> 621/2013

<sup>306</sup> 18/2019

<sup>307</sup> Executive Regulations of Law 59/2012, annexed to the decision of the Council of Ministers 130/2013

<sup>308</sup> 5/2014

<sup>309</sup> 7/2014

<sup>310</sup> Decision of the Head of Board of Commissioners No. (77) 2013

<sup>311</sup> Decision of Board of Commissioners Decision No. 45 of 2013.

<sup>312</sup> Board of Commissioners Decision No. 73 of 2013.

- *Decision No. 17 of 2014*: In this case, the Supreme Court declared Constitutional Amendment no. 7 unconstitutional after it was passed by the GNC on March 11, 2014. It was declared unconstitutional on procedural grounds because the amendment only received 121 of the 124 required votes at the time of the vote, collecting the remaining three votes separately after the GNC had moved on to deliberate on another issue. The decision was extremely controversial, with some suggesting that this implied the dissolution of the HoR.<sup>313</sup>
- *Decision No. 16 of 2014*: Abdul Raouf Ibrahim Ali al-Monaai, an elected member of the HoR, requested a ruling that the session of HoR convened in Tobruk on August 4, 2014 was unconstitutional because only the president of the GNC can call the HoR to session and it must be called in either Tripoli or Benghazi. However, constitutional amendment no. 7, on which Al-Monaai's case was based, was ruled unconstitutional (See Decision No. 17, above). The Supreme Court thus considered the case without merit and dismissed the case.
- *Sabha rulings of May 2019*: The Sabha Appeals Court annulled the results of the April 27, 2019, municipal election in Sabha for the following reasons: (1) a failure of police to secure the electoral process as required under Article 43 of Decree No. 18 of 2019, (2) failure to announce the Election Day with sufficient notice as required under Article 10 and (3) and falsification of ballot papers as prohibited under Article 50.
- *Ali Tarhouni rulings*: Elected on April 22, 2014, as the head of the Constituent Assembly, Ali Tarhouni was removed from his position by the Bayda Appeals Court on November 28, 2016, which ruled that Tarhouni did not meet the requirements for candidacy under Law No. 17 of 2013 for having dual nationality. Libyan nationality is required, and Gaddafi-era Law No. 24 of 2010 provides that Libyan nationality is lost upon acquisition of foreign nationality.

---

<sup>313</sup> <https://www.atlanticcouncil.org/blogs/menasource/a-legal-look-into-the-libyan-supreme-court-ruling/>





Global Expertise. Local Solutions.  
Sustainable Democracy.