

## **Law to Promulgate a Law on Amending Certain Provisions of the Constitution (1)**

**We Idris I, King of the United Kingdom of Libya, have ratified and issued:**

- The following Law, as enacted by the Senate and House of Representatives. The legislative chambers have approved the provisions thereof in respect of amending the form of the federal government.

### **Article (1)**

The federal system in the Kingdom of Libya shall be repealed and replaced by the unitary state system as prescribed in the Constitution and this Law.

### **Article (2)**

Articles 2, 3, 26, 40, 44, 45, 68, 71, 79, 84, 85, 90, 94, 96, 98, 100, 101, 102, 103, 107, 109, 125, 126, 130, 172, 198 and 200 of the Constitution shall be amended in the form set out in Appendix No. (1) of this Law.

### **Article (3)**

The titles of Chapter IX and Chapter X shall be replaced as follows:



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(Financial System) and (Local Administration).

The title of Chapter III, along with its first and second subtitles shall be repealed.

#### **Article (4)**

1. Articles 36, 37, 39, 95, 173, 174, 175 and 199 of the Constitution shall be repealed.
2. The articles provided for in Chapter VIII, X and XII of the Constitution shall be repealed and replaced with articles 2, 3 and 4 of the Appendix of this Law, respectively.

#### **Article (5)**

The terms (federal), (Federation), (union) and (united) shall be removed wherever they appear in the Constitution.

#### **Article (6)**

All ministers shall implement this Law under their respective purview. This Law shall enter into force as of the date of publication in the official gazette.

Issued in the Royal Palace on 2 Dhul Hijjah 1382 H

Corresponding to 25 April 1963 AD

**Idris**

**By order of the King**

**Mohieddin Fikini**

**Prime Minister**

**Mohieddin Fikini**

**Minister of Foreign Affairs**

**Mansour Qadara**

**Minister of Finance and National Economy**

**Wahbi Al-Bouri**

**Minister of Petroleum Affairs**

**Hamid Al-Obaidi**

**Minister of Planning and Development**

**Wanis Al Qaddafi**

**Minister of Interior**

**Saif Al-Nasr Abdul-Jalil**

**Minister of Defense**

**Muhammed Alkrikshi**

**Minister of Industry**

**Omar Mahmud al-Muntasir**



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**Minister of Justice**

**Ahmad Bishti**

**Minister of Health**

**Al Mehdi Bouzou**

**Minister of Labor and Social Affairs**

**Mohammed Yassin Al-Mabri**

**Minister of Transportation and Public Works**

**Hamid Abu Sarwail**

**Minister of Agriculture and Livestock**

**Ahmed Fouad Shennib**

**Minister of Knowledge**

**Abdul-Latif Al Shweiref**

**Minister of News and Guidance**

**Ali Al-Hosoumi**

**Minister of State for Parliamentary Affairs and Conferences**

## **Appendix No. (1)**

Article (2)

Libya is a State having a hereditary monarchy, and its system of Government is representative. Its name is "THE KINGDOM OF LIBYA".

Article (3)

The Kingdom of Libya is part of the Arab world and a portion of the African Continent.

#### Article (4)

The boundaries of the Kingdom of Libya are:

On the North, the Mediterranean Sea;

On the East, the United Arab Republic and the Republic of Sudan;

On the South, the Republic of Sudan, Chad, Niger and Algeria; and

On the West, the Republic of Tunisia and the Republic of Algeria.

#### Article (26)

The right to form peaceful associations shall be guaranteed. The exercise of such right shall be regulated by law.

#### Article (40)

Sovereignty belongs to Allah, and by the will of the Almighty it is entrusted to the nation, and the nation is the source of authority.

#### Article (44)

Subject to Article 40, Sovereignty is vested by the nation in trust with the King Mohammed Idris al-Mahdi al-Senussi and after him to his male heirs, the oldest after the oldest, degree after degree.

#### Article (45)

The throne of the Kingdom shall be hereditary pursuant to the two Royal Orders issued on 22 Safar 1374 H and 22 Rabi Al Thani 1376 H, respectively.

Each of these two Orders regulating the succession to the Throne shall have the same force as an article of this Constitution.

#### Article (68)

The King shall be the Supreme Commander of all the armed forces in the Kingdom of Libya. The duties of the armed forces are to protect the sovereignty, territorial integrity and security of the country. The armed forces include both the army and security forces.

#### Article (71)

The King shall create and grant titles, decorations and all other signs of honor, but creation of civil titles shall be prohibited.

#### Article (79)

Before assuming office, the Prime Minister and ministers shall take the following oath before the King:

“I swear by Allah Almighty to be loyal to the country and to the King, observe the Constitution and the laws, and fully safeguard the interests of the people.”

#### Article (84)

The Council of Ministers shall be responsible for the administration of all internal and external affairs of the State.

#### Article (85)

For the signatures of the King concerning the affairs of the State to be effective, they require the countersignature of the Prime Minister and the competent ministers. The Prime Minister shall be appointed and relieved of office by virtue of a royal order, but the ministers shall be appointed and relieved of office by decrees duly signed by the King and the Prime Minister.

#### Article (90)

During their term of office, ministers may not assume any other public office, practice any other profession, purchase or rent any State property, nor sell to or barter with the State any of their property. They may not take part, directly or indirectly, in undertakings and tenders invited by the public administration or the institutions falling under the administration or control of the State. They may not be members of the board of directors of any company, nor may they take an active part in any commercial or financial business.

#### Article (94)

The Senate shall consist of twenty-four members appointed by the King.

#### Article (96)

In addition to the requirements prescribed in the Electoral Law, Senators must be Libyan nationals and, upon appointment, their age must not be less than forty Gregorian years.

#### Article (98)

The term of Senate membership shall be eight years. Half of the senators may be replaced every four years. Outgoing members may be re-appointed.

#### Article (100)

The House of Representatives shall consist of members elected by means of a universal and secret ballot in accordance with the Electoral Law.

#### Article (101)

The number of deputies shall be determined on the basis of one deputy for every twenty thousand people or every fraction of this number that exceeds one half.

#### Article (102)

Libyan citizens who reach the age of twenty-one Gregorian years shall have the right to vote as prescribed by the Law. Women may exercise this right in accordance with the conditions set out in the Law.

#### Article (103)

A representative must:

1. Have completed 30 Gregorian years of age;
2. Be inscribed on one of the electoral rolls; and



3. Not be a member of the royal family.

In addition to other conditions prescribed by the Electoral Law.

Article (107)

The order to dissolve the House of Representatives must include a voter invitation to carry out new elections within a period not exceeding three months. It must also set a date for the new Chamber to convene within the twenty days following the completion of the elections.

Article (109)

Membership in the Senate may not be combined with membership in the House of Representatives. Other cases of incompatibility shall be determined by the Electoral Law.

Article (125)

During the session, no criminal procedure or arrest may be made against any member of the Parliament without the authorization of the Chamber of which he is a member, except in cases of flagrante delicto.

Article (126)

Members of the Parliament, other than those holding governmental positions that are not incompatible with membership in the Parliament, shall not be awarded decorations or medals during their term of office, except for military ranks, decorations and medals.

## Article (130)

Half of the Senate's members shall be replaced within the three months preceding the expiration of the term of outgoing members. If the replacement could not be carried out on time, the term of outgoing members shall be extended until new members are appointed.

## Article (172)

All state revenues, including taxes, fees and other funds, shall be transferred to the public treasury as per the provisions of the Constitution and laws.

## Article (198)

For the revision of this Constitution, each of the two Chamber shall adopt, by an absolute majority of all its members, a resolution stating the necessity and subject of such revision. After discussing the matters to be revised, the two Chambers shall adopt a resolution in their respect. The discussion and voting in both Chambers shall not be valid unless three-quarters of the members are present. For a resolution to be valid, they must be adopted by a majority of three-quarters of the members present in each Chamber and must be ratified by the King.

## Article (200)

Immigration to Libya shall be regulated by the law.

## Appendix No. (2)



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## Chapter VIII

### The Judiciary

#### Article (141)

The Supreme Court shall consist of a President and judges appointed by a decree, and, before assuming office, they shall take the oath before the King.

#### Article (142)

The President and judges of the Supreme Court shall retire upon completing 65 Gregorian years of age.

#### Article (143)

The competencies of the Supreme Court shall be determined by the law, which shall also arrange other judicial bodies and determine the competencies thereof.

#### Article (144)

Court sessions shall be public, unless a court decides to confidentially hold a session to maintain public order and morality.

#### Article (145)

Judges shall be independent and shall only be answerable to the law in the administration of justice. They may not be removed from office, as provided for in the law.

#### Article (146)

The conditions of appointing judges, transferring them and disciplining them shall be prescribed by the law.

#### Article (147)

The Public Prosecution function, competencies and connection to the judiciary shall be regulated by the law.

#### Article (148)

The appointment of members of Public Prosecution in courts and their discipline and removal shall be in accordance with the requirements prescribed by the law.

#### Article (149)

The Law shall regulate the arrangement and competencies of military courts, as well as the requirements that must be met by those who take charge of the judiciary therein.

### **Appendix No. (3)**

#### Local Administration

#### Article (176)

The Kingdom of Libya shall be divided into administrative units in accordance with the law issued in this regard. Local and municipal councils may be formed

therein. The Law shall determine the scope of these units and regulate such councils.

## **Appendix No. (4)**

### Chapter XII

#### Transitional and Temporary Provisions

##### Article (201)

Until the Local Administration Law is issued, the Kingdom of Libya shall be divided into 10 major administrative units named by a decree of the Council of Ministers. Each unit shall be headed by an employee appointed by a royal decree.

##### Article (202)

The Senate shall maintain its present form until the expiry of the membership of each member.

##### Article (204)

All the laws, legislation, orders and declarations applicable in any part of Libya at the enforcement date of this Law shall remain in force to the extent that they do not conflict with the provisions of the new constitutional amendment, until they are expired, repealed, amended or replaced with other legislation enacted in accordance with the rules set out in this Constitution.

## Explanatory Memorandum

On 7 December 1962, amendments were made to the Constitution in accordance with the provisions of Law No. (28) of 1962. As soon as the amended version was published, the people of all classes received it with deep satisfaction. Soon afterwards, the higher authorities were stormed with the people's ardent desire not only to support the amendments, but also to accelerate the attainment of the desired goal of realizing a comprehensive, complete unity in the entire Libya.

Since such a desire was met with complete acceptance and applause by everyone, as well as common feelings driven by the belief in the benefits and advantages of a comprehensive unity for this blessed country, it is no surprise that the government announced a statement before the nation's representatives unveiling its internal and external policies and sincere determination to bring this national desire into existence without delay.

In honor of the government's promise and in response to the people's desires, the government has completed this draft law with the purpose of realizing the country's aspirations towards unity under the banner of glory and honor.

It is no secret that our country's implementation of the federal system has uncovered defects that we cannot remain silent on or turn a deaf ear to. Here, we cite a few examples of such defects as follows.

First: The defect of this "federal" system is obvious from the financial point of view. The existence of administrative bodies and councils representing the executive authority, along with a large number of employees, is necessary to implement this system in the provinces, not to mention the bodies and



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employees of the federation itself. This has entailed massive expenditures that depleted the state budget.

While the jurisdiction of the provinces has been restricted by the constitutional amendment made on 7 December 1962, the multiplicity of administrative bodies and councils across all provinces still constitutes a burden on the country's budget.

Second: The defect is more obvious in terms of control, i.e. the control of the Audit Bureau. For any system intended to be implemented, there is no option but establishing an authority to ensure the sound implementation of such system with the responsibility of controlling the performance of all sections of the executive authority. Such a control authority should be established upon constitutionally sound basis. Since the federal system and the attendant distribution of jurisdiction between the Federation and provinces has posed great difficulties, it became impossible under such system to establish a strong control authority in full conformity, in terms of composition, with the constitutional provisions. Therefore, the control has become unfit for purpose.

In light of the constitutional defects uncovered over the past years, which are many compared to the above few examples, there is a need for proper consideration to ensure the welfare of the people and maintain the public interest by proceeding with the amendment of the constitution to meet the needs of our people. This was represented in shifting from the federal system to a unitary state system; a simple and flexible system that fulfills the wishes of all citizens.

It goes without saying that the adoption of a unitary state system is not a novelty in our country. It is well established in the constitutional jurisprudence that the transformation of a state from the federal to the unitary system is a natural manifestation and a normal end of such a federal system.

Even the current constitution has expected this end in Article (199) which provides as follows: “Concerning the amendment of provisions related to the federal form of government, the approval of all legislative chambers of provinces of the proposed amendment must be added to the provisions of the preceding article. Such approval shall be made by a resolution issued by the legislative council of each province before submitting the amendment to the King for ratification.”

Accordingly, the proposed constitutional amendments are mostly required for the country’s transition from the federal system to the unitary state system. The main grounds of the constitutional amendments are summarized as follows:

First: The parliamentary representative system has remained unchanged. This is an essential guarantee in democratic countries. It was decided to maintain the two-chamber system - the House of Representatives and the Senate - in order to avoid what might happen and the usual tendency of either chambers to monopolize power, and to prevent troubled relations between government entities. The dual nature of the chambers serves as a means of differentiation between them in the method of formation, allowing one of them to represent the competencies and interests that cannot be represented by the other. This, in turn, leads to the enhancement of general trends.



Second: Since the current Senate is formed on the grounds that the State is acting under the federal system wherein states are represented equally, the transition to the unitary system would change the basis on which the Senate was formed. Accordingly, the foundation of this new formation is the appointment of all Senate members. In addition to the elected members of the House of Representatives, the political instrument of the country is to be enhanced in the presence of such persons who have the ability to employ their personal status, competence, previous national service, knowledge, national balance and professional experience to bring sound, important and mature opinions and sincere feelings into the political life.

Many of those persons, however, refuse to take part in electoral contests for the House of Representatives. So, in many countries they are appointed in the Senate and, thus, represent the nation to the fullest extent possible.

Third: The number of Senate members is 24; the same number of the previous Senate members. The amendment has considered not to increase the number of the Senate members, as it is well established in social science and large chambers that the larger the number of members the lesser the fruitfulness of discussions and the independence and maturity of opinions.

Furthermore, we have kept the number of Senate members due to the requirements of good governance and the current conditions of the country.

Fourth: With regards to the local administration, the articles of Chapter X of the Constitution on the provinces have been repealed. It is no longer appropriate to maintain a provinces system under the unitary system. Therefore, this was

replaced with another system dividing the Kingdom of Libya into administrative units organized under the law.

It is well understood that the law organizing these main units will provide for dividing each administrative unit into other parts, as needed. On the other hand, the legislative and administrative chambers of provinces have been abolished. We have been of the opinion that local and municipal councils of the new administrative units shall be established.

Fifth: Regarding the executive authority, it shall be vested in the King. In continuation of the current situation, the King shall govern through his ministers. According to the new situation, the jurisdiction of the Council of Ministers has become inclusive of all parts of the State in all executive works. Accordingly, the administrative chambers in provinces have been abolished and all their competencies were transferred to the Council of Ministers.

Sixth: The State judiciary authority shall be vested in the Supreme Court and other civil and Sharia courts of all levels. They shall render verdicts in the name of the King as per the Constitution and law. In order to ensure justice for everyone and provide judges with assurance to maintain justice and rightfulness in their work, it was expressly stated, as a guarantee for them, that judges may not be removed from office, according to the law as well as the practices adopted by all civilized countries.

In light of this constitutional reform, it was envisioned, for the public interest, that some existing provisions need to be corrected, amended, redrafted or



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repealed. Before explaining some of these provisions, I would like to point out that the new constitutional amendments included the following:

First: Article (40) of the Constitution stipulated that “Sovereignty belongs to the nation, and nation is the source of authority.” Whereas sovereignty actually lies with Almighty God, as per Islamic Sharia jurists, this provision was amended to put things back on track. Thus, the amended provision reads: “Sovereignty belongs to Allah, and by the will of the Almighty it is entrusted to the nation, and the nation is the source of authority.”

Similarly, Article (44) was amended as follows:

“Subject to Article 40, Sovereignty is vested by the nation in trust with the King Mohammed Idris al-Mahdi al-Senussi and after him to his male heirs, the oldest after the oldest, degree after degree.”

Second: Since the Kingdom of Libya, in its concrete and tangible reality, is part of the African Continent and in reflection of the wishes of the peoples of our African Continent, and since we are blessed to be part of the Arab race and have Arab brothers who share with us the same feelings and aspirations, it is no wonder that Article (3) of the Constitution should refer to these two facts.

The rest of the amended provisions are as follow:

1. Article (68), which stipulated that “The King shall be the Supreme Commander of all the armed forces in the Kingdom of Libya” was amended to clarify that the “armed forces” term includes both the army and security forces, and this is an acknowledgement of the previous status before amendment. The

article also identified the armed forces' duties, namely protecting the sovereignty, territorial integrity and security of the country.

2. Article (71), which stipulated that the King shall have the right to create titles, ranks, decorations and all other signs of honor, has been amended. Since the independence, it is established that the King has never used his right to grant civil ranks such as Bey and Pasha. Moreover, such titles are no longer appropriated for this modern age. Thus, this article has been amended to serve this purpose and keep up with the prudent policy of His Majesty. Accordingly, this is an acceptable procedure that conforms with Islam's democracy and rules of equality.

3. Article (79), which stipulated that the Prime Minister and ministers shall take the oath before the King before assuming office, was amended. Since the article did not provide for the form of such oath, the amendment addressed this deficiency by expressing a certain form of the oath.

4. Article (90) provided for the business activities that ministers may not participate in during their term of office. The article was amended to prevent ministers from selling to or bartering with the State any of their property.

5. The amendment to Article (102) allowed women to exercise their right to vote in accordance with the conditions set out in the law on the grounds that women make up half of the society. Modern legislations tend to grant women their natural right to take part in public life. Thus, they now hold several public offices and are allowed to join the university. Therefore, in line with such developments, it is necessary to grant women the right to vote.

The technical drafting of some articles has been amended. This includes Article (85) which stipulated that “For the signatures of the King concerning the affairs of the State to be effective, they require the countersignature of the Prime Minister and the competent ministers, save for the decree in which the Prime Minister is appointed or relieved of office, which shall be signed by the King alone. Decrees in which ministers are appointed or relieved of office shall be signed by the King and the Prime Minister.”

Whereas the King alone is in charge of signing the Prime Minister’s appointment instrument, it should be described, from the technical and constitutional views, as a “royal decree” rather than a decree. The expression “save for” cited in this article may give the impression that the King is not entitled to issue royal decrees except for appointing the Prime Minister, which is not the true meaning. Pursuant to the true law, the King may issue royal decrees other than those relating to the appointment of the Prime Minister.

Certain articles have been repealed:

i. either as a result of the new constitutional amendment, such as repealing Articles 141-158 on the Federal Supreme Court. These articles were replaced with other articles in Chapter VIII related to the judiciary. The new articles addressed the Supreme Court, other courts and Public Prosecution. Articles of Chapter X on provinces were repealed. The “provinces” themselves were repealed, and those articles were replaced with other articles on local administration; or

ii. because some articles have exhausted their purposes, such as the articles of Chapter XII of the Constitution, which include transitional and temporary provisions. Such articles were repealed and replaced with other articles appropriate with the status quo. For example:

The current Senate must be reconstituted to accommodate the new foundations. Since this would take some long or short time, it has been opined, to ensure the continuation of the work of legislative bodies, that the Senate should maintain the current formation until the term of each members expires.

Finally, it is unquestionable that the success of the basic law of State depends on how appropriate it is to the customs of the people in their original environment. The purposes of laying down the constitution provisions in any given country are to ensure national interests, pave the way for establishing justice and internal security, provide means of protecting the country's sovereignty and integrity and establish the principles of freedom and equality.

The constitution can be viewed as sound and successful as far as it contributes to achieving the foregoing purposes, goals and objectives.

We should keep in mind that what befits a particular country at a given time may not be suitable for the same country in another time. Like any other system of government, the parliamentary system cannot grow and thrive unless it exists in an appropriate environment. Ultimately, everyone has agreed to choose the unitary state system for our country.

In conclusion, we are all honored to extend our deep thanks and gratitude to our inspiring leader and great King for this blessed step, which has arisen from his



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great wisdom and received his full, royal support. We will move forward with God's blessings and may God guide us on our way.

**Mohieddin Fikini**  
**The Prime Minister**



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