

**DEMOCRACY
REPORTING
INTERNATIONAL**

COMPARISON

LIBYA

**COMPARISON OF
TWO CONSTITUTIONAL TEXTS
ACCORDING TO INTERNATIONAL
STANDARDS OF DEMOCRACY**



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**COMPARISON OF
TWO CONSTITUTIONAL TEXTS
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Politicians, journalists, civil society groups, and international analysts have been discussing whether Libya's historical monarchical constitution of 1951 could serve as a reference point in providing a comprehensive and broadly accepted legal framework that could stabilise the current political situation, or if the constitutional text adopted by the Constitution Drafting Assembly (CDA) in 2017 should be enacted.

This paper compares those two texts against international obligations of democratic government. An overview and analysis of such obligations can be found in [several DRI documents](#). Most of these standards had not yet emerged when the monarchical constitution was drafted, but they apply today, and a re-enacted constitution would be judged against them. This paper does not cover the National Transitional Council's 2011 Constitutional Declaration as it was not intended and designed to serve as a long-term constitutional basis for democratic governance.

Overall, although both constitutional texts have strengths and weaknesses, the CDA draft reflects a substantial evolution in constitutional design. The 1951 constitution lacks many important elements: it does not back up human rights protections against the risk of erosion by ordinary laws, does not clearly articulate checks and balances, and does not provide for independent democracy-preserving institutions¹. As applied to today's context, it is not clear how the monarchical system would translate into a republican one, as simply substituting the king for an elected president would not provide clear rules for how a presidential system of government would operate. The CDA draft includes stronger human rights provisions and checks and balances but has its own gaps, including the absence of protections against discrimination on religious grounds (including a requirement that the president, prime minister and all members of the House of Representatives must be Muslims), poor articulation of the system of government (e.g., unclear role of the prime minister and procedure for dissolving houses of the legislature), and deferral of many issues to ordinary legislation. The latter point may be seen by some as an advantage, as some of Libya's most divisive issues, such as the relationship between the central government and the regions, could still be discussed and negotiated when drafting laws on these yet unregulated questions.

* The authors thank Omar Hamady for his insightful comments. Democracy Reporting International supported the work of the CDA from 2014 to 2017 by providing comparative expertise and organising consultations with civil society organisations. The project was funded by the UK government.

¹ For further analysis, please see Democracy Reporting International's report [Briefing Paper](#) on the 1951 constitution.



STRUCTURE OF GOVERNMENT

Balanced executive and legislative power in lawmaking

Unbalanced in favour of an unelected monarch.

- The king may veto legislation, which parliament may override by a two-thirds vote in each chamber or by a simple majority vote of each chamber in two consecutive legislative sessions.
- The king may dissolve parliament in favour of new elections within three months and convene extraordinary legislative sessions.
- The king may issue decrees when parliament is not in session under “exceptional circumstances” that “necessitate urgent measures”. Parliament then must review those measures at its first session.

Somewhat balanced between the president (who has weak veto power) and the bicameral Shura Council.

- The House of Representatives has general legislative power.
- The Senate must consent on legislation on the “financial system of the State,” nationality and immigration, elections, natural resources and the environment, and proposed constitutional amendments.
- The president may veto, yet each chamber may override the veto with an absolute majority.

The president has limited authority to issue legislative decrees.

The president has limited but vague power to dissolve the legislature.

- The president may dissolve the Senate or the House of Representatives based on “reasons related to obstruction of the policy of the State or development plan, or disruption of the budget without substantial justifications or breach of the Constitution.” No further guidance is provided for how a legislative chamber might “obstruct” the policy of the State.
- The president must appeal to the Constitutional Court to determine the “appropriateness” of these conditions, a political judgment for the judicial branch with no enumerated criteria.
- If the Constitutional Court agrees, the president must call for a referendum, but there are no provisions on timing or the required majority.
- If one chamber is dissolved, its powers shift to the other chamber—an unusual provision that could lead the president to dissolve the chamber that is less favourable to his/her politics.

Legislative oversight of the national budget

Parliament oversees the federal budget. It is unclear to which branch the audit office reports.

- Parliament must approve the federal budget, with the House of Representatives first approving the budget proposed by the Council of Ministers.
- An Audit Office audits the federal government and submits the results to Parliament.

The House of Representatives approves the national budget by a two-thirds majority. The high voting threshold could lead to stalemates.

An audit bureau is established as an independent constitutional body.

International standard	1951 Constitution (as amended in 1963)	2017 CDA draft
<p>Democratic selection and removal of the chief executive(s)</p>	<p>Undemocratic selection of the executive:</p> <ul style="list-style-type: none"> ● Executive authority is vested in the king. ● The monarchy is hereditary, passing to the eldest son of the previous king. <p>Some oversight of the Council of Ministers only.</p> <ul style="list-style-type: none"> ● The king appoints a prime minister and, with his consultation, a Council of Ministers appointed by and responsible to the king. ● The House of Representatives (lower house) may by majority pass a vote of no confidence in the Council of Ministers or an individual minister, in which case the relevant minister(s) must resign. 	<p>Essentially a presidential system with a weak prime minister:</p> <ul style="list-style-type: none"> ● The president is elected by public, free, secret, and direct ballot, with the absolute majority of the valid votes of voters, ensuring the equal value of votes. There is no explicit age restriction for voters. ● The president appoints the prime minister. <p>It leaves unclear important questions about the relationship between the president and the prime minister, such as who chairs cabinet meetings and the prime minister's role in lawmaking.</p> <p>The president and prime minister must meet many qualifications, some of which are discriminatory (e.g. both must be Muslim) or vague and could give rise to exclusion on arbitrary grounds.</p> <p>Clear provisions on removal:</p> <ul style="list-style-type: none"> ● Detailed provisions for impeachment and removal from office for treason, breach of the Constitution, or premeditated felony by a two-thirds majority of the Shura Council. ● The government or a minister must resign in the event of a two-thirds vote of no confidence by the House of Representatives.
<p>Direct election to at least one chamber of parliament</p>	<p>The lower house is elected. The selection of the upper house is partly undemocratic.</p> <ul style="list-style-type: none"> ● Parliament comprises a Senate and a House of Representatives. ● Eight senators serving eight-year terms represent each of the three provinces, with four appointed by the king and four selected by the provincial legislatures. ● Representatives are directly elected to four-year terms. 	<p>The House of Representatives is directly elected every four years by citizens aged 18+ years.</p> <ul style="list-style-type: none"> ● Equality of vote is not very clearly articulated: the number of seats is "based on the population". ● Women must hold one quarter of the seats; details on how this is ensured are left to law. ● Must be "minimum level of representation for cultural and linguistic components"; details on how this is ensured are left to law. <p>Senate seats are directly elected every four years from regions by citizens aged 18+ years.</p> <ul style="list-style-type: none"> ● The Senate has 78 members elected by general, free, secret and direct ballot by way of individual election. ● There are 32 representatives for Tripolitania, 26 for Cyrenaica, and 20 for Fezzan. There is no provision for amending the number of seats according to changes in the population other than by constitutional amendment. ● Geographical distribution "shall include guarantees of representation of the cultural and linguistic components with two members for each component." Details on how this is ensured are left to law.

International standard	1951 Constitution (as amended in 1963)	2017 CDA draft
		<p>Members of the House of Representatives must meet many qualifications, some of which are discriminatory (e.g. they must be Muslim) or vague and could give rise to exclusion on arbitrary grounds.</p> <p>Important questions of the electoral system left to law.</p>
Legislative autonomy over its internal affairs	<p>The legislature is autonomous over internal affairs.</p> <ul style="list-style-type: none"> ● “Each Chamber shall lay down its own rules of procedure and it shall specify therein the manner in which it will exercise its functions.” ● “The President of each Chamber shall be responsible for maintaining order in his Chamber; no armed force may enter either Chamber or be stationed near its doors except by request of the President.” 	<p>The legislature is autonomous over its own rules of procedure and the removal from office of its members.</p>
Military subordinate to civilian, democratically constituted oversight	<p>No specific provision.</p>	<p>Civilian authority and neutrality is stipulated.</p> <p>The civilian president is the commander-in-chief.</p> <p>Rules of legislative oversight of the military or its budget are left to law.</p>



TRANSPARENCY AND ACCOUNTABILITY

Effective legislative oversight of the executive	<p>Parliament may hold the Council of Ministers accountable, but provisions are limited to questioning, with nothing on investigative committees or similar functions.</p>	<p>Parliament may hold the Council of Ministers accountable, but provisions are limited to questioning, with nothing on investigative committees or similar functions.</p>
Effective power for opposition parties	<p>No specific provision.</p>	<p>No specific provision.</p>
Integrity of public life and prohibitions on corruption	<p>Limited provisions that apply only to ministers.</p>	<p>General and specific provisions against corruption of state officials. Some issues are left to law.</p>
Public access to information	<p>No public right to information.</p>	<p>Specific obligations to state bodies for transparency, with limitations for example for public security. Obligation on the state to develop more detailed legislation. No individual right to access.</p>
Independence of constitutional bodies that support democracy (e.g. election administration, human rights, judicial oversight, audit, etc.)	<p>None. The structure and function of the Audit Office are left to non-constitutional law.</p>	<p>Establishes several independent bodies, including an election commission, audit bureau, human rights commission, central bank, and a judicial council.</p> <p>Provides for financial, personnel, and administrative independence of these bodies.</p>
Clear rules on the distribution of power among levels of government	<p>The 1963 changes abolished the federal government structure and established 10 governorates, with the constitutional text leaving some important questions unclear.¹</p>	<p>Establishes local and regional governments and principles for the distribution of state revenues and natural resources.</p> <p>Leaves much to subsequent legislation over which level of government decides important issues of policymaking and the distribution of resources.</p>

¹ For further analysis, please see the [report](#) on decentralisation in Libya co-published by Democracy Reporting International, the Sadeq Institute, and the University of Benghazi’s Research and Consulting Centre.



RULE OF LAW

Defined role for international human rights obligations	No mention of international obligations	Defined hierarchy for treaties, but no specific mention of human rights obligations
Clear hierarchy of law	No specific provision	Reference to Islamic sharia as “source of legislation” could result in unclear legal hierarchy. Implementation and interpretation, including with regard to human rights, could lead to conflicts with international law and make it difficult to determine the scope of constitutional norms
Effective judicial review of government measures	Individual right to appeal civil and criminal judgments, including to the Supreme Court for constitutional challenges. Jurisdiction of the federal courts left to legislation.	Independent judiciary with ordinary and constitutional review. Potential constitutional appeals by individuals but details unclear
Independence of the judiciary and of judges	Some provisions on independence of Supreme Court judges, fewer for lower court judges. The king appoints Supreme Court judges.	Several provisions on judicial independence for all courts. Provisions on balanced appointment of the Constitutional Court. Some aspects are left to be determined by law.
Unamendable executive term limits	None	Limit of five two-year terms for the president, but the provision could be changed by constitutional amendment.
Rules on constitutional amendment by supermajority or public participation	High thresholds for changing the constitution, including approval of the king. Provisions that relate to the monarchy and those on “liberty and equality” cannot be changed.	Restrictive amendment procedure, requiring in each case a referendum; no amendment within five years of approval. These provisions could create stalemates and complicate necessary constitutional adjustments.
States of emergency must be proportional, lawful, and necessary	Restrictive provisions, requiring the involvement of parliament, but few details.	Detailed, restrictive provisions on states of emergency, involving parliament. The Constitution mandates that some aspects are defined in more detail by law.
No civilians tried in military courts	No specific provision.	Requirement that persons be tried before their “natural judge,” including during states of emergency and under martial law.



POLITICAL RIGHTS AND FREEDOMS

Limitations on constitutional rights must be proportional, lawful, and necessary	No general limitations framework. Most rights’ guarantees permit limitations through ordinary lawmaking with no requirements of proportionality, lawfulness, or necessity.	<p>The restriction language reflects international obligations.</p> <ul style="list-style-type: none"> ● “Any restriction of rights and liberties must be necessary, clear, defined, and proportionate to the interest to be protected. Revoking guarantees provided by the law shall be prohibited. All this shall not contravene with the provisions of this Constitution.”
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International standard	1951 Constitution (as amended in 1963)	2017 CDA draft
<p>Non-discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status</p>	<p>The non-discrimination provision does not mention sex.</p> <ul style="list-style-type: none"> ● “Libyans shall be equal before the law. They shall enjoy equal civil and political rights, shall have the same opportunities and be subject to the same public duties and obligations, without distinction of religion, belief, race, language, wealth, kinship or political or social opinion.” 	<p>The non-discrimination provision does not mention religion. Equality between men and women appears only to be ensured for citizens, not for all persons in the territory of Libya.</p> <ul style="list-style-type: none"> ● “Male and female citizens shall be equal in and before the law. There shall be no discrimination among them. All forms of discrimination for any reason such as ethnicity, colour, language, sex, birth, political opinion, disability, origin or geographical affiliation shall be prohibited in accordance with the provisions of this Constitution.”
<p>Right to participate in public affairs, including to vote and be elected at genuine periodic elections by universal and equal suffrage held by secret ballot</p>	<p>No specific provision.</p>	<p>Clear provisions on the right to vote for all citizens, but key details are missing, such as secrecy and equality of the vote.</p> <p>Citizens’ and organisations’ right to political participation is narrowly defined, limited to submitting proposals and petitions.</p>
<p>Right to freedom of opinion and expression, including for the media</p>	<p>Protections for freedom of thought, expression, and the media.</p>	<p>Protects only citizens’ right to freedom of speech instead of everybody’s right to freedom of expression; the provision is not explicit about freedom of opinion; detailed protections for media and journalists.</p>
<p>Right to freedom of association, including the formation of political parties</p>	<p>Protection of free association, but little detail.</p>	<p>Protects everyone’s right to free association and citizens’ rights to form political parties. Includes due process guarantees against disbanding.</p>
<p>Right to peaceful assembly</p>	<p>“The right of peaceful meetings is guaranteed within the limits of the law.”</p>	<p>“The State shall guarantee the right to peaceful assembly, association, and demonstration, and it shall take the necessary measures to protect property and persons. It shall not use force except at a minimum level and in the case of necessity.”</p>
<p>Right to freedom of thought, conscience, and religion</p>	<p>“Freedom of conscience shall be absolute. The State shall respect all religions and faiths and shall ensure to Libyans and foreigners residing in its territory freedom of conscience and the right freely to practice religion so long as it is not a breach of public order and is not contrary to morality.”</p>	<p>No specific provision.</p>
<p>Right to due process of law</p>	<p>Chapter II provides key due process guarantees, such as the right to liberty except as provided by law, the presumption of innocence, and the inviolability of personal property and correspondence.</p>	<p>Detailed due process protections, including the right to liberty, the presumption of innocence, and the right to dignity.</p>
<p>Right to an effective remedy for violations of constitutional rights</p>	<p>No specific language on constitutional rights protection.</p>	<p>Right to an effective remedy, including important procedural rights, such as the right to fair trial before a natural judge.</p>



TRANSITIONAL PROVISIONS

Coherence of transitional provisions	Non applicable for the 1951 constitution	The “existing legislative authority” must issue new laws to organise first executive and legislative elections, including on key questions like the size of the House of Representatives
Legal certainty	Includes provisions on the transition of the old legal order into the new constitutional framework	The Constitution needs to be approved by referendum. No text on the implementation of the new constitution ¹
Peaceful transfer of power	No specific provision	The first two presidents will serve for one non-renewable term each

¹ On the issue of implementing new constitutions, see Democracy Reporting International’s [briefing paper](#) “From Words to Deeds: The Implementation of Constitutions”.

ABOUT DEMOCRACY REPORTING INTERNATIONAL

Democracy Reporting International (DRI) strengthens democracy by shaping the institutions that make it sustainable. We support local ways of promoting democracy with impartial analysis and good practices, bringing international standards to life.

The belief that people are active participants in public life, not subjects of their governments, guides what we do. We work with local actors to protect and expand our shared democratic space in a polarized world, regardless of political opinions or personal beliefs.

In Libya, DRI aims to increase awareness and understanding on the political transition and to create opportunities for Libyan citizens to engage on issues related to a democratic process.