

CIVIL SOCIETY'S SOBER ASSESSMENT OF THE LIBYAN CONSTITUTION-MAKING PROCESS

EXECUTIVE SUMMARY

Libyan civil society organisations (CSOs) hold various opinions on the constitution-making process but they agree that it is a major legal, political and technical challenge.

Libyan CSOs are critical of the bylaws and the overall legal framework. While their views differ on whether the CDA timeline was insufficient or excessive, CSOs are critical of the bylaws for not addressing consistent failure to meet the deadlines. They criticise the lack of accountability measures and a consistent drafting approach (roadmap, committees, mechanisms).

Libyan CSOs underscore the negative impact of political polarisation among CDA members. They believe that multiple allegiances, disagreements over the form of state (de-centralisation), ideological clashes and territorial aspirations reduce discussions to power conflicts; the fact that the members were elected, rather than appointed based on expertise, they think, has also been a significant factor.

They highlight technical challenges such as lack of expertise, resources, transparency, and communication. CSOs agree that the location of the meetings, in an insecure area with interrupted services, do not support the process.

Expressing their recommendations to strengthen the constitution-making process, CSOs demand reform of the bylaws, consensus building, CDA de-politicisation, CSO integration and international support.

1. INTRODUCTION

Civil society organisations (CSOs) in Libya have participated in debates on the constitution of their country ever since 2011. Based on a survey of 70 civil society representatives in the three regions of Libya, this paper reports their views on the current Libyan constitution-making process.

A first complaint voiced by CSOs concerns the insufficient communication by the Libyan Constitution Drafting Assembly (CDA). In the hope to reinvigorate this

communication, this report exposes how CSOs view the constitution-making process. The ultimate goal is to contribute to enhancing the participatory nature of the constitution-making process in Libya, and to helping CSOs ensure a more efficient involvement for themselves in the entire process.

The paper starts with placing the ongoing constitution-making process into context and explaining the methodology used in collecting and processing views. The main part of the paper is focused on how CSOs assess the legal, political and technical challenges to this process, and is completed by relevant concluding remarks.

2. THE CONSTITUTION-MAKING PROCESS

Libya's Constitution Drafting Assembly (CDA) was elected in February 2014. It issued a first draft of the constitution on 6 October 2015, followed by a second draft on 3 February 2016. At the time of writing it is reported that a third draft was endorsed by 36 CDA members and submitted to the House of Representatives on 19 April 2016. Once adopted, Libya's new constitution would replace the post-Gaddafi Constitutional Declaration of 3 August 2011 as amended, and the UN-brokered Libyan Political Agreement (LPA) of 17 December 2015.

3. CIVIL SOCIETY IN THE CONSTITUTION-MAKING PROCESS

Experience shows that inclusive constitution-making processes, especially in post conflict contexts, are more likely to result in an accepted and respected outcome. CSOs are one actor to be included in the process. In post-conflict countries, the requirements of 'inclusion', 'representation' and 'participation' are particularly relevant as a response to prior domination by specific groups: "Consultative and inclusive mechanisms, which facilitate bargaining and negotiation among elites and participation by the public, contribute to the acceptance

of the transitional political process and its outcomes.¹ Thus, transition processes “that are broadly inclusive [...] have the best chance of creating the legitimacy needed for effective post-war governance.”²

In constitution-making processes worldwide, including CSOs is seen as a prerequisite for success. In addition, including civil society in the constitution-making process is increasingly seen as a legal obligation. A 2009 UNSG report notes the importance of “effective communication and an inclusive dialogue between national authorities and the population”.³ More recently, the 2015 Review of the UN Peace-building architecture emphasised the importance of ‘inclusive national ownership’.⁴

The views expressed in this paper do not necessarily reflect the vision or opinion of DRI.

4. METHODOLOGY

4.1. RESEARCH DESIGN

This study is based on interviews that were conducted in the three historical regions of Libya. Using a semi-structured questionnaire, data collectors conducted 31 interviews in the Eastern region of Cyrenaica, 23 in the Western region of Tripolitana and 16 in the Southern region of Fezzan. Considering the subject matter of the study, questions were open-ended, thus not limiting respondents to any pre-defined choices. Questions focused on the legal, political and technical challenges CSOs faced during the constitution-making process. Participants were also asked to explain how they would address these challenges.

4.2. DEFINITION OF CIVIL SOCIETY / PARTICIPANTS

A wide definition of CSOs was adopted for the purposes of identifying respondents in this study. Respondents are

affiliated with organisations working on a wide range of topics and in diverse fields, including: the (independence of the) judiciary, heritage conservation, political advocacy, social matters, health care, cultural affairs, democracy and elections, constitutional governance, universities and academic institutions, women’s rights organisations, local governance, youth organisations, human rights advocacy, minority rights, rights for persons with disabilities, economic reform, press freedom and tribes.

The data collectors were required to approach all sides of the political spectrum, with no exceptions.

4.3. METHODOLOGICAL LIMITATIONS

The conduct of this study in a country in civil war faced some difficulties. The fact that the data collectors are local individuals, committed with and working for local CSOs, helped overcome many obstacles. However, some limitations merit special mention here, including:

- The study did not adopt a gendered perspective, however, where possible, the data collectors tried to ensure a gender balance and women empowerment organisations participated in the survey;
- Given the current circumstances in Libya, mainly the complex political environment coupled with fragile security conditions, it was more difficult to collect data in the Southern and Western regions, hence the higher number of interviews concluded in the Eastern region; and
- Several respondents had not had the opportunity to read the drafts of the constitution before the interviews; therefore, some responses show little awareness of the content of the latest drafts.

5. THE SURVEY RESULTS

5.1. LEGAL CHALLENGES OR STUMBLE BLOCKS 5.1.1. CSOS CRITICISE THE LEGISLATIVE SPLIT IN LIBYA

The division of the country, reflected in the existence of competing legislatures (House of Representatives vs General National Congress) is lamented by several CSOs. The presence of two governments has much influenced the work of the CDA. The result of this duality is that even if the CDA were to agree on a final draft, it remains unclear who would review this draft before a referendum takes place.

CSOs have formulated a number of solutions to this problem. One would be to unify both legislative bodies. Alternatively, the CDA (or its successor) could refer the final draft only to one legislative body, and only deal with the (most) ‘legitimate’ government. Yet another approach consists in supporting UNSMIL and the LPA in creating a Government of National Accord after constitutional deliberations by a committee with five members from

¹ Katia Papagianni, “Power sharing, transitional governments and the role of mediation”, *op. cit.*, p. 47. *Id.*, p. 58. Papagianni summarizes the policy reasons behind the requirements of inclusion or expansion of participation during the transition process as follows: “improving perceived legitimacy of a power-sharing government, representing newly formed opposition groups, enabling the emergence of new leaders, and laying foundations for long-term institutional development”.

² T. D. Sisk, “Elections and Statebuilding after Civil War, Lurching toward legitimacy” in *Routledge Handbook of International Statebuilding*, eds. D. Chandler and T. D. Sisk, *op. cit.*, p. 259.

³ Report of the Secretary-General on peacebuilding in the immediate aftermath of conflict’ dd. 11 June 2009, A/63/881-S/2009/304, § 9.

⁴ 2015 Review of the UN Peacebuilding architecture, *op. cit.*, pp. 8-9; and Democracy Reporting International, “Briefing Paper 20: Lessons learned from Constitution-Making: Processes with broad based public participation” Berlin, November 2011, <[http:// dann.rewi.hu-berlin.de/doc/Dann_2011.pdf](http://dann.rewi.hu-berlin.de/doc/Dann_2011.pdf)>.

each legislative body.⁵ One CSO suggests that a constitution-review joint committee by the HoR and the GNC could be formed. This committee will then be able to properly focus on the constitutional process. In line with this approach, favoured by the international community, the founding of a Government of National Accord is indispensable.

5.1.2. CSOS CRITICISE THE CDA'S TIMING AND DRAFTING APPROACH

Several participants comment on the CDA's time management, also from a legal perspective. A number of participants, question whether the CDA exceeded its legal timeframe in light of the 2011 Interim Constitutional Declaration. This declaration provided that the CDA was to finish its work within 120 days since the start of activities on 21 April 2014. The first deadline would thus have expired in August 2014, but after a controversial amendment the deadline was extended for 14 months, until October 2015. The 2015 LPA provides the third deadline and stipulates that the CDA has to conclude its mission by 24 March 2016. On that date, the mandate of the CDA officially expired.

However, only in December 2015 did the CDA publish proposals regarding the future constitution; another draft was proposed early February 2016; and a final draft in April 2016.

Yet, for several CSOs, the timing legally allocated to the CDA was not enough, and its mandate should have been extended. Other participants consider that the Constitutional Court should have ruled about a new final deadline after which the CDA would definitively be dissolved; or that the constitutional declaration should be amended with an extension to the CDA's mandate. Another participant argues that any time limitation on the constitution-making process should be avoided so as to allow for consensus to ripen. Yet other participants consider that the CDA should have accelerated the process, or at least should have explained why the deadline was not met, and how much extra time would be needed; realistic dates for the CDA to deliver should have been identified. Yet other CSOs find that the CDA should have been suspended when the deadline passed, or even earlier, until political stability is reached.

Generally, CSOs have criticised the lack of a fixed drafting approach as the CDA has changed between drafting mechanisms and committees several times. The drafting roadmap must be clearly set beforehand. The delay in producing the CDA's administrative regulations to this

end has created a gap of trust between the CDA and Libyan public. CSOs esteem that the CDA should apologise for the delays and try to gain back public trust.

5.1.3. CSOS CRITICISE THE LACK OF ACCOUNTABILITY MEASURES FOR CONSTITUTION-MAKERS AND CALL FOR A REFORM OF THE CDA'S BYLAWS

CSOs complain about a lack of clarity of the CDA's mechanisms. It is not clear what authority the CDA president and members have.

The legal framework of the CDA should provide for transparency and accountability measures. The current bylaws lack any such measures. There is no legal approach for dealing with members of the CDA boycotting the process. This is why participants suggest that a new legal framework should include transparency and accountability measures.

CSOs find that such measures will also oblige the CDA to better communicate with the public, a point of critique that is also seen as a technical challenge to the constitution-making process, as we shall see below.

Several CSOs consider the current bylaws inherently weak and insufficiently applied. These bylaws do not efficiently organise the work of the CDA. At least one participant finds that the President of the CDA is allocated too much power under the bylaws; another participant observes that the CDA's presidency is unable to control the constitution-making process and suggests that this position be eliminated. Where the bylaws might prove useful, they are not implemented. There is no actual enforcement or implementation of the bylaws. Given the weakness of the bylaws and their feeble implementation, the best solution is to review them altogether and to endure effective law enforcement tools, several survey participants find. Once reformed, awareness on their contents should be raised.

Effective bylaws can ensure future constitution-making exercises to take CSOs' demands into account and not be determined by constitution-makers' political or other allegiances, two points that will be addressed below. For one CSO, the issue of external pressure on CDA members by their constituencies can only be resolved through enforcing the bylaws and ensuring a depoliticised dynamic among constitution-makers. The bylaws are instrumental to this, at least to the extent that a monitoring body is put in place to watch over the performance of the CDA. One participant finds that CSOs should actively contribute to monitoring constitution-makers' activities.

5.1.4. CSOS CLAIM THAT CONSTITUTION-MAKERS MUST CONSIDER THEIR DEMANDS

Several CSOs demand to be taken more seriously. They thus request that the CDA's bylaws be amended so as to

⁵ LPA, art. 52.

include an obligation for the CDA to consider CSOs' demands. Under the current bylaws, there is neither an obligation nor an established approach for handling CSOs' comments and suggestions. Several survey participants find that CSOs should take part in the constitutional process. But today there is excessive control over CSOs. A legal framework to protect CSOs should be developed to provide reasonable space for CSOs to work independently and to collaborate with constitution-makers. In order to encourage this legislative initiative, more awareness must be raised on how CSOs can positively impact the constitution-making process. This legal framework should both protect CSOs and regulate their activities.

5.1.5. CSOS FIND THE CURRENT LEGAL PROCEDURES TOO DEMANDING

Several survey participants find that the CDA's quorum – two thirds plus one – is too high, and that the bylaws must be amended to allow for a more flexible approach by decreasing the vote quorum. Most participants hold that there should be strict measures to ensure the attendance of CDA members, and that the quorum should be amended so that it be calculated in proportion to the attending members only.

5.2. POLITICAL CHALLENGES

CSOs identify a myriad of political challenges affecting the Libyan constitution-making process.

A first issue often raised is that the CDA members were not appointed for their expertise in constitutional matters. They were elected rather than appointed on the basis of specific criteria. Several survey participants criticise this approach, because they believe that it politicises the constitution-making exercises.

Thus, according to some participants, the CDA's presidency was not elected transparently, and his neutrality can be doubted. This lack of transparency and accountability measures increases the risk of politicisation. Moreover, several if not most CDA members have multiple allegiances, resulting in the political polarisation of the constitution-making process. Furthermore, controversies about the form of the state and the procedure and location of the constitution-making process constitute considerable political challenges.

5.2.1. ALLEGIANCES

Are allegiances part of the problem, part of the answer, or both? The interviewed CSOs regard political, tribal, ethnic, regional and other allegiances as problems or challenges rather than as part of the solution.

Several CSOs consider that multiple identities and allegiances burden the constitution-making process. For instance, the dual nationality of the CDA's President and other CDA members is considered as an impediment to this process according to some of the survey participants, with some even suggesting that dual-national CDA members must choose between holding only the Libyan nationality or being eliminated from the constitutional process. Political divisions in Libya run across various entities impacting the work of the CDA. Besides political parties, tribes, minorities, regional entities, political Islam and women and youth organisations may influence the constitution-making process. This report focuses on how regional orientations and ideological differences impact, or are affected by, this process.

Some of the survey participants state that these orientations and ideologies also weigh on personal relationships within the CDA. CSO actors thus complain that personal conflicts and accusations among CDA members vitiate the constitution-making process, and demand an objective approach towards the interests of all Libyans, away from politics.

5.2.2. FORM OF STATE

In light of regional and tribal allegiances, it comes as no surprise that the form of state is also fiercely discussed within the CDA. CSOs recognise that the form of state and system of governance are a major divisive issue in the CDA. For one survey participant from the South, federalist calls will split the country; the constitution should guarantee the unity of Libya. For another participant from the South calls for federalism without any compromises must be discarded; the national interest must take precedence.

At least two survey participants from the East demand a decentralisation system, with Tripoli as the country's capital: 'the territorial mind-set results from the fear of over-control by the areas with the highest population density, thus the solution is to grant constitutional guarantees for all areas and good decentralisation'. Voices from the East are however not unanimous, with at least one survey participant lamenting the alienation of the federalist movement in the CDA.

In the face of these debates about the form of state – federalism, decentralisation, or centralisation – several CSOs demand that the CDA be independent from ideological and tribal movements but also from territorial aspirations.

5.2.3. PROCEDURE AND LOCATION

Procedural issues are relevant throughout the constitution-making process. A number of CSOs insist that the constitution making process must guarantee that

the views of all stakeholders be addressed; and that the input of CSOs be taken seriously.

CSOs complain about the lack of any clear alternative to deal with the CDA's approaching failure; in fact, the CDA has recently missed another deadline (24 March 2016). The LPA provides for a 'rescue plan': constitutional deliberations by a committee with five members from each legislative body.⁶ But the LPA itself is contested, even after the HoR's vote, since it was conditioned with dropping article 8 that allows the Government of National Accord (GNA) to have the control over military leadership positions. In short, there is no clear constitutional roadmap, and a ready-to-implement post-CDA alternative is lacking. In this context, survey participants demand to focus on procedures and the conduct of a correct vote, regardless of the results; priority should be delivering the output the CDA was elected to provide.

Even if constitutional deliberations were successful, some procedural hurdles would remain. The referendum requires a two-third public approval. One CSO suggests that an absolute majority for the referendum would be enough, or that a referendum might not be required because the CDA was elected. In addition, as observed above, some survey participants propose that two referenda be held, splitting the controversial (e.g. the role of Sharia' in the legislation, the capital and the form of the state) from less controversial issues.

There is no consensus on where the constitutional deliberations, currently held in Bayda, should take place. Some CSOs criticise the repeated attempts to move the CDA outside Libya but propose it should be relocated within Libya, or that the situation in Bayda be remedied. The security situation and the presence of armed militias in Bayda hinder constitutional deliberations. Also, some forces in the city are known for having strong views on the constitution-making process, thus potentially compromising the independence of the CDA.

Survey participants have thus proposed either to relocate the CDA to a more neutral and/or accessible location, or to liaise with social and armed leaders in Bayda in order to improve the security situation.

Yet, even if consensus could be reached on where to continue the constitutional deliberations, and even if a constitutional draft could be agreed on despite the absence of a clear roadmap, choosing the capital remains a bone of contention. For one survey participant the challenge of regional affiliations is confirmed by the controversy over the capital.

5.2.4. EXPLORING REMEDIES FOR POLITICAL POLARISATION IN THE CONSTITUTION-MAKING PROCESS

Survey participants are dismissive about the circumstance that CDA members privilege regional interests, and often associate this to their being elected rather than appointed on the basis of objective criteria. The lack of expertise – an issue that shall be revisited under the section on technical challenges – affects the whole constitution-making process. This fuels the politicisation of the CDA. Fights over power as in other state bodies are unavoidable, but the active boycotting of a constituent assembly in a foundational moment is seen by many CSOs as a different thing.

How can one avoid that CDA members or their successors be politicised? How can the deep split within the CDA be overcome? The CDA has failed to have a vote on any draft constitution. In spite of the fatigue and desperation reigning in CSO circles, several survey participants have expressed how they believe this problem can be solved.

Survey participants mention the following six approaches, which may or may not be combined:

5.2.4.1. Reform and implement the bylaws

The bylaws should be amended and enforced against spoilers of the constitution-making process.

For some of the survey participants, this is the most effective way to diminish the power of those CDA members who privilege tribal, regional and personal interests over national interests. Concretely, CSOs have two proposals. First, the vote quorum should be amended to be calculated against attending members only, and boycotters should not be considered. Second, strict measures must be taken against any abuse of authority and any CDA members imposing their views by boycotting and blocking the process. In the eyes of some participants, only in this way can boycotters be incentivised to constructively participate in the constitution-making process.

5.2.4.2. Build consensus

A big majority of the survey participants insists that consensus must be built among all CDA members. In light of the variation of thoughts and ideologies, a common ground for dialogue and the priority of national interests is needed.

First, survey participants have suggested that a domestic political agreement between the HoR and the GNC is necessary. Consensus channels must be explored and used before submitting the constitution for referendum; currently, there is a lack of a systematic approach to reach consensus on texts. Such a consensus can however only be reached if divergent opinions are not discriminated against.

⁶ LPA, art. 52.

Second, most CSOs insist on a fundamental shift of mindset. The internal divisions within the CDA (or its successor) can only be overcome if their members show some readiness to compromise in order to reach an agreement. Concretely, real team work and consensus-building within the CDA must be encouraged. All the survey participants who have shared their thoughts on this issue agree that there is a need for a spirit of compromise despite the lack of trust among CDA members, and despite their sometimes emotional approach of dealing with political issues.

5.2.4.3. Depoliticise the CDA

The independence of the CDA must be guaranteed. The CDA has failed to avoid political polarisation among its members. In order to depoliticise the CDA or its successor, some of the survey participants have formulated a couple of concrete proposals.

First, CDA members should be barred from engaging in partisan work during five years or at least the time to complete their mission. Second, in order to reduce the influence of political stakeholders on the work of the CDA, political parties should provide lists not only of the CDA members affiliated to them but also of their affiliated CSOs. Third, the constitution-making process must be rationalised by placing rights rather than politics at the centre of debate. Fourth, a code of conduct must be developed. This code would prohibit CDA members to reflect their political affiliations on the constitution-making process and will put pressure on them to release their regionally affiliated interests.

5.2.4.4. Integrate CSOs

CSOs believe that governmental control over their work must be diminished, and that a law protecting them should be enforced. They also argue that a true consensus within the CDA or its successor depends on their involvement.

5.2.4.5. Support the international community / the LPA

CSOs do not seem to agree on whether, and if so to which extent, the international community must be involved in the constitution-making process. In fact, only a few survey participants point at the issue of international interference in the constitution-making process. Some CSOs suggest that a transition should be organised under international supervision without however detailing the form of such supervision. Regardless of this particular topic, a couple of survey participants insist that the only way out of the current crisis is to endorse the LPA.

5.2.4.6. Find alternative approaches

The survey participants hint at alternative approaches for remedying political polarisation of the constitution-making process. Six such approaches are raised by CSOs:

First, an alternative 15-person technical committee to draft the constitution (distinct from the committee foreseen in the LPA) must be appointed, one CSO argues. Second, all CDA and constitution-making processes must be put on hold until a true political agreement can be reached between the two legislative bodies. Third, new forms of consensus-building must be explored, e.g. first finding consensus among powerful lobbies and replicating their agreement within the CDA; actively including the diaspora in the process; and using the leverage of tribal allegiances by building consensus among tribal leaders. Fourth, privileging a double-track approach whereby, on the basis of a wide and constructive social dialogue, the CDA or its successor would agree on what it can agree on and refer the remaining divisive issues to a vote or referendum. Fifth, several survey participants find that the only way to separate the constitutional process from divisive politics is to design a short constitution without providing (too many) details; especially controversial topics are then to be referred to the post-constitutional elected legislative. Other survey participants insist that this short constitution should at least express the unity of Libya, i.e. be a unity constitution for all Libyans. Sixth, a number of survey participants demand a nation-wide reconciliation paired with a national dialogue on divisive issues and a broad public debate on the future constitution.

5.3. TECHNICAL CHALLENGES

The final section on how CSOs view the challenges of the Libyan constitution-making process concerns technical and practical hurdles. Most participants consider that the lack of expertise, resources, communication, security and appropriate facilities render this process nearly impossible.

5.3.1. LACK OF EXPERTISE

Several survey participants feel that the CDA has performed badly. It lacks technical expertise and its staff underperforms. This lack of expertise is often associated to the fact that CDA members were elected rather than appointed. But how can this situation be remedied? First, CSOs find that awareness of the CDA's role and responsibility should be raised within the CDA itself; capacity-building plans should be implemented within the CDA. Second, given the absence of any technical support committee within the CDA, its team should be complemented with legal experts providing assistance during the constitution-making process. Or at least should the CDA's output be reviewed by such a committee. The survey participants generally agree that external expertise is necessary. Some insist on providing international expertise while others insist on engaging national experts and academics; yet others would rather see a team composed both of international and national

constitutional experts and consultants, as was the case for example in the South African and Kenyan transitions.

5.3.2. LACK OF RESOURCES AND TRANSPARENCY OF FINANCING THE CONSTITUTION-MAKING PROCESS

CSOs generally agree that the CDA does not dispose of sufficient resources, but they also complain that there is no transparency on how the available resources are committed.

First, there is a lack of financial resources for the CDA. Several survey participants find that the state should provide financial allocations to the CDA. Generally, more financial resources should be allocated to the constitutional process.

Second, a 'systematised administrative and financial body of the CDA' is lacking. As a result, there is little or no transparency on how available resources are being spent by the CDA. It is therefore time to establish the capacity of the CDA's administrative and financial bodies. To the extent that CSOs (can) contribute to the constitution-making process, the state should provide financial allocations also to them, some survey participants find. At the same time, there is no financial framework for CSOs assisting the constitution-making process or purporting to do so. Some survey participants thus insist on the creation of a financial framework and accountability measures for CSOs' work. Also here, transparency is insufficient in their view.

5.3.3. LACK OF COMMUNICATION

The lack of communication is yet another challenge impacting the constitution-making process. According to our survey, CSOs find that the CDA has failed both its internal and external communication and that, where it manages to communicate, information about the constitution-making process is not clearly formulated.

5.3.3.1. Internal communication / communication with constituencies

The CDA does not communicate sufficiently with its own constituents, a number of survey participants find. There is a lack of communication among the CDA's different committees. CDA members should commit to more communication and actively reach out to their constituents. The survey participants have hinted at four solutions to cope with this problem. First, electronic communication should be increased between the CDA's constituents; all communication points and city committees must be reachable electronically. Second, a code of conduct or a set of guidelines could improve the internal communication of the CDA. Third, in order to remedy the lack of coordination within the CDA, its bylaws should include an obligation for its members to communicate more actively among themselves; in this way, their respective views could at least be mapped out.

Fourth, the CDA's local outreach must be improved. This can be done by supporting the establishment of local CDA offices and by supporting the existing local offices. The local offices already in place perform weakly; additional human and financial resources are needed to fulfil their duties.

5.3.3.2. Communication with public / CSOs

Several CSOs complain about the absence of an informed approach for how the Libyan people can participate in the constitution-making process. During the survey, several CSOs suggested they can be employed as intermediaries between the CDA and the public at large. This requires a minimum of coordination (concretely, an outreach plan for the CDA with various CSOs and societal groups), especially if CSOs are to (physically) collect views of the public in remote areas. But cooperation and communication between CDA members and CSOs is also lacking.

CSOs feel that their comments and demands are not seriously considered. Dismissing their input however prevents the CDA from scanning views from the public on their constitutional aspirations. Survey participants suggest a number of approaches to reinvigorate the communication between the CDA and the public. First, CSOs offer their assistance in (re-)establishing this communication line; some survey participants suggest that they could facilitate the communication between the public and the various committees within the CDA. Second, hearing sessions for CDA members and other stakeholders and experts should be organised. Third, new communication approaches are to be developed, and, to the extent that this is technically feasible, the CDA should reach the population of less accessible areas by using communication technology (the internet). In the same vein, the CDA members' electronic (and physical, i.e. professional) addresses must be available to the public. Favouring modern communication approaches is a point especially youth organisations insist on: 'the CDA's money should be used for better communication, and its staff should include more youth who know how to use modern communication tools to reach out to the people'. Fourth, the media could be used to increase the CDA's outreach. CDA sessions should be broadcasted live. A survey participant also suggests that the CDA media team should be reinforced; contact persons must be assigned with enough capacity and qualifications for communicating effectively. At the same time, one survey participant remarked that the CDA must not have recourse to media only to highlight internal disputes or to expose the internal handling of thematic divisions.

Some CSOs are so disillusioned by the CDA's lack of communication that they would like to see this issue

legally tackled: regular communication with the public must become an obligation sanctioned in law. This obligation would imply that all or most of the CDA sessions should be public, and that their bylaws, decisions and regulations must systematically be rendered accessible. For one survey participant, the amended bylaws should provide for such an obligation.

5.3.3.3. Communication on the constitution-making process

A final issue concerns the poor quality of CDA communication. CSOs demand better outreach by the CDA, and awareness building on the draft constitution. Concretely, the CDA or its communication team should reach out to the public with clear explanations about the constitution-making process and the drafts it produces. The drafts are too vague for the average people, and the constitution-making process is not understood anymore. Worse still, basic information about how this process unfolds is lacking. There is no (clear) schedule of the plenaries. There is no timely information on the CDA's progress. The public does not know which members attend its meetings. In sum, systematic reporting and documentation on the CDA's proceedings are failing; a deficiency that is difficult to justify in light of the CDA's responsibilities.

The CDA must increase its capability to 'bring the constitution down to people's understanding', as one survey participant states. Communication methods are important in this regard. The CDA underestimates the importance of a good coverage of the societal components of the constitutional dialogue, and the use of social media can be beneficial to this.

5.3.3.4. Location, security and mobility

The security situation negatively impacts on the constitution-making process. A number of CSOs have lamented the interference of armed forces in the work of the CDA. For some CSOs, the constitution-making process should be discontinued until the end of the civil conflict and a stabilisation of the country. The security situation results in safety concerns for CDA members to openly express their views, especially if these views are anti-Islamist, several CSOs note. A solitary voice however contradicts this, and speaks of 'the false claim by CDA members that their lives are under threat'.

Inevitably, the security situation affects mobility, and triggers the question whether, and if so where, the CDA or its successor should be located. Due to the security problems large swaths of Libya are not accessible. The location of the CDA is thus not only a political and symbolic issue, but also a practical problem, both for external stakeholders and for the CDA members themselves.

Some survey participants argue that the CDA's location in Bayda detracts external stakeholders from engaging with

the constitution-making process. Bayda would be insecure and difficult and expensive to reach. Also, survey participants contend that the CDA's location in the East puts it under the control of federalists. CSOs therefore suggest that the CDA should organise regular visits to all Libyan cities and communicate with the population. Currently, local CDA offices are by and large lacking. Another suggestion is to subdivide the CDA into smaller working groups to facilitate their movement to different cities. Alternatively, the CDA should cover the costs of CSOs coming to Bayda to reach them.

Mobility problems resulting from the security situation would also be a concern for the CDA members themselves, especially CDA members from the South, a survey participant notes. Several participants consider that international security must be provided to CDA members. Other participants suggest, the CDA should be relocated to a safer and more neutral place. The province of Jufra has been mentioned in this regard. Some survey participants suggest that the CDA or its successor be relocated outside the country.

5.3.3.5. Lack of equipment

A final technical challenge affecting the constitution-making process concerns the lack of necessary equipment – technology and facilities – to handle a mission as important as drafting a constitution. There is no decent infrastructure to host the CDA and to allow it to function effectively. The CDA has no access to stable electricity or a stable internet connection in Bayda. It is not surprising, then, that the CDA's website is not activated or seldom updated. This is a missed opportunity since this website could be used as a gate for people to the CDA's work. Modern communication tools are essential for reaching out to the public. One survey participant suggests that a technology expert be recruited. Youth organisations complain not only about their exclusion from the constitution-making process but also about the short-sightedness of the CDA's members and staff: including youth will bring more know-how about the use of modern conventional communication tools. One survey participant states that a start would be to simply compile a comprehensive list with all the CDA's technical needs to conclude the constitution-making process.

6. CONCLUDING REMARKS

Interviews with 70 civil society representatives located across the country provide us with a wealth of information about how CSOs view the constitution-making process and how they believe the many challenges affecting this process might be remedied.

In addition, while the challenges of the constitution-making process were conceptually separated between

legal, political and technical challenges, they are interdependent. Thus, the location of the CDA's activities is both a political and technical challenge. The duality of government is both a legal issue and a political obstacle. Several CSOs emphasised however that some challenges can be transformed into opportunities. A challenge, such as the allegiance to tribes, can form a problem but also contribute to political solutions, depending on the context and approach taken.

In face of the current situation in Libya, the desperation and fatigue of CSOs was clearly felt by DRI's data collectors: what is the purpose of collecting CSOs' views on a constitution-making process that seems to fail on all fronts? A quick comparison with other constitution-making processes on the African continent and beyond shows that CSOs' views are taken seriously when a state is reviewing its own constitutional foundations. This point justifies the collection of data and opinions from CSOs. In addition, understanding how CSOs perceive the constitution-making process of their country is instrumental to any attempt to put this process back on track; understanding the many challenges affecting this process is indispensable to solving it.

This snapshot therefore has a double relevance. First, as already noted, it allows domestic and international actors to (further) engage with CSOs. If constitution makers take the vision, aspirations, claims and knowledge of CSOs seriously, they can use this report as a working basis for involvement with CSOs. Second, the rich pallet of opinions and considerations forms a basis for further discussion and the development of remedies to the many challenges of the constitution-making process in Libya.

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Democracy Reporting International (DRI) is a non-partisan, independent, not-for-profit organisation registered in Berlin, Germany. DRI promotes political participation of citizens, accountability of state bodies and the development of democratic institutions world-wide. DRI helps find local ways of promoting the universal right of citizens to participate in the political life of their country, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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