

Constitutionalism and Political Order in Libya 2011-2014:
Three Myths about the past and a New Constitution

Frederic Volpi & Carmen Geha

Abstract: Libya's 2011 revolution enabled ordinary citizens and an emerging civil society to voice their demands on a variety of key issues including Libya's new constitution. Libyans faced the challenge of redefining and re-empowering national political institutions through the establishment of a new constitution. This article analyses a series of constitutional grassroots debates that were led by the Forum for Democratic Libya thereby unpacking insights not only into the constitutional process itself but also into the underlying expectations regarding a new political order in the country. We argue that the brief period of relative peace and stability in Libya between 2011 and 2013 presents a "golden age" of constitutional activities that created meaningful interface among Libyan citizens after decades of oppression. We argue however that although constitutional debates allowed for citizen engagement in the process of constitutional development it had little bearing on the outcomes of this process. Citizen demands remained unanswered due to deeply entrenched informal political practices causing activists to face the arduous task of trying to influence a formal process of constitutional development. Priority demands expressed by citizens in our research pointed to the need for Libyan political actors to address the creation of a new system of governance, civil liberties and three regional priorities namely immigration and citizenship in Southern Libya, reconciliation and justice in Western Libya, and natural resources in Eastern Libya. The priorities remain unaddressed in Libya and provide insights of priority issues that will require serious efforts in the future of a stable Libya.

Key Words

Libya, constitution, arab uprising, civil society, revolution, mobilisation, dialogue

Word Count: 8265

Acknowledgments

The authors wish to thank Mr. Amr Ben Halim, founder and Chairperson of the Forum for Democratic Libya for facilitating surveys and interviews that were crucial to the insights and analysis in this article.

References

- Abdulhadi, Fayruz. "Libya Goes for Broke." *Foreign Policy*, August 14, 2013. Accessed December 3, 2015. http://www.foreignpolicy.com/articles/2013/08/14/libya_goes_for_broke?page=0,4
- Al-Qadhafi, Muammar. "Part one: The Solution to the Problem of Democracy," in *The Green Book*, Jerusalem International Pub. on behalf of the Green Book World Center for Research and Study, Tripoli, Socialist People's Libyan Arab Jamahiriya, 1983, 7-35.
- Anderson, Lisa. "Libya and American Foreign Policy," *The Middle East Journal* 36 no. 4 (1982): 516-534.
- Anderson, Lisa. *The State and Social Transformation in Tunisia and Libya, 1830-1980*. Princeton: Princeton University Press, 1986.
- Baldwin-Edwards, Martin. "Between a Rock and a Hard Place: North Africa as a Region of Emigration, Immigration and Transit Migration." *Review of African Political Economy* 33 no. 108 (2006): 1-20.
- Bateup, Christine A. "The Dialogic Promise: Assessing the Normative Potential of Theories of Constitutional Dialogue." New York University Public Law and Legal Theory Working Papers 11 (2005). http://lsr.nellco.org/nyu_plltwp/11.
- Ben Halim, Amr. "Conversations across Libya: hopes, fears and expectations of citizens on the constitution," *Libya Herald*, July 19 2013. Accessed December 1 2015. <http://www.libyaherald.com/2013/07/19/conversations-across-libya-hopes-fears-and-expectations-of-citizens-on-the-constitution/>
- Benomar, Jamal. "Constitution-making after conflict: lessons for Iraq." *Journal of Democracy* 15, no. 2 (2004): 81-95.
- Between, Mohammad. "The Political Forces behind the 1951 Constitution: Characters, Thoughts and Circumstances." Conference paper presented at The Libya-American Forum for Freedom. Washington DC, 2006.
- Doumit, Gilbert. and Carmen Geha. "Libya's Constitutional Twilight." *Carnegie Endowment for International Peace online journal SADA*, October 15, 2012. Accessed December, 5 2015. <http://carnegieendowment.org/2012/10/25/libya-s-constitutional-twilight/e61k>

- Dziadosz, Alexander. "East Libyans Burn Qadafi Book, Demand Constitution." *Reuters*, March 2, 2011. Accessed December 4, 2014.
<http://www.reuters.com/article/2011/03/02/libya-protest-green-idAFLDE72127720110302>
- El Mallakh, Raghei. "Affluence versus Development in Libya." *The World Today*, 24 no. 11 (1968): 475-482.
- Fitzgerald, Mary. "Libya's New Power Brokers?" *Foreign Policy*, August 2014.
- Finer, S.E., Vernon Bogdanor, and Bernard Rudden. *Comparing Constitutions*. Oxford: Clarendon Press, 1995.
- Fisher, Louis. *Constitutional Dialogues: Interpretation as Political Process*. Princeton: Princeton University Press, 2014.
- Geha, Carmen. *Civil Society and Political Reform in Lebanon and Libya: Transition and Constraint*. London: Routledge, 2016.
- Ghai, Yash. and Guido Galli, *Constitution Building Processes and Democratization*. Stockholm: International Institute for Democracy and Electoral Assistance, 2006.
- Golino, Frank Ralph. "Patterns of Libyan National Identity." *The Middle East Journal* 23, no.3 (1970): 338-352.
- Hajjar, Samir. "The Jamahiriya Experiment in Libya: Qadhafi and Rousseau." *The Journal of Modern African Studies* 18 no. 2 (1980): 181-200.
- Higgins, Benjamin. "Entrepreneurship in Libya." *The Middle East Journal* 11 no. 3 (1957): 319-323.
- Hilsum, Lindsey. *Sandstorm: Libya in the Time of Revolution*. London: Faber and Faber, 2012.
- Jawad, Rana. "Libyan Elections: Low Turnout Marks Bid to End Political Crisis." *BBC news*, June 26, 2014. Accessed December 10, 2015.
<http://www.bbc.com/news/world-africa-28005801>
- Joffe, George. "Qadhafi's Islam in Local Historical Perspective." In *Qadhafi's Libya, 1969 to 1994* edited by Dirk Vandewalle, 150-152. New York: St. Martin's Press, 1995.
- Khalidi, Ismail R. "Constitution of the United Kingdom of Libya: Background Summary," *The Middle East Journal* 6, no. 2 (1952): 221-228.
- Khalidi, Ismail R. *Constitutional Development in Libya*. Beirut: Khayat's College Book Cooperative, 1956.

Laessing Ulf. and Ghaith Shennab. "Poor Turnout in Libyan Vote for Constitution-drafting Body." *Reuters*, 21 February 2014. Accessed December 12, 2015. <http://in.reuters.com/article/libya-vote-idINL6N0LP2RC20140220>

Laessing, Ulf, and Feras Bosalum. "Libya's government resigns to allow parliament to form new cabinet." *Reuters*, August 28, 2014. Accessed December 8, 2015. <http://www.reuters.com/article/2014/08/28/us-libya-security-government-idUSKBN0GS2PJ20140828?feedType=RSS&feedName=worldNews>

"Libya's New Constitution: Towards an Inclusive and Democratic Social Contract." *The Forum for Democratic Libya and Beyond Reform and Development, Briefing Report*: Tripoli, May 2012.

"Libyan's Recommendations for a New Constitution." *The Forum for Democratic Libya, Briefing Report*. Tripoli, July 2013.

Pargeter, Alison. *Libya: The Rise and Fall of Qaddafi*. New Haven: Yale University Press, 2012.

Pelt, Adrian. *Libyan Independence and the United Nations: A Case of Planned Decolonization*. New Haven: Yale University Press for the Carnegie Endowment for International Peace, 1970. \

"Political Isolation Law." *Libya Herald*, 14 May 2013. Accessed December 10. <http://www.libyaherald.com/2013/05/14/political-isolation-law-the-full-text/> (accessed 15/09/2013).

Salem, Paul and Amanda Kadlec. "Libya's Troubled Transition." *Carnegie Endowment for International Peace Paper*, June 2012. Accessed December 14, 2015. <http://carnegieendowment.org/2012/06/14/libya-s-troubled-transition/bzw4#>

Sawani, Youssef Mohammad and Jason Pack. "Libyan Constitutionality and Sovereignty Post-Gadhafi: The Islamist, Regionalist and Amazigh Challenges." *The Journal of North African Studies* 18, no. 4 (2013): 523-543.

Toler Updike, Lorianne. "Mapping the Constitutional Process." *Cambridge Journal of International & Comparative Law* 3 no.4 (2014): 1260-1286.

Vandewalle, Dirk. "Libya's Revolution Revisited," *Middle East Report* no. 143 (1986): 30-43.

Vandewalle, Dirk. *Libya Since Independence: Oil and State Building*. London: I.B. Tauris, 1998.

Vandewalle, Dirk. *A History of Modern Libya*. Cambridge: Cambridge University Press, 2006.

Wright, John. *Libya*. London: Ernest Benn, 1969.

Zoubir, Yahia. "Libya in US Foreign Policy: From Rogue State to Good Fellow?" *Third World Quarterly* 23 no. 1 (2002): 31-53.

Zoubir, Yahia H., and Erzsebet N. Rozsa. "The End of the Libyan Dictatorship: The Uncertain Transition." *Third World Quarterly* 33, no. 7 (2012): 1267-1283.

|

Constitutionalism and Political Order in Libya 2011-2014:
Three Myths about the past and a New Constitution

Frederic Volpi & Carmen Geha

Looking back at constitutional (dis)orders in Libya

Libya's 2011 revolution enabled ordinary citizens as well as social and political actors to voice a multiplicity of demands, not least regarding freedom and democracy. In a post-revolution phase characterized by, among other things, instability, insecurity and political contestation, Libyans faced the challenge of redefining and re-empowering national political institutions, not least through the establishment of a new constitution. Looking back at these constitutional debates today thus provides insights not only into the constitutional process itself but also into the underlying expectations regarding a new political order in the country.

During a brief period of relative peace and stability in Libya's political transition, a wealth of activities concerning a new constitutional order took place in the country. This "golden age" of constitutional activity began with the August 2011 Constitutional Declaration by the National Transitional Council (NTC). It would end in June 2014 with the contestation of the result of the elections of a new General National Congress (GNC).¹ The NTC had been formed early on in the uprising of 27 February 2011, and by early March had proclaimed itself to be the representative of the Libyan people.² The NTC was intended as an interim transitional entity and as the political "face" of the Libyan revolution, at home and abroad. The NTC Constitutional Declaration stated that the Council would hand over power to a

¹ See Sawani, Youssef Mohammad and Jason Pack. "Libyan Constitutionality and Sovereignty Post-Gadhafi: The Islamist, Regionalist and Amazigh Challenges." *The Journal of North African Studies* 18, no. 4 (2013): 523-543; Rana Jawad, "Libyan Elections: Low Turnout Marks Bid to End Political Crisis," *BBC news*, <http://www.bbc.com/news/world-africa-28005801> (accessed 10 December 2015).

² Zoubir, Yahia H., and Erzsebet N. Rozsa. "The End of the Libyan Dictatorship: The Uncertain Transition." *Third World Quarterly* 33, no. 7 (2012): p. 1267-1283.

democratically elected National Congress, which would in its turn appoint a constitutional body to draft a new constitution.

After an amendment to the Declaration in March 2012 stipulating that the constitutional drafting body would be elected rather than appointed, the elections of the Constitutional Drafting Assembly (CDA) finally took place in February 2014.³ These elections occurred at a time of widespread protests against the General National Congress' refusal to hold parliamentary elections and its decision to extend its own mandate instead. The CDA enjoyed a short-lived support despite the low turnout at these elections, the boycotts by some ethnic minorities and the limited involvement of citizens and activists in formal constitutional dialogues.⁴ However, by the time of the elections of a new national congress in June 2014, it was clear that this "golden age" of activities about the constitution was coming to an end. The parliamentary elections were marked by low voter turnout, and a deteriorating security situation. By the summer of 2014 fighting had broken out between forces loyal to the outgoing GNC and those loyal to the newly elected congress. These armed clashes spread with increasing severity to produce another civil conflict and closed this window of opportunity to debate and enact a new constitution.⁵

The following analysis thus seeks to capture insights and priorities about the constitution and about governance as they emerged during this period of transition. Such elements point to the dilemmas that the constitution and transition more broadly will have to address in order to produce a more stable form of government in the country. The constitution in its simplest term is a nation's highest legal reference to organize the shape of its governing institutions, the nature of citizen-state relations, and the sovereignty of the political system.⁶ After the 2011 revolution, debates about

³ See Toler Lorianne Updike, "Mapping the Constitutional Process." *Cambridge Journal of International & Comparative Law* 3 no.4 (2014): 1260-1286.

⁴ Less than half a million Libyans went to the polls, compared to the three millions that voted in the 2013 GNC elections. Ulf Leassing and Ghaith Shennab, "Poor Turnout in Libyan Vote for Constitution-drafting Body." Reuters, 21 February 2014. <http://in.reuters.com/article/libya-vote-idINL6N0LP2RC20140220>

⁵ Reuters, "Libya's government resigns to allow parliament to form new cabinet," *Reuters* August 28, 2014, <http://www.reuters.com/article/2014/08/28/us-libya-security-government-idUSKBN0GS2PJ20140828?feedType=RSS&feedName=worldNews>

⁶ S.E. Finer, Vernon Bogdanor, and Bernard Rudden, *Comparing Constitutions* (Oxford: Clarendon Press, 1995).

the constitution generated new forms of political and civic mobilization.⁷ The newly found freedoms of civil society, media and political parties in Libya widened the scope of participation in the process of constitutional development. Yet, with the procedural and political delays of the drafting process, this increased participation also underscored the divisions and contested priorities present in post-Qaddafi Libya.

In this particular context, three myths about constitutional order in the country shaped Libyan's approaches to the problem of political order. The first myth was that of the first Libyan constitution of 1951 as setting an example for a modern (western, liberal) and democratic (wide consultation, regional representation) constitutional process. In this perspective, the new constitutional opening initiated in 2011 represented an opportunity to set the clock back to a time when Libya was a political example for the region. In this narrative, it was a time when local, regional and international issues could be peacefully resolved; a time before the failures of the monarchy (authoritarian centralization) and of Qaddafi (neo-sultanism).

The second myth was that of the clean slate. There was the perception that the new constitution would inaugurate a truly new political order as there was no genuine constitutional and institutional order in the Jamahiriya. There was therefore a tendency to downplay the practical importance of the informal institutional and normative systems that structured social and political processes under Qaddafi. Unsurprisingly it was then 'rediscovered' that religious norms (for example articulated in demands for the return sharia law), as well as regional, tribal and local power structures and preferences (articulated in the demands for federalism, Berber and other minorities' rights, etc.) shaped and placed specific constraints on the constitutional process.

The third and probably most potent myth was that of the new Libyan citizen. Participation in and formulation of a new constitutional system was meant to shape and entrench a form of Libyan citizenship that could not exist before. It was meant to fulfil the promises of the first constitution by enabling the merging of multiple identities and preferences that would underpin an effective model of governance. This narrative fed from the first myth by downplaying the multiple causes of failure of the constitutional order of the 1950s and overemphasising role of the constitution in resolving outstanding issues and dilemmas.

⁷ For a more detailed account see See Carmen Geha, *Civil Society and Political Reform in Lebanon and Libya: Transition and Constraint* (London: Routledge, 2016).

In the following, we use these myths to investigate the contemporary reformulations of formal political order in Libya as outlined by the citizens taking part in constitutional dialogues organised by non-governmental organizations in 2012-2013. We contextualize these experiences with constitution-making to highlight the processes and thematic issues that Libyans found important as they sought to entrench new forms of political order in post-revolution Libya.

The 1951 constitution: viewing Libya's first constitution through tainted glasses

Libya is a former colony of Italy that progressively acquired its independence after the end of World War II. Under Ottoman rule prior to the Italian conquest in 1911, Libya had no parliamentary institutions. It was administered as a province (*vilayet*) by a governor (*vali*; Arabic, *wali*) appointed directly by the Ottoman Sultan. The views and interests of the province were presented to the Ottoman Parliament (*Mejlisi Mebusan*) through a few local representatives of the province. As in other parts of the Arab World, the Ottoman era was characterized by patron-client relations. Most of the political and economic power was located in Tripolitania and Cyrenaica (Western and Eastern Libya). In 1835 the government of Sultan Mahmud II took advantage of local disturbances to reassert its direct authority over the regions of Tripolitania, Fezzan and Cyrenaica and held it until the collapse of the Empire.⁸

It was only after World War I that self-rule was introduced. During the 1918 peace treaty between the Ottoman Empire and Italy, the latter gained nominal control over Tripolitania and Cyrenaica. In June 1919 the Italian Government enacted an Organic Law in Tripolitania whereby an Italian *wali* was appointed to administer the civil and military affairs of the territory, assisted by an elected local council. A similar law was enacted in Cyrenaica in October of the same year. With the advent of fascism in 1922 and the accompanying rise of imperialist ambitions, any Italian consideration for the development of a parliamentary system in Libya disappeared. Under fascism, a form of military dictatorship prevailed for nearly a quarter of a century. Vandewalle noted that 'opposition to Italy within the provinces had differed and had remained focused largely around local, provincial interests'.⁹ During World War II, The Allies' expulsion of German and Italian troops from North Africa led to the creation of a

⁸ For a detailed historical account see Dirk Vandewalle, *A History of Modern Libya*, (Cambridge: Cambridge University Press, 2006).

⁹ *Ibid.* p.42.

British Military Administration in Tripolitania and Cyrenaica, and of a French Military Administration in Fezzan.

In the wake of independence Libya was a divided territory with no previous experience as a unitary state. Independence generated an opportunity to bring together representatives from different regions to build the foundations of a common state. The role of foreign states was crucial in this process. The Allies agreed in accordance with the terms of the Peace Treaty with Italy to refer the case of Libya to the United Nations for a decision. In 1948 the UN General Assembly began to consider the independence of Libya. On November 21, 1949 the General Assembly adopted a resolution stipulating that Libya should become independent as soon as possible and no later than 1 January 1952. Under the auspices of the United Nations, the three provinces formed a National Assembly, which at its first meeting on 2 December 1950, agreed that Libya was to become a federal state and a constitutional monarchy, with Idriss al-Sanussi as Head of State. The federal system of governance gave extensive powers to the three autonomous provinces – Tripolitania, Cyrenaica, and Fezzan.¹⁰

In 1951, the National Assembly drew up Libya's first constitution. Pargeter noted that 'given the divergent interests of the different regions, and particularly those of Cyrenaica and Tripolitania, what emerged was a complex and cumbersome political system, comprising a parliament, a federal government and powerful provincial councils, whose heads were appointed by the king'.¹¹ In this situation, local governors and councils were in a position of strength vis-à-vis the central administration. The dilemmas of decentralization were eventually resolved in favour of the central administration in a drastic and autocratic manner through the 1963 constitutional amendment abolishing the federal system and establishing a unitary form of government. Limited analysis has been made of the 1963 amendment, but scholars attribute this reform to the ambition of King Idriss to have a stronger grip

¹⁰ For an analysis of the situation at the time see Ismail R. Khalidi, "Constitution of the United Kingdom of Libya: Background Summary," *The Middle East Journal* 6, no. 2 (1952): 221-228. For a later assessment see Vandewalle, *A History of Modern Libya*

¹¹ Alison Pargeter, *Libya: The Rise and Fall of Qaddafi* (New Haven: Yale University Press, 2012), 34.

over economic and political development.¹² Of relevance to the argument developed here, however, is the process of construction, and then of representation, of the ill-fated 1951 constitution.

For contemporary Libyan constitutionalists this process was perceived as a success for several important reasons. First, as Berween suggested, the ‘founding fathers’ of Libya displayed a great deal of political awareness as the drafting committee spent at least 25 months and conducted more than 187 meetings with stakeholders from the three provinces.¹³ The drafting committee also requested from Adrian Pelt, the UN commissioner overseeing the process, the translation of a number of constitutions of both federal and unitary states that they studied closely. In addition, the committee also displayed openness by inviting legal consultants from Egypt, Palestine, and Great Britain. After the 2011 revolution, Kaddoura, a Libyan constitutional expert stressed that the significance of the 1951 constitution resided not in the content of the constitutional text but in the inclusive process of drafting it.¹⁴

A second distinguishing feature was the role of UN commissioner Adrian Pelt, who remains appreciated by contemporary political activists and constitutional experts in Libya.¹⁵ Pelt spent weeks in each of the three provinces meeting with local leaders and stakeholders before selecting a consultative committee for drafting the constitution.¹⁶ He ended up choosing four representatives, one from each of the East, West and South regions and an additional person to represent minorities. At the time,

¹² For a perspective on those changes from the same decade see John Wright, *Libya*. London: Ernest Benn, 1969; Frank Ralph Golino, “Patterns of Libyan National Identity.” *The Middle East Journal* 23, no.3 (1970): 338-352. For a later assessment of the situation see Vandewalle, *A History of Modern Libya*; Lisa Anderson, *The State and Social Transformation in Tunisia and Libya, 1830-1980*. Princeton: Princeton University Press 1986.

¹³ Mohammad Berween, “The Political Forces behind the 1951 Constitution: Characters, Thoughts and Circumstances”, conference paper presented at The Libya-American Forum for Freedom, Washington DC, June 2006).

¹⁴ Dr. Abdelkader Kaddoura, constitutional and legal expert, Tripoli, 21 January 2013.

¹⁵ Dr. Faraj Najem, Forum for Democratic Libya, opening statement at a training workshop for constitutional dialogue facilitators, Tripoli, 15 January 2013.

¹⁶ For a detailed account of this process by the Commissioner himself, see, Adrian Pelt, *Libyan Independence and the United Nations: A Case of Planned Decolonization* (New Haven: Yale University Press for the Carnegie Endowment for International Peace, 1970).

there were more than 13,000 Jews in addition to a few hundred Greeks residing in Libya.¹⁷

The third important characteristic of the 1951 process was the Committee of 21 members that was selected by the Pelt Commission after months of consultations in the three providences. Although there were demographic disparities, the commission agreed to appoint the same number of 7 representatives from each region to give equitable hearing to each of them. Only two conditions were set for these representatives: that they should not be members of the main political parties and that an opportunity would be given to non-partisan actors to participate in the General Assembly.¹⁸ The Assembly itself comprised 60 members, 20 from each province, and was responsible for drafting the constitution.

For the purpose of this analysis, it is worth noting that a significant outcome of the 1951 constitutional process was the formal recognition of important civil liberties and principles of governance. First, Libya was among the first Arab countries to adopt the Universal Declaration of human rights. Second, the parliamentary system established an equal representation of citizens from the three regions. Third, it adopted federalism making Libya a sovereign state grounded on a power-sharing agreement between the central administration and provincial governments.

Since the 1950s, observers and activists have hailed the document as hopeful and promising for Libyans.¹⁹ In 1953 Pelt wrote for the *Barqa Algadida* (new Cyrenaica) newspaper on December 25th that ‘the Libyan new constitution aimed at democracy and respect of human liberties’.²⁰ While the 1951 constitution stated that “all Libyans are equal before the law”, it also more problematically affirmed Islam as the religion of the state and declared Arabic to be the official language.²¹ As it turned out this constitutional experiment was to be short-lived. Yet, in the contemporary Libyan context, a debate on the intrinsic reasons that might have caused the failure of

¹⁷ Ismail R. Khalidi, *Constitutional Development in Libya* (Beirut: Khayat’s College Book Cooperative, 1956).

¹⁸ Berween, *The Political Forces*.

¹⁹ Khalidi, *Constitutional Development in Libya*

²⁰ Adrian Pelt, quoted in *New Barqa Newspaper* صحيفة برقة الجديدة , 25 December 1952.

²¹ Republic of Libya, Constitution of 1951, articles 11 and 15.

the 1951 constitution was not deemed by post-2011 political activists to be highly relevant to the reconstruction of political order after the fall of the Qaddafi regime.²²

Political order and the *Jamahiriyah*: a formal absence with an informal presence

By the time of the 2011 uprisings, Libya was one of the richest countries in the world with some of the largest oil reserves and approximately \$168 billion in foreign assets for a relatively small population of a little over six million.²³ At the time of independence, however, the country's major export was scrap metal from the debris of the World War II military campaigns, and the government's operating budget was provided almost completely by foreign states. According to one analyst writing in 1957, "Libya's value as a case study is that it provides an example of universal poverty in an extreme form."²⁴ The discovery of oil a decade after independence would change fundamentally the system of governance of the country. King Idriss faced new challenges to regulate the oil production and the distribution of revenues. Although government revenues from petroleum rose from \$40 million in 1962 to \$800 million by 1968 this affluence did not immediately translate into better standards of living for the Libyan population.²⁵ The discovery of oil meant in practice that the state neglected agriculture, and centralized resources management and public good distribution through the central administration.²⁶ In the 1960s, the King faced another serious challenge, ideological this time, with the rise of Arab nationalism in the region. This challenge became more pressing over time as political parties had been banned and political life focused on succession within the ailing king's inner circle.²⁷

On September 1st, 1969 the 27-year-old Captain Qaddafi led a bloodless coup against the king and emerged as the charismatic leader of the Revolutionary

²² Interviews with participants to a workshop on the 1951 Constitution organized by the Forum for Democratic Libya in Tripoli on 19 January 2013

²³ Fayruz Abdulhadi, "Libya Goes for Broke," *Foreign Policy*, August 14, 2013. Available at

http://www.foreignpolicy.com/articles/2013/08/14/libya_goes_for_broke?page=0,4

²⁴ Benjamin Higgins, "Entrepreneurship in Libya," *The Middle East Journal* 11 no. 3 (1957): 319-323.

²⁵ Raghei El Mallakh, "Affluence versus Development in Libya." *The World Today*, 24 no. 11 (1968): 475-482.

²⁶ Dirk Vadewalle, "Libya's Revolution Revisited," *Middle East Report* no. 143 (1986): 30-43.

²⁷ Lisa Anderson, "Libya and American Foreign Policy," *The Middle East Journal* 36 no. 4 (1982): 516-534.

Command Council (RCC)., Inspired by Nasser, Qaddafi attempted to lead the cause of pan-Arabism, as illustrated by the “Zuwara speech” of 1973.²⁸ In this declaration, Qaddafi spelled out how greater Arab unity was not possible under the existing forms of government. Only through the dismantling of the state’s institutions could the will of the people be realized, and ‘direct democracy’ was the means to achieve a Pan-Arab state. Conveniently, this positioning justified domestically the dismantlement of most of the political institutions that could pose a threat to his rule. In 1969 already, when Qaddafi had suspended the constitution and in 1972 he had banned political parties. By the end of the 1970s, analysts would often describe Libya as a state without government or a nation without a state.²⁹

In practice, as Hajjar remarks, Qaddafi created para-public organizations carrying out both the administrative and legislative functions of the state.³⁰ By 1973, more than 2,400 locally appointed popular committees had been approved by the Revolutionary Command Council and took up the role of the state administration at the provincial level. In 1975 Qaddafi had published the *Green Book* in which he stated that the country’s citizens directly managed political and economic life; a proposition in stark contrast with a political system where decision-making was restricted to Qaddafi and his advisors.³¹ At the same time according to Joffé, the regime also ‘introduced a more insidious phenomenon: a de-politicization of the population and an atomization that took place as any type of organized activity was forbidden’.³² After 1977 in particular, the structure of government in its traditional legal-bureaucratic sense was dismantled, and the ‘people's authority’, exercised through people's congresses and committees, was proclaimed.³³

In the *Green Book*, Qaddafi had denounced the idea of a constitution on the grounds that ‘the problem of freedom in the modern age is that constitutions have

²⁸ Vandewalle, *A History of Modern Libya*.

²⁹ See Dirk Vandewalle, *Libya Since Independence: Oil and State Building* (London: I.B. Tauris, 1998); Anderson, *The State and Social Transformation*.

³⁰ Samir Hajjar, ‘The Jamahiriya Experiment in Libya: Qadhafi and Rousseau’, *The Journal of Modern African Studies* 18 no. 2 (1980): 181-200.

³¹ Vandewalle, *A History of Modern Libya*.

³² George Joffé, “Qadhafi’s Islam in Local Historical Perspective.” In *Qadhafi’s Libya, 1969 to 1994* edited by Dirk Vandewalle, 150-152 (New York: St. Martin’s Press, 1995).

³³ Hajjar, *The Jamahiriya Experiment*.

become the law of societies', but law should be based on human freedom.³⁴ The *Green Book* came to replace a formal constitution and served to legitimize the Libyan leader's policies. In it, Qaddafi had argued that 'a society has fundamental laws derived from either tradition or religion. This is what constitutes the moral code for a society that would direct the people in their practice of self-government so that the need for a man-made civil religion, for instance, is avoided'.³⁵ Nowhere in the *Green Book* is there a reference to agents performing a role similar to that of a lawmaker. Instead it is claimed that anyone who has 'the boldness to proclaim the will of the society' opens 'the way to dictatorship'.³⁶ The typical functions of a formal constitution that would normally delineate power and authority and organize relations between citizens and the state, as well as between different branches of government, were thus mainly irrelevant in Qaddafi's *Jamahiriya*.

It would take Libyans 41 years, but in 2011 they would eventually burn and ridicule the *Green Book* in the street protests against Qaddafi that started in Benghazi in February 2011. The protestors said it had allowed Qaddafi to act with impunity and had disregarded the responsibilities of the state and the rights of the citizens.³⁷ It was telling that at the start of the revolution, citizens directed their hatred not only towards pictures of Qaddafi himself but towards his book. From early on in the uprisings, Libyans took to the streets to call for reforms, including the introduction of a constitution.³⁸

As with 1951 constitution, in the aftermath of the Libyan revolution, important questions were not asked about the dismantling of the *Jamahiriya*. While the lack of a formal constitution certainly gave freedom to interpret the *Green Book* any way the regime wanted, this did not make Libya that different from other regimes in the region where the presence of formal constitutions was hardly a hindrance for autocratic rule. In addition, the neo-sultanistic system of governance underpinned by the *Green Book*

³⁴ Muammar Al-Qadhafi, "Part one: The Solution to the Problem of Democracy," in *The Green Book*, (Jerusalem International Pub. on behalf of the Green Book World Center for Research and Study, Tripoli, Socialist People's Libyan Arab Jamahiriya, 1983), 7-35.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Alexander Dziadosz, "East Libyans Burn Qadfad Book, Demand Constitution," *Reuters*, 2 March 2011. Available at <http://www.reuters.com/article/2011/03/02/libya-protest-green-idAFLDE72127720110302>

³⁸ Lindsey Hilsum, *Sandstorm: Libya in the Time of Revolution* (London: Faber and Faber, 2012).

did also reflect a power balance between different groups, and national preferences. For all the empty rhetoric contained in the ideological guidelines that were meant to replace a formal constitution, the ever-evolving authoritarian system put in place by Qaddafi over the years took into account the strength of the various social groups that could mobilize against the regime (tribes, armed forces, religious groups, etc.). Hence the formal absence of a constitutional order did not amount to the absence of constraints on governance in the *Jamahiriya*.

New citizens and new politics: public engagement with the constitutional process

A new public sphere

Citizens' engagement with the political process gained a new prominence in Libya in the late 2000s with the reformist efforts of Qaddafi's son Saif al-Islam in the perspective of a possible succession to his father. The facilitation of a new civil society and public sphere was part of a 'liberalizing' drive designed to promote the reintegration of Libya in the international and regional order.³⁹ The new Libyan strategy to engage with the international community prompted the regime to allow for some freedom of assembly and association. It is precisely this emergent civil society that contributed to the success of the mobilization that would kick-start the Libyan revolution in February 2011. On 28 June 1996 following a prison riot, 1,270 inmates had been killed in the Abu Slim prison. The truth about the massacre would only be acknowledged by the regime much later in 2009.⁴⁰ Emboldened by Saif al-Islam's reformist project, the victims' families demanded that the regime gave them information about how their loved ones had died.⁴¹ Symbolically, the mothers of the deceased prisoners started organized sit-ins in front of Benghazi central courthouse on weekly basis.⁴² The arrest of Fethi Terbil, the lawyer representing the Abu Slim families, on 15 February 2011 would set in motion a series of events that marked the beginning of the Libyan uprising.

Under the *Jamahiriya*, there were only about 30 registered NGOs which were service-driven and government funded. In post-revolutionary Libya, civil society organizations (CSO) activities suddenly heavily outnumber governmental initiatives.

³⁹ Yahia Zoubir, "Libya in US Foreign Policy: From Rogue State to Good Fellow?" *Third World Quarterly* 23 no. 1 (2002): 31-53.

⁴⁰ Hilsum, *Sandstorm*.

⁴¹ Pargeter, *Libya*, 218.

⁴² Hilsum, *Sandstorm*.

In 2013, there were at least 2,700 formally registered CSOs working on a variety of issues, with a wide range of sizes, degree of specialization, and levels of membership.⁴³ The NGOs working in Tripoli and Benghazi can be categorized broadly between service-delivery and advocacy organizations. Hundreds of groups registered to monitor the elections of June 2012. Many CSOs were also working on the constitutional process, such as H2O, a youth-led organization which mobilized thousands of citizens on issues of voter registration and participated in dialogues on the constitution.⁴⁴

Most of this new advocacy-driven work centred on dialogue, awareness, participation, and broadly related to the ‘educational’ aspects of democracy. Outside of any governmental initiative, hundreds of dialogues were thus organised throughout the country to encourage citizens to participate in the constitutional process. The period 2012-2013 constituted in Libya a new but short-lived ‘golden age’ of constitutional awareness raising, somewhat similar to what had happened before the writing up of the 1951 constitution, but with a wider engagement of different sections of civil society and less direction given by state actors.⁴⁵

The National Transitional Council (NTC) Constitutional Declaration of 3 August 2011 had set a timetable for the transition that included the appointment of an interim government, the promulgation of an election law, the establishment of a Higher National Election Commission (HNEC), preparations for national Constituent Assembly elections and the appointment of a Committee of 60 to draft the constitution.⁴⁶ The elections to the national assembly that took place on 7 July 2012 were considered by many as a milestone for Libya’s democratic transition. However violent incidents in the East during the elections changed the original timetable and led the chairman of the NTC Mustafa Abdul Jalil to announce that the constitutional drafting committee would be elected directly by the people in order to ease tensions

⁴³ Ibid.

⁴⁴ Aya El Tayeb, an activist who helped launch the constitutional dialogues on a bus tour across Libya, indicated that H2O’s mission was to reach out and make citizens feel that they have a voice in this process. Interview with Aya El Tayeb, Tripoli, December 5, 2012.

⁴⁵ Ibid.

⁴⁶ Paul Salem and Amanda Kadlec, “Libya’s Troubled Transition,” *Carnegie Endowment for International Peace Paper*, June 2012. <http://carnegieendowment.org/2012/06/14/libya-s-troubled-transition/bzw4#>

with the pro-federalists.⁴⁷ These incidents stressed the importance of a national and regional dialogue in the process of drafting a new constitution.

Constitutional dialogues are generally an instrument to allow citizens to forge a meaning for the constitution.⁴⁸ Ideally, this dialogue should incorporate both society-wide and institutional aspects. Constitutional dialogues require a minimum engagement of the state institutions and particularly the judiciary in fostering society-wide constitutional discussion. The institutional progress made in 2012-2013 in Libya was however limited to setting up an election commission and announcing an electoral law for the election of the 60 members committee responsible for drafting the constitution. No serious effort was made by the government or the parliament to discuss the constitutional process with the wider public. As a result, citizens' definitions of priorities and views of political order solidified mainly as a result of civil society activism in the constitutional process. NGOs and international organizations de facto took the lead in a nation-wide effort to revisit the constitution and by involving different categories of citizens (including women, youth, minorities, tribal leaders and armed rebels).

The role of citizens and informal dialogue is commonly highlighted in the literature as an important prerequisite to the design of a constitution. The engagement of citizens can lead to a wider legitimacy of the constitution when this engagement is made to appear meaningful.⁴⁹ Practitioners also note the importance of an engagement of stakeholders in constitutional debates particularly after conflict and regime change.⁵⁰ In 2012-2013 in Libya, public opinion was highly mobilized in support of these dialogues. Many activists and intellectuals were wary of the case of Iraq where they claim that the constitution was 'imposed' and not locally driven.⁵¹ At the time in the Libyan media, there were a wealth of debates on the constitutional process and

⁴⁷ Gilbert Doumit and Carmen Geha, "Libya's Constitutional Twilight," *Carnegie Endowment for International Peace online journal SADA*, October 15, 2012. <http://carnegieendowment.org/2012/10/25/libya-s-constitutional-twilight/e61k>

⁴⁸ Christine A. Bateup, "The Dialogic Promise: Assessing the Normative Potential of Theories of Constitutional Dialogue," *New York University Public Law and Legal Theory Working Papers* 11 (2005). Available at http://lsr.nellco.org/nyu_plltwp/11

⁴⁹ See Fisher, Louis. *Constitutional Dialogues: Interpretation as Political Process* (Princeton: Princeton University Press, 2014).

⁵⁰ See Benomar, Jamal. "Constitution-making after conflict: lessons for Iraq." *Journal of Democracy* 15, no. 2 (2004): 81-95.

⁵¹ Interview with Al-Irfi, Hana, Head of Women Caucuses in General National Congress, Tripoli June 24, 2013.

what the new constitution should include.⁵² Newly empowered Libyan citizens wanted to have an influence on the writing of the new constitution and were trying to make their voices count. In addition, beyond the constitution itself, this mobilization around constitutional debates highlighted a range of issues that Libyans deemed crucial in the post-revolutionary context.

Unanswered demands

To address some of the issues behind the debates about the constitution, we consider the results of a series of dialogues that took place between February and March of 2013 under the hospices of the Forum for Democratic Libya (FDL) with the support of the United Nations Development Program (UNDP). Selected participants in the dialogues and the survey were identified through a sampling of local stakeholders and aimed at ensuring that respondents represented the important social and political groups of each of the regions (including members of the military, former revolutionary, local councils, media, civil society, political parties, and tribal leaders).

The dialogue topics were based on an initial mapping that took place the preceding year between February and May 2012, which brought together more than 550 activists, youth, women, revolutionaries, lawyers, intellectuals, civil society and political groups in Benghazi, Derna, Beyda, Misurata and Tripoli among others.⁵³ In line with what local think tanks, media and observers were reporting at the time, participants in these initial meetings considered to be priorities for the constitution: (i) the role of sharia and Islamic jurisprudence, (ii) the place of freedom and equality, (iii) the organization of the political and administrative system, (iv) the place of minorities and, (v) women's rights.⁵⁴ Participants expressed divergent views regarding the role of religion, particularly regarding whether the sharia ought to be the main or the only source of legislation. They were also divided on the question of

⁵² Amr Ben Halim, "Conversations across Libya: hopes, fears and expectations of citizens on the constitution," *Libya Herald*, 19 July 2013. Available at <http://www.libyaherald.com/2013/07/19/conversations-across-libya-hopes-fears-and-expectations-of-citizens-on-the-constitution/>

⁵³ The Forum for Democratic Libya and Beyond Reform and Development, "Libya's New Constitution: Towards an Inclusive and Democratic Social Contract," Briefing Report, Tripoli, May 2012.

⁵⁴ Nebbe f Dostoor Initiative. *The Recommendations of Libyans for Libya's New Constitution* (The Forum for Democratic Libya in partnership with United Nations Development Program, Tripoli, July 2013).

equality between men and women, particularly in relation to a religious understanding of equality. The issue of minorities was also a divisive issue, with some demanding the official recognition of the Tamazight language and others requiring that Arabic remained the only official language.

On the basis of these preliminary results FDL selected three set of issues for focus groups to address: (1) the system of governance, (2) civil liberties, and (3) regional priorities. Locations for these focus groups included post-conflict towns, locations with recurrent tensions and violence, towns with Gadhafi loyalists.⁵⁵ The following section presents the top ranking propositions chosen in 15 dialogue sessions that brought together just over 900 participants in the Eastern Region (Benghazi, Derna, Tobruk, and Ajdabia), the Southern Region (Sebha, Murzuq, and Ubari), and the Western Region (Tripoli, Jadu, Bani Walid, Sirte, Misrata, Zawaya, Zleiten, and Khoms).⁵⁶

The system of governance (*nitham al hokm*) was widely debated as the inequalities in the economy and political sphere had made government a sensitive issue. Between 2012 and 2013 calls for a federal system emanating from, but not restricted to, social and political actors in the eastern region were on the rise. When debating the constitution, participants in the dialogues saw the relevance of a new governance system for the relations between citizens and state, especially in terms of guaranteeing political freedom and minority rights, and improving economic fairness. At the outset the most popular view was that constitution should give some form of autonomy to local councils. From the frequency of the answers provided, FDL noted that a majority of participants in the eastern areas supported a full-fledged federal system, while this was not the case in the west and south.⁵⁷ The other most popular view was that the constitution should account for decentralization within a unified state. While the terms “federalism” or “decentralization” were politically loaded, citizens who participated in the discussions across the regions had similar objectives regarding a redistribution of goods and services. The only regional disparities were that these views were expressed via pro-federalist discourse in the East, while they were voiced as concerns about marginalization in western areas (especially in those

⁵⁵ For a detailed account see Geha. *Civil Society and Political Reform in Lebanon and Libya*.

⁵⁶ One of the authors, Carmen Geha, was a facilitator in these meetings.

⁵⁷ The Forum for Democratic Libya, “Libyan’s Recommendations for a New Constitution,” Briefing Report, Tripoli, July 2013.

towns that were deemed not to have taken part in the revolution), and constructed as demands for better representation in the southern areas.

Concerning civil liberties (*al horriyat al aama*) FDL again estimated via the frequency of answers given that the most common view was that freedom is about political participation and accountability rather than private liberties.⁵⁸ The second most supported opinion was that freedom was about every aspect of life including religion, public expression and right of assembly. Libyans having lived for 42 years of almost complete de-politicization of public life with a regime that forbade political parties, independent media outlets, religious militancy and civil society activism, it was unsurprising that a mutually agreed perspective on civil liberties was hard to come by. Participants defined the issue of freedom as relevant to the constitution mainly because it facilitated accountability and prevented a monopoly of political power. They linked the protection of civil liberties to the need to enhance political stability. In particular they stressed that these freedoms should guarantee the right of expression and association, as participants often wanted to form organizations, media outlets, and political parties themselves. In addition, they considered civil liberties to be useful for the development of new economic activities, again often with a personal agenda in mind. Finally, although civil liberties were strongly endorsed by all participants, they was a clear willingness to mention their conformity to sharia law, as no one wanted to appear to be directly challenging this Islamic principle.

Finally regarding the issue of regional priorities, focus groups from different regions of Libya showed some significant differences regarding the prioritizations of the abovementioned generic themes. In the Eastern region, the main priority of governance was the state control of oil and natural resources. Participants identified this issue almost unanimously in connection to a need to reform the welfare state and to redistribute oil revenues more fairly. They saw the management of oil and natural resources as indicative of whether the political system deserved the trust of its citizens. Hence, they wanted the constitution to include a mechanism for direct investment outside of Tripoli, as well to enshrine principles of transparency that would avoid mismanagement. An additional concern of the participants in this region was how to create alternative sources of revenues outside the oil and gas sector.

⁵⁸ Nebbe f Dostoor Initiative, *The Recommendations of Libyans*.

Importantly, natural resources were equated it with peace, stability and economic development in the context of a local management of these resources.⁵⁹

In the Southern region, the main priorities had to do with citizenship and immigration. Participants explained that to be a citizen involves an administrative procedure that recognizes one's ability to access resources and benefits, and provides a shared identity regardless of people's origin. They recognized that citizenship had cultural, economic and political implications especially when it came to women's ability or inability to pass citizenship to their husbands and children. They wanted the constitution to address how Libyan citizenship could be obtained and set standards to solve the issue of immigration and stateless citizens, especially in the southernmost regions (Chad and Niger borders).⁶⁰ The access to citizenship was directly linked by participants to identity and belonging. There were tens of thousands of Libya-born individuals in the south with no recognized citizenship and no standard procedure for obtaining Libyan citizenship. Participants saw these issues directly related to security and basic rights. In the historically marginalized southern regions, the quest of participants was very much about livelihood. The right to obtain citizenship for a number of stateless people, particularly from the Tabu ethnic group, was considered as a basic need to enable them to access employment, residency and health services from the state.

In the Western region the main priorities centred on the issues of justice and reconciliation. Participants in this region stressed that the absence of justice both for crimes committed during and before the revolution was creating polarization and causing more violence. They assessed that reconciliation efforts were primarily needed to identify who could take part in the political process, to demilitarize armed

⁵⁹ Ibid.

⁶⁰ Under the first Libyan constitution, the 1954 citizenship law of King Idriss stipulated that citizenship was granted by birth, residency, or from a child's mother or father. In 1980, under the Jamahiriya, Colonel Qaddafi changed Libyan citizenship to 'Arab citizenship' and determined that nationality should be given to anyone who claimed allegiance to the Arab nation. When Qaddafi's aspiration for Arab unity changed, the basis upon which Libyan nationality was to be granted also changed as he opened the door to immigration from neighbouring Africa states in the Southern region. This constitutional (dis)order produced several categories of Libyan nationals with different rights and degrees of recognition. See, Martin Baldwin-Edwards, "Between a Rock and a Hard Place: North Africa as a Region of Emigration, Immigration and Transit Migration," *Review of African Political Economy* 33 no. 108 (2006): 1-20.

groups, and to deal with continuing violence in some areas. They wanted the constitution to include the mechanisms of justice that tribal leaders had successfully used in the past, and they saw a need to rebuild the judiciary while preserving local customs.⁶¹ The 2011 uprising was a divisive issue for residents in the Western region as it created deep divisions between the rebels and the Qaddafi loyalists. Participants all noted that reconciliation and even forgiveness of crimes committed was necessary for the Western region – including the “middle regions,” where the civil conflict was most intense – to be stable again.

In parallel to this FDL process, one of the authors conducted a survey asking participants in these dialogues how they viewed the impact of citizens’ involvement in this type of a political process.⁶² Only 14% of the respondents stated that they viewed the collective impact of civil society as ‘highly effective’ and therefore expressed doubts that they could have an influence over the political process. The main reason for their participation in the constitutional debates was to have some kind of ‘representation’ (60%). Participants were also skeptical about the level of openness and responsiveness from decision-makers with only 14% of respondents believing that decision-makers displayed high level of openness to citizens’ views. While casting doubt on the responsiveness of decision-makers, they nonetheless believed that the average citizen had a role in shaping the constitution (77%). This role was said by 66% to be generally through ‘direct actions’ that included taking part in dialogue processes, participating in meetings, voicing opinions in the media, and voting in the referendum. In addition, 79% of respondents believed that their participating in the constitution was beneficial to them (more representation, influence and knowledge gained).

The multiple political and socio-economic priorities and dilemmas present in post-Qaddafi’s Libya underscored the difficulty of the task of the constitutional drafting committee in formalizing a text that would generate and maximize consensus. Although the question of the system of governance in Libya appeared to be a divisive issue, once the terminology of federalism is taken out, the focus is on the sharing the national resources in order to build a national infrastructure (education, health,

⁶¹ Ibid.

⁶² The survey’s 572 respondents were divided into 75% males and 25% females (illustrating women’s reluctance to participate openly in the areas visited). The respondents were 27.7% from the South, 31.3% from the West, and 41% from the East.

energy, transport) and redistribute and create wealth at the local level. The recognition that there are shared basic needs still requires a satisfactory practical answer to the question of the organization and shape of a new state system. The new system would have to necessarily include the administrative restructuring of public institutions and the reorganization of the administrative prerogatives between the regions, and between the regions and the centre. Whichever coalition of military and political actors come on top of the current scramble for state power in Libya, they will have to face this difficult practical and ideational predicament. Today, the armed struggles taking place across the country only heightens the divisions highlighted in the dialogues, as well as the common demands that citizens would make on any new political system.

Conclusion: continuity and change in Libyan political (dis)order

Even in today's fragmented Libyan polity, there are clear elements of continuity that shape the debate about the nature of political and constitutional order in these post-revolutionary and semi-democratic times. Changes in the prerogatives attached to Libyan citizenship remain a good illustration of the continuing relevance of 'formal informal' and 'informal formal' practices of exclusion and inclusion in the country. In the debates about the constitution, while participants demanded freedom and equality, the issue of political affiliation remained a defining and divisive feature of the post-revolutionary order. Just over two years after the date that marked the start of the uprising, the Libyan General National Congress (GNC) endorsed a 'political isolation' proposition of law that excluded Qaddafi loyalists, former bureaucrats and politicians from the new political process. On 9 April 2013, the GNC made several critical amendments to Libya's interim Constitutional Declaration to prevent these categories of citizens from holding positions in government. On 14 May 2013, the GNC formally approved legislation number 13 on 'political and administrative isolation' which prohibited individuals who held public positions between September 1969 and October 2011 from holding any public positions in the future.⁶³ This law directly undermined Article 6 of the 2011 constitutional declaration which stated that 'Libyans shall be equal before the law. They shall enjoy equal civil and political

⁶³ An English translation of the law is provided in the *Libya Herald*, 14 May 2013. Available at <http://www.libyaherald.com/2013/05/14/political-isolation-law-the-full-text/> (accessed 15/09/2013).

rights [...] without discrimination due to religion, doctrine, language, wealth, race, kinship, political opinions, and social status, tribal or eminent or familial loyalty'.⁶⁴ This formalisation of an earlier informal exclusion of specific political actors itself became one of the sources of subsequent conflict in the country.⁶⁵

In the post-revolutionary context, constitutional dialogues could have constituted an interface between citizens and government, as well among the citizens themselves, and enabled them to consider possible solutions and scenarios for the country. However, the continuing 'formal informality' of the Libyan political system made it difficult to establish firm and systemic linkages between these dialogues and the formal process of drafting the new constitution. The mobilization of civil society organizations around constitutional dialogues could at times even generate more frustration than goodwill towards the government when it was perceived to be detached from formal measures of consultation. Just as well-organized consultations about the constitution could be important to stabilise a new political system (viz. Kenya, South Africa),⁶⁶ ill-conceived processes could contribute to further internal dissensions. The troublesome constitutional process in Egypt, which was much debated in the Libyan media at the time, illustrated well how leaving significant segments of the population or of the political elites out could cause an important backlash for the state. Whilst the Libyan government and parliament received technical support from the international community – mainly the UN and UNDP whose mandate was to facilitate to the work of the constitutional drafting body – by the spring of 2013, even members of the UNDP delegation assessed that there was no link between what civil society was organising and what the GNC was planning.⁶⁷

One of the main reasons a formal interaction could not be established was that at the time Libya still had no constitutional drafting body, two years after the production of the interim constitutional declaration. Unlike in other transitional

⁶⁴ The Arabic and English versions of Libyan Interim Constitutional Declaration are provided by the Max Planck Institute for Comparative Public Law and International Law.

http://www.mpil.de/ww/en/pub/research/details/know_transfer/constitutional_reform_in_arab/libyen.cfm (accessed 21/04/2013).

⁶⁵ Mary Fitzgerald, 'Libya's New Power Brokers?', *Foreign Policy*, August 2014

⁶⁶ See, Yash Ghai and Guido Galli, *Constitution Building Processes and Democratization*, (International Institute for Democracy and Electoral Assistance, 2006).

⁶⁷ Interviews with Adam Styp-Rekowski, UNDP expert on Assistance to Building the Constitution, Tripoli 15 April and 25 June 2013.

system where the constituent assembly acts as parliament and as constitutional assembly, in Libya, the GNC only played a role in the constitutional process by determining how the constitutional drafting body was to be chosen. Hence, in a continuation of the earlier patterns of “formal informality,” popular mobilization on constitutional issues was directed at the GNC, even though the GNC was not formally involved in drafting the constitution.⁶⁸ The informality of the relationships between citizens or non-governmental actors and politicians certainly facilitated the creation of communication channels with GNC representatives. However, because this informality applied principally to those with contacts and/or proximity with the Tripoli elite, it commonly ended up perpetuating the type of patronage system that had characterised the *Jamahiriya*.

Libya’s Constitutional Declaration of August 2011 was amended in March 2012 to determine that the constitutional drafting body would be elected directly by citizens with 20 members to come from each of the three regions. Inspired by the model of the 1951 constitution and its committee, the new committee of 60 was meant to draft the constitution within 60 days after convening and to submit it to the GNC before having it approved by referendum. By the summer of 2013, only the electoral law for the constitutional committee members had been adopted, and there was no set date for these elections. At that time, there was also no secretariat and no bureaucracy set up to support the drafting of the constitution; nor was there a formal consultative body. This lack of political and administrative groundwork made it even more difficult for the state elites to engage the population on the substantive issues pertaining to the new constitution. Indirectly, the failure of the GNC in 2012-13 to initiate and lead a national dialogue with citizens to underpin the formal constitutional process contributed to the continuing mobilization of groups and individuals in more localized political activities. These localized dynamics of mobilization in their turn also contributed to the continuing relevance of armed groups as power brokers.

The 2012-2013 efforts at making a new constitution in Libya illustrated how ideational and practical continuities with earlier political practices weighted on and hindered the emergence of new forms of effective civic activism. The informality of the relationship between citizens, politicians and policy-makers that characterised the *Jamahiriya* remained present, often by default, at a time when citizens were

⁶⁸ Ibid.

organizing themselves in new civil society organizations to have an impact on formal democratic institutions. The inspiration of the federal model of governance underpinned by the 1951 constitution remained also well present in the social and political imaginary, often by default as the country's new political elites were too busy grappling with the organisation of political order in a unitary and democratic Libya to elaborate and put forward constitutional alternatives. In this context, the emergence of democratic form of civic activism in debates about the constitution faced an arduous task to be recognised as a valid contribution to this issue and as a set of meaningful practices for the public sphere. In all these respects, the dynamics of the 2012-2013 period will remain very relevant for the social and political sphere in a post-2014 civil conflict Libyan polity.