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ANALYSIS OF THE RULES OF PROCEDURE OF THE GENERAL NATIONAL CONGRESS OF LIBYA

EXECUTIVE SUMMARY

The rules of procedure of the General National Congress (GNC) of Libya are adequate in many respects to ensure a proper parliamentary process, but they should be improved to allow inclusiveness, accountability and transparency. Such changes would help making parliament more efficient.

The rules of procedure outline the means to hold the government accountable, although the opposition in parliament should be given more powers in this regard. The same applies to rules related to parliament as a forum for debate, which are clear but give too little space to parties that are not in the majority. Provisions related to law making are adequate, but, curiously, the rules of procedure require that all acts of the GNC, including all legislation, must be approved by a two-thirds majority. While rules that foster consensus are recommended for important decisions such as constitutional amendment, if used across the board, they undermine the parliament's efficiency and make it difficult for political groups that form the government majority to implement their political programme.

The rules of procedure should further protect the role of the opposition in the parliamentary process. The majority party or coalition can decide the membership of parliamentary committees and the executive bureau. While it is normal that a majority party enjoy a primary position in parliament, the GNC rules of procedure should include safeguards against excessive dominance by the majority, such as provisions that committees and the executive bureau should proportionally represent political groups. The current system's winner-take-all logic undermines political inclusiveness and

representativeness. The problem is compounded because the rules of procedure do not include any provisions for the formation and rights of political groups. Without a formalised role for political groups it is difficult to structure parliamentary work and to ensure proportional representation. A summary of recommendations appears at the end. The analysis is based on the rules of procedure passed by the GNC in August 2012, still in force as of May 2013.

POLITICAL CONTEXT

The General National Congress, Libya's first democratically elected parliament in over forty years, has had to simultaneously build its own capacity while playing the role of a parliament, including enacting often-controversial legislation. The challenge for the GNC has been to implement the full functions of a parliament while designing the institution. The inconsistent application of the rules of procedure demonstrates this challenge. The GNC often takes votes without recording them, schedules votes without quorums, does not work through the formal committee structure, and has few structures in place to guarantee public participation. The GNC has been taking steps to build its institutional capacity, such as through hiring more staff and establishing a committee to review the rules of procedure. This analysis focuses on the text of the rules of procedure to guide efforts in reform that should lead to better implementation.

The GNC was elected on 7 July 2012 based on a parallel voting system that included 80 members from closed lists based on proportional representation, and 120 members elected on the basis of single non-transferable vote (SNTV). The list-based system required a horizontal and a vertical zipper for women, whereby each list alternated by men and women and the heads of lists for one party nationwide alternated between men and women. Thirty-two women were elected from the lists, and one was elected from the SNTV ballots. The SNTV system was included in an effort to reduce the influence of party politics, but many so-called independent candidates later joined parliamentary groups organised around parties.

GNC politics are defined by negotiations between the two largest political blocs: the National Forces Alliance (NFA) and the Muslim Brotherhood-affiliated Justice and Construction Party (JCP). Smaller parties and remaining independents are also involved in negotiations from time to time. Fractiousness among political parties has affected efficiency. Parties have boycotted votes on controversial issues, notably including a local-government act in late January 2013 that sought to empower municipal councils. The boycotts have compounded the GNC's problems in achieving quorums, due to high rates of absenteeism and the suspension of around twenty members by a lustration commission. The NFA boycotted the GNC for a week in January after a proposal by one of its members, backed by seventy-three members, regarding the election of the constitutional committee was not included on the agenda. Party rivalries have also

complicated oversight of the executive, where factions have targeted ministers backed by their political opponents.

The GNC has also not followed the transparency requirements in its rules of procedure. The GNC should be applauded for its live broadcasts of plenary sessions, a first in Libyan history. Yet many decisions are made in closed committees, and the GNC has not published minutes of public committee meetings or plenary sessions. The rules of procedure create a position of spokesperson, which at least formally has limited communication to a single point of contact. Civil-society organisations have been given no formal role, though many GNC members have individually been open to meeting with and hearing proposals from civil-society groups.

The GNC's operational problems have complex reasons, the rules of procedures being only one of them. Amendments to the rules, however, could strengthen the parliament by promoting internal oversight and accountability. In particular, ensuring the balanced representation of political blocs could strengthen the GNC's institutions through promoting collaboration and reducing partisanship. Furthermore, the debate on amended rules of procedure could in itself be beneficial for members of parliament to reach a clearer understanding of their roles and those of parliamentary bodies.

INSTITUTIONS OF THE GNC AND INCLUSIVENESS

Modern parliaments are based on the actions of political groups, which are the formation of members who were elected to the parliament on the ticket of the same political party, or who were elected as independent candidates and later joined a parliamentary group. The role of political groups should be recognised and supported by the rules of procedure. They aggregate interests and positions of members. Parliamentary groups should play key roles in many important decisions, including committee membership and agenda setting. The current rules of procedure do not include any language on parliamentary groups. Many recommendations in this paper pre-suppose the existence of recognised parliamentary groups.

Parliaments as political institutions have political and technical bodies, each with distinct functions in promoting transparency, participation, and accountability. Technical bodies are appointed and not elected, thus their staff are neither participatory nor directly accountable to citizens. Consequently, technical bodies should not make political decisions. The rules of procedure should mention the technical bodies (the secretariat) in two ways: how they are appointed, and how they implement decisions made by political bodies. The political bodies of a parliament are the plenary, the committees, and a lead coordination body: the executive bureau, in Libya's case.

POLITICAL BODIES OF THE GNC

The Libyan rules of procedure lists the following political bodies:

- The president
- The executive bureau
- The plenary
- The committees, both permanent and temporary committees

The president

The president (speaker) has a crucial role in every parliament. S/he conducts debates impartially and should enforce the rules of procedure equally. The president represents parliament to third parties. S/he sets the legislative schedule, moderates debates and determines the order of precedence of motions brought forward by members. Presidents are usually party politicians, making it challenging to remain impartial in a partisan environment.

This challenge can be addressed in two ways: First, by sharing some of the president's responsibilities with a collective body, such as the executive bureau or other committees where opposition is represented. Second, the more clearly the rules are defined, the less discretionary decisions need to be made. For example, if the rules of procedure (or decisions of the executive bureau) define the sequence of the speakers during the debates, the president cannot be criticised for following the rules. In the absence of such rules or decisions by the executive bureau, the president will be more easily exposed to criticism over choices that s/he makes in setting the order of speakers.

The Libyan rules of procedure charge the president with some decision-making responsibilities with high political consequences. Under the rules of procedure:

- The president convenes congressional committees discussing urgent matters (Article 7/9), authorising the president to decide what matter is urgent
- The president can decide on printing and publishing of the minutes in an appropriate manner (Article 35), leaving open whether the president can withhold publication of the minutes
- Committee chairpersons present their reports to the president for consideration of their inclusion on the plenary agenda (Article 37), leaving open whether the president is entitled to not include a report on the agenda
- The president, when deciding on the sequence of the speeches, takes into consideration also "discussion interests" (Article 96), meaning that the president is supposed to make decisions on behalf of parliamentary groups to which he does not belong

These elements of the Libyan rules of procedure put the president into situations where s/he might make political decisions that could damage the perception of neutrality.

It would be in the interests of the parliament as a whole, and for the president individually, to relieve him or her from discretionary decision-making on politically sensitive questions, or, when it is not possible, to share such responsibilities with an inclusive body, such as the executive bureau.

The executive bureau

Political bodies equivalent to the executive bureau are usually designed to achieve consensus among parliamentary groups on certain items such as the legislative agenda, speaking times, the budget, the appointment of the secretary general, and preparations for plenary sessions.

The competencies of the GNC's executive bureau are similar. They could be expanded to include agreement on the allocation of speaking time between parliamentary groups and independents. The parliamentary groups would then determine how to fill their time from among their membership. The executive bureau is further entitled to decide on objections regarding the minutes, and even the voting results (Article 5/2).

International best practice dictates that executive bureaus include all parliamentary groups. The GNC rules of procedure do not prevent the majority party or coalition from filling the entire executive bureau. According to Article 4, the executive bureau comprises the president, two vice-presidents, a rapporteur, an assistant rapporteur, three observers and the official spokesman, without any provision on the distribution of these positions among parliamentary groups. Furthermore, the rules prescribe majoritarian elections for the president and vice-presidents (Article 106), implying that it is possible for the majority to elect all members of its own party group(s). This arrangement does not lend itself to consensus. It is recommended that every parliamentary group be entitled to nominate one vice-president to the executive bureau, and that decisions are made by consensus. The president or a majority should make decisions only if consensus is not reached within a certain time period in the interest of efficiency.

Other permanent committees

The main function of parliamentary committees is to facilitate the work of the plenary politically and professionally. Permanent committees assist the normal functioning of the parliament, while temporary committees are most often *ad hoc* fact-finding committees. The committees in either format do not make decisions on behalf of parliament, but rather prepare its decisions. The committees can implement their tasks in a credible way only if their membership reflects the composition of the parliament as a whole.

The Libyan rules of procedure indicate that agreement should be reached on committee composition, implying a consensual process. They also indicate, however, that in absence of agreement, committee members will be elected in the same way as members of the executive bureau (Articles 12 and 106). The possible consequence of

majoritarian voting is that the majority could elect *all* committee members from its own ranks. The rules of procedure should stipulate that committee membership reflect the proportion of political groups in the GNC. Political groups should decide whom they nominate for their membership slots. The allocation of the committee presidencies should be negotiated among parliamentary groups in good faith at the beginning of each parliamentary term with the understanding that opposition political groups hold the presidency of some committees.

Committees elect their officials (presidents, vice-presidents and rapporteurs), but elections are not valid unless an absolute majority of the members of the committee is achieved (Article 14). This means that committee officials could be members of the ruling coalition. Usually, presidencies and vice-presidencies of committees are distributed proportionally, making them more inclusive.

Agenda setting

Democratic parliaments endeavour to achieve broad consensus on agenda setting. To this end, the executive bureau, or the plenary, will adopt the agenda. No preliminary agreement, however, should prevent any members to make proposals to the agenda. Members should always be entitled to make proposals regarding the agenda both in the plenary and in the committee meetings. In case of disagreement, a majority vote decides the agenda, but the public should be aware of such proposals. It is recommended that the agenda of the plenary be decided by the plenary itself upon proposal by the president, whose proposal is based on the deliberation of the consensual political body, like an executive bureau (differently composed).

TECHNICAL BODIES OF THE GNC

The rules of procedure contain a few regulations concerning the tasks of the secretariat, but regulations concerning the appointment of the administrative bureau and its leadership do not promote consensus building. The head of administration is appointed by the GNC by majority decision, on the proposal of the GNC president (Article 168). This means that, by default, the head of the administration will be elected by members belonging to the majority. According to best international practices, the secretariat is led by a secretary general, who is appointed by the speaker of the parliament with a consensual decision of the executive bureau. All other administrative appointments should be made solely by the secretary general. The potential of a politically biased administration could threaten parliamentary stability.

THE STATUS OF GNC MEMBERS

The rules provide provisions for resolving conflict of interests by banning members from holding other official positions (Article 46).

Immunity

GNC members are granted immunity from prosecution for potential crimes committed in connection to their official duties. If an application for lifting immunity were presented, the president would convene a joint meeting of the executive bureau and the justice committee (Article 57). Since the executive bureau currently comprises members belonging to the majority only, this meeting of the two committees may result in a representation of the majority in greater proportion than in the GNC as a whole. Such majority might undermine the credibility of the process, making it possible that the lifting of the immunity is decided for political considerations rather than legal ones.

Disciplinary actions and lifting of immunity from criminal prosecution should be fair, neutral and subject only to law and not political considerations. Democratic parliaments make exceptions for cases of *delictio in flagranti*, when the approval of the parliament is not a condition to start legal proceeding against a member of parliament. Article 55 makes the exception for cases of *delictio in flagranti*, as well as “indecent and dishonest misdemeanours.”

Freedom of speech

The rules of procedure, which acknowledge the importance of the freedom of speech, also limit the freedom of speech “so far as not to contradict public order and ethics” (Article 2). The president can prevent speakers if they use “abusive language against parties or blocs in congress, or a member of congress” (Article 102/2). Such a ban without further clarification could be misused as a platform for banning critical remarks, which would stifle genuine discussion and oversight of the government.

THE FUNCTIONS OF PARLIAMENT

Legislative function

The legislative function of a parliament is well designed if sufficient time is available for the parliament to study the tabled bills, for the committees to help parliamentarians analyse bills and for the political groups in the plenary to arrive at conclusions regarding bills as to whether or not they will be useful for the society. Debates over bills also enable the opposition to show what bills they would table if they had the majority in the parliament. Moreover, debates allow the opposition to criticise bills and force the majority and the executive to publicly defend and justify the merits of their proposed bills.

The rules of procedure by and large adequately regulate the legislative process. The rules outline the complete procedure of law making, including proposal, committee review, plenary debate, and voting. The rules of procedure should be amended to increase the inclusivity of the law-making process beyond the opposition, and to allow representatives of civil society or the wider public to be heard. While this would slow the process to an extent, legislation fundamentally concerns the citizens, and involvement of civil society would enhance both public perception and quality of parliamentary work. It is

recommended to institutionalise public hearings for civil-society organisations during the committee phase of the legislation process.

According to Article 70, all decisions except constitutional amendment must be made by an absolute majority of the members. While an absolute majority of fifty per cent plus one (50% + 1) is usual for decision making, in many parliaments decisions are made and laws passed with 50% + 1 of *votes cast*, rather than of *all members*. Requiring a majority of all members can create challenges to efficiency because often not enough members will be present. Changing the rules to an absolute majority of votes cast would require a transparent process of agenda setting based on long-term planning, to make sure that members are not caught unaware by parliamentary decision-making.

Oversight of the executive

The rules of procedure enable members to ask ministers questions in a way generally applied in democratic parliaments (Article 143). It is possible under Article 157 of the rules of procedure to establish fact-finding committees (investigative committees). The rules of procedure currently do not enable the parliamentary opposition to establish such committees independently, empowering the governing party or coalition to block an investigation into its own practices or those of its government ministers. Rules of creating investigative committees should not enable the majority to interfere with investigations initiated by the opposition.

According to Article 42, a member can ask for information and data through his or the competent committee only. This provision enables the majority to block such request with a majority vote. In democratic parliaments, each member is entitled fully to ask questions and to access data and information. The limitation in the Libyan rules curbs the rights of the opposition. It is recommended that the restriction be abolished, and that the rules be amended to allow the opposition to initiate investigative committees alone, without approval of the majority.

Over-centralised parliament

It is typical that the president represent the parliament to the public and third parties, but it is cumbersome that the president sign and stamp all letters (Article 7/10-11). Such a formality can greatly slow down parliament's functioning. Formal letters to the executive power, as well as other messages, should be signed by the relevant person representing the parliamentary body, such as a committee president. The president should sign letters from the plenary, all committee presidents, and the executive bureau. It is also unnecessary that committees must invite government members through the president (Article 25/2).

TRANSPARENCY AND ACCOUNTABILITY TO THE PUBLIC

Accountability and transparency

Because elected leaders are accountable to the public, the work of the parliament should be transparent. Without transparency, there is no accountability because citizens cannot learn what was discussed, what were the positions of the parties and members, and how they voted.

Plenary meetings should be accessible to citizens and the media. Agendas, motions, questions to the executive, as well as the answers and minutes of the meetings, should be made fully available. As committee meetings may serve as a forum for compromises, they do not need to be fully transparent. However, at least the agenda, the attendance list, and the decisions should be publically accessible. Exceptions should be extremely limited and precisely drafted. The list should be exhaustive and conditional on a qualified majority vote.

The rules of procedure of the GNC provide in general sufficient regulations for transparency, but some are ambiguous. The official "observer" of the GNC will give authorisation to the public to attend and follow congress sessions (Article 11/4). The rules of procedure do not define the role of the observer. The language suggests that the observer may make *ad hoc* decisions in this respect, instead of a general regulation that the public may attend the plenaries without any restriction. The conditions (how many people may be on the balcony at the same time, security provisions, etc.) should be set objectively — preferably by the executive bureau — and the observer, or the secretary general and her/his staff, would only implement these regulations.

While Article 66 provides that the sessions are public, the majority may close meetings on the request of at least twenty GNC members or a member of the government. International experiences suggest that the temptation is high in case of controversial issues to have meetings behind closed doors. The current law does not prevent the majority from calling a secret meeting if the GNC is discussing a topic that is uncomfortable to the majority. The conditions to demand private meetings should be subject to a qualified majority, so the consent of the opposition or a significant part of the opposition is required.

The minutes of the plenary containing each word and each decision that is said in the plenary should be fully accessible to the public both in printed form and online. The provision that "the congress president shall have the right to decide on printing and publishing of these minutes in an appropriate manner" (Article 35) should be rephrased so that records are made available automatically. No one, including the president or the executive bureau, should be able to block the process. Similarly, the provision that "the president shall have the right to give instruction for deletion of any speech, from the session minutes, to be issued by one of the members in contradiction to the provisions of these rules" (Article 100) should also be

revised. Only knowledge and awareness enables citizens to have public discussion on events in the parliament, and only awareness can help them to make proper decisions in future elections.

Article 10 provides rules for an official spokesman. In most democratic parliaments, the president may have a spokesperson, but the activities of the parliament are also communicated by the parliamentary groups and by the executive bureau. It is important that a GNC spokesperson does not replace the communication of the parliamentary groups to the public.

The principle of inclusivity does not apply only to the inclusion of the opposition, but also to the society at large. It is therefore recommended that the rules of procedure build in a role for civil-society organisations. All committees should hold public hearings to listen to the view of civil-society groups.

PROCEDURAL FAIRNESS: RIGHTS OF THE OPPOSITION

Democratic rules of procedure should enable the work of both the majority party or coalition and the opposition. Inclusive rules of procedure that grant sufficient and proportional rights to the opposition to take a substantive role in law making and oversight of the executive can be inconvenient to the majority. Nevertheless, there are strong arguments in favour of granting wide responsibilities to the opposition and other minority groups in parliament.

First, the way the majority treats the opposition will be the way the current majority will be treated should they lose elections. As a consequence, rules of procedure should be adopted by a wide consensus expressed in a qualified majority in the parliament in order to build trust and a collaborative environment. Qualified majorities provide a safeguard that no majority in the future will be able to amend the rules of procedure to oppress the opposition.

Second, the role of parliament is to have the political views debated during parliamentary sessions. Should the opposition feel that it has no adequate opportunities to criticise the executive and to articulate its own policies, the opposition will more likely take the debates out of the parliament. Street demonstrations are legitimate in a democracy, but they should not replace parliamentary debate. Such a situation would not lie in the interest of either the government or the opposition. These scenarios can be prevented by fair treatment of the opposition and their proper inclusion in all parliamentary procedures.

The rules of procedure should include provisions that protect specific rights of the opposition. The opposition should be entitled to have time slots for plenary debate, the agenda of which is set by the opposition. Beyond this, while the majority should remain in general responsible for the agenda of the parliament, the public is entitled to know what alternative proposals were made to the agenda. In this sense, Article 94, which prevents the

person who proposed a bill even to argue for her/his proposal, is unduly disadvantageous for the minority. The allocation of speaking time, under the agreed slots, should be the competence of the parliamentary groups and not the president alone.

Rules preventing filibuster (extending debate to prevent voting) are necessary in all democratic parliaments. Attention should be paid, however, that preventing filibuster should not result in preventing the opposition to express its view. The rule that each member has the right to propose closing the discussion after two members have spoken in favour and two have spoken against (Article 104) is excessive in preventing a filibuster. More time should be allowed before debate can be closed.

SUMMARY OF RECOMMENDATIONS

The rules of procedure should be amended in the following areas:

Parliamentary groups, the opposition, and procedural fairness

- Define the role of parliamentary groups
- Achieve a multi-partisan balance of parliamentary groups in the executive committee
- Balance committee membership and leadership according to the distribution of parliamentary groups
- Protect specific rights of the opposition, such as time slots for plenary debate
- Enable the opposition to initiate its own investigations of the government without interference by the majority
- Allow the plenary session to set its own agenda, based on the proposal of the executive bureau
- Allow more time for debate before debate can be closed by plenary vote

Accountability and transparency

- Publicise agendas, questions to the executive and their answers, motions and minutes of meetings
- Require a qualified majority to close meetings to the public
- Increase the inclusivity of law making beyond the GNC to include civil-society organisations and the public at large, such as by institutionalising public hearings during the hearing phase
- Enable the executive bureau to appoint a nonpartisan secretary general, who then independently makes all other administrative appointments
- Clarify the role of the GNC observer

Procedural efficiency

- Shift key prerogatives of the president — such as setting the agenda, allocating speaking time and amending the minutes — to the executive bureau
- Enable committee heads to sign official letters relevant to their own business

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ABOUT H2O

H2O was founded in September 2011 by a group of ambitious young people from scientific backgrounds and different social orders with one goal: to activate the role of youth and promote democratization in Libya. H2O works to raise youth awareness, particularly with regard to political and civil issues, as well as seeking to connect ideas and opinions and aspirations of the Libyan youth and translating them into demands and proposals for presentation to responsible parties. H2O also strives to consider young people's reactions to the programs offered to them by the state adopting, transparency and credibility in the practice of our volunteer activities and using clever, interactive methods. H2O's objectives are: (1) supporting the democratic transition in Libya; (2) activating the role of youth in the civil sphere; (3) increasing the level of awareness among young people of Libya in the field of civil and political awareness; (4) creating a link between youth and the responsible authorities.

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