

Public Rights and Freedoms in the Libyan Constitutional Declaration 2011

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Abstract

The most important goals of the popular revolution in Libya in February 2011, which turned into an armed clash to be issued a constitution that guarantees rights and freedoms, which was violated during the former regime. The Libyan constitutional declaration 2011 translated the ambitions and aspirations of the Libyan people. And even if it was set to only organize a period of transition. It is in accordance with the objective criterion for the definition of constitutions, considered as a constitution for containing constitutional themes. Also, according to the constitutional standard, it is considered a constitution; for the existence of the features of the formal criterion in terms of its issuance by a native constitutive authority, that is an authority that intervenes for constitution-making in the absence of a constitution in the country, as well as in terms of procedures to amend or repeal any text therein. Thus, the Libyan constitutional declaration has a constitutional nature that is not different from permanent constitutions and its texts transcend to all legal standards and norms. The texts of the rights and freedoms contained in the Libyan Constitutional Declaration (Part Two, Articles 7-16) approved many of the provisions of Islamic law, international conventions and constitutions of countries with mature constitutional experience. Its articles, which were generally considered, brief and short, came to specify many of the texts to an important issue in constitutions, namely rights and freedoms. Furthermore, the circumstances that the country is undergoing are reflected in the content of some texts, which confirms that the constitutions must reflect the conscience of society and its aspirations. Despite the existence of the texts, the transitional period lasted longer than what was issued in the constitutional declaration and witnessed many violations of rights and freedoms. Therefore, a permanent and consensual constitution that guarantees national reconciliation and recognizes transitional justice is a popular and elitist demand.

1. Introduction

Beyond the efforts of jurists and thinkers throughout the ages, as well as the holy books and their interpretations and the efforts of the jurists of natural law and the theory of social covenant proved to peoples aspiring to freedom and emancipation that there is no way to the establishment of rights and freedoms but through the revolution and the extraction of these rights and stating them into the texts and documents higher to every authority and every organization in the society" (1). The culmination of the struggle of these revolutions was to state documents and constitutions that recognize and enshrine those rights and freedoms.

In Libya, with the so-called Arab Spring, by the end of 2010 and the beginning of 2011, a public revolution began with peaceful protests that soon turned into an armed clash. The slogan of freedom and revolution was raised against injustice and violations of human rights during the so-called democratic regime.

It was one of the objectives of the popular revolution, which arose against the tyranny and oppression, which culminated in its aims and endeavours by stipulating the rights and liberties of the Constitution as a document that transcends everyone and that these constitutional texts have actual application on the ground. The people in Libya suffered for a long period of time Lasted for more than forty years from the existence of constitutional provisions protecting the rights and freedoms without activating them, but violating them.

(1)Dr. Boumedienne, Mohamed Kadour, Human Rights between the National Authority and the International Authority, Dar Al-Raya Publishing and Distribution, First Edition, 2011, Amman, Jordan, p. 41

The jurisprudents of constitutional law agree that a revolution in a country and its victory must require a period or a stage of time prior to the establishment of the new constitutional system, which the revolution is made or meant to achieve, and that the revolution represents the basis or starting point for this system. The period or stage following the victory of the revolution and before the establishment of the new constitutional system, which the revolution aspires to achieve, is called the transitional period. It aims to consolidate the revolution and move the country from the collapsed regime to a new system that achieves the goals and aspirations of the revolution. And because the revolution needs an organized leadership lead that takes control of the country in this exceptional period, and keeps it from falling into the trap of internal conflicts, which undermine the pillars of the state. This leadership is not based on the constitutional rules, but on the reality of the revolution and circumstances, thus, it has been given several titles such as the revolutionary government, or the real government. In order not to have the authority of this revolutionary or realistic government ultimate, it is necessary to have an interim constitutional document (provisional constitution) regulating the terms of reference and responsibilities of this government, the limits of the transitional period during which this government exercises its functions and its relationship with the executive bodies that it establishes. From generalization to

specification, all that we have said above applies to the revolution of February 17, which resulted in the collapse of the former dictatorial regime. The victory of this revolution led the country to the entry into a transitional period, resulting in the emergence of a revolutionary government whose inception is based on the revolution's legitimacy, which was then given the name "The National Transitional Council". And since the transitional period following the success of the revolution required special constitutional regulation, especially after the liberation of some areas and the fall of other areas under the siege of the collapsed regime forces, the Council issued a constitutional declaration in the third of August 2011, to be the basis for judging during this transitional phase.

In our view, the purpose of establishing the National Transitional Council at the beginning was to lead the country during the period of the revolution and to complete the liberation after the country entered into an internal armed conflict in which the Libyan people relied on many of the rights recognized by international conventions such as the right of self-defence and resist aggression, Self-determination and the right to fight tyranny. The President of the National Transitional Council, himself councillor "Mustafa Abdel Jalil", in several interviews and television and press interviews, said that the Council is not a provisional government, but is the face of the revolution in the transitional period, which is confirmed by the Transitional Council at its meeting in Al-Baidaa on February 23, 2011 and in Benghazi March 5. The Eastern Region and its exit from the control of the former regime was to force the establishment of a body or a legislative council to manage the crisis, so it was necessary to establish effective authority for two reasons first, that there must be a government to manage the country, to issue legislation and decisions and oversee the Military actions. The second reason concerns the international relations and the international representation of the Libyan state after many countries declared the former regime illegitimate for violating the rights of citizens. This is stated in the Declaration of the Establishment of the Transitional National Council in Article 6, paragraph 6, entitled "Responsibilities of the Council", including the representation of the Libyan people and the conduct and direction of the foreign policy of the Libyan State (2). The leadership of the state during the period of the revolution and before the declaration of liberation of the entire Libyan territory is one of the most important tasks for this Council in addition to representing the Libyan people and organizing relations with other countries and international and regional organizations. An administrative system has also been established for the management of public services and the provision of services to citizens, which was called the "Executive Office" in the Constitutional Declaration 2011. Thus, the continuation of the revolution and the achievement of its objectives and the presence of a body or a council representing the Libyan people internationally are among the tasks that gave the Transitional Council its legitimacy during the period from its announcement until the promulgation of the constitutional declaration. The Constitutional Declaration issued by the Transitional National Council is the culmination of the work of this Council and a road map for the transitional period extending from the Declaration of Liberation until the promulgation of the Constitution and the public referendum on it.

(2) Sixth paragraph of the declaration of the establishment of the National Transitional Council, 6 March, 2011, published in the newspaper Akhbar Benghazi No. 2260, the sixteenth year, p 2.

In this research, we try to study the Libyan Constitutional Declaration 2011 and the impact of the transformation in the political and constitutional system on the constitution of rights and freedoms.

2. Problem of the Research

The topic of this research raises many issues, amongst are:

What is the legal nature of the constitutional declarations, including the Libyan constitutional declaration, and does its definition fit to the criteria set by the jurists of constitutional law for defining constitutions?

Also, did this constitutional declaration satisfy the aspirations of the Libyan people, who aspire to freedom and seek for their rights after a long period of oppression and injustice under the dictatorship of the former regime?

Then, is the transformation of the political system from a totalitarian system that enshrines the rule of the individual to a regime that aspires towards democracy and the transformation of the constitutional system from a system that is not adopted and does not believe that there is a constitution in the formal sense of the constitutional document, a system in which the constitutional documents are varied and different in their names and subjects to a new constitutional system takes its legitimacy from the written Constitutional Charter and sets it as a method of governance, although this document is characterized as provisional?

3. Objectives and Limits of the Study

The research includes the Libyan Constitutional Declaration issued on August 3, 2011 and the contents of its texts that are related to public rights and freedoms.

This research aims at:

1- Studying the Libyan constitutional declaration and trying to define it and seeing to what extent does the criteria established to define constitutions apply to the constitutional declaration in question.

- 2- Investigating the legal nature of the Libyan Constitutional Declaration 2011.
- 3- Analysing the effectiveness of various contexts that were adopted after the transformation witnessed by the constitutional system in Libya and its impact on the constitution of rights and freedoms in the Libyan constitutional declaration.
- 4- Studying the Libyan constitutional experience, that was through issuing an interim constitution "Constitutional Declaration 2011", to benefit from this experience when writing, drafting the permanent constitution.

4. Research Methodology

By following the analytical approach, we will try to analyse the changes and developments in the rights and public freedoms in Libya after the constitutional changes that took place after the revolution of February 17. As well as analysing the texts on the rights and freedoms and the extent of their comprehensiveness of the rights adopted by the international declarations and conventions, and analysing the leftover of the transformation in the political and constitutional system to the constitution of rights and freedoms. We will also follow the comparative approach to compare the constitutional declarations in constitutional trials similar to neighbouring countries with the Libyan Constitutional Declaration 2011 in terms of issuance conditions and general characteristics.

5. Previous studies

- 1- The Libyan Revolution, February 2011 -2013. The Privileges and Challenges of the Transition Period - Ahmed Khalif Afif - University of Jordan - Studies of Human and Social Sciences - Volume 42 Number 3-2015. The study revealed the uniqueness of the Libyan revolution to the other Arab Spring revolutions in terms of the environment in which it was conducted and the contradiction between the size of the huge petroleum resources and the reality of the bad real-life circumstances of most citizens, as well as what happened to the Libyan revolution of a quick transition from the peaceful path to the armed track. The study deduced that the absence of the institutional building of the state has put it in a critical situation and highlighted security, political, economic and social challenges that prevented the continuation of the achievement of the revolution's objectives, and made turn to a civil war. And what distinguishes our study is that it has included the overall challenges that faced the Libyan revolution, most important of which is the lack of the institutional building of the state.
- 2- The constitutional legitimacy in Libya - the lessons of the past and the ambition of the future - Research paper presented in the conference of Libya from the revolution to the state - Misrata - Libya – 2012. The paper touched on what the constitutional system in Libya has gone through of experiences that contributed in finding a set of lessons that must be studied and recognized along with their shortcomings to help issuing a constitution that guarantees the arrival of the new state of Libya to a constitutional state in which the Constitution is respected. Thus, this research paper meets one of the objectives of the study which is the need to benefit from past experiences, albeit immature or incomplete experiences, to reach the desired constitution.
- 3- Defining the interim constitutional declaration and the expected integrated constitution. A study presented by Dr. Kadri Al-Atrash to the Libyan Youth Expatriate Conference, Darna, Libya, November 2011. This study included a definition of the 2011 constitutional declaration and why it was given the status of interim and its importance for the transitional period in terms of organizing it until the issuance of a permanent constitution. This study also stressed on the importance of working and accelerating the issuance of a constitution that ends the transitional period so as not to leave room for tyranny of governance, violation of rights and freedoms. Indeed, the findings of this study are some of the most important elements that we discussed in investigating the constitutional declaration issued in 2011, which was supposed to organize a short transitional period until the preparation of the permanent constitution and the public referendum on it.

6. Research Plan

We'll try to reach the objectives of this research through two approaches:

The first approach: The Libyan Constitutional Declaration issued on August 3, 2011.

The first objective: Defining the Libyan Constitutional Declaration 2011.

The second objective: The nature of the Libyan Constitutional Declaration 2011.

The second approach: The impact of the transformation in the political and constitutional system on the texts of public rights and freedoms in the Libyan constitutional declaration.

The first objective: The constitutional declaration and the identity of the new state.

The second objective: The texts of rights and freedoms in the Libyan Constitutional Declaration 2011.

6.1 The first approach: The Libyan Constitutional Declaration 2011

The Constitutional Declaration of the Interim National Transitional Council was issued on August 3, 2011 to organize a transitional period ending with the declaration of the permanent constitution of the country. The

articles of this declaration were prepared by the Legal Committee of the Transitional National Council. The circumstances of writing the provisional constitutions differ from the ones of writing the permanent constitutions in terms of the election of the body that wrote the constitutional document as the conditions of the country at that time and its entry into an internal armed conflict, the subjugation of parts of the country to the former regime and the siege of other parts has prevented from holding elections, so the legal committee appointed by the National Transitional Council is the one that prepared and wrote the constitutional declaration. The legitimacy on which the National Transitional Council was based in issuing the Constitutional Declaration is the consideration of the council as a realistic authority whose legitimacy is based on the revolution, as stipulated in Article 17 of the Constitutional Declaration of 2011. Thus, the Constitutional Declaration was issued in a preamble and 37 articles. In this approach, we will try to define the Libyan Constitutional Declaration and its legal nature.

6.1.1 The first objective: - Defining of the Libyan Constitutional Declaration 2011

As previously stated, it is necessary to define the constitutional declarations which often follow revolutions and coups in order to organize transitional periods.

By looking for a definition for the constitutional declarations in the writings that dealt with the constitutional declarations, we note the reluctance of the jurists of constitutional law to define these declarations. The jurists of the constitutional law, although they addressed in their writings the constitutional declarations and how they are issued and their importance, they were not exposed to their definition. The reason for not defining them may be because they were interim which made the doctrine differs in their view, so, we will try to reach a definition through the definition of the Constitution in general and seeing if it is possible to give the same characteristics of the Constitution on the constitutional declaration and thus give the same definition.

In reference to the definition of the Constitution, as stated in the writings of the jurists of constitutional law, they set standards for the definition of the Constitution, perhaps the most important are the objective standard and the formal standard, thus we will use these criteria to verify the possibility of defining the constitutional declaration using the definition of the Constitution in general.

6.1.1.1 The Libyan Constitutional Declaration and the objective standard

The objective criterion, which is followed by a large number of the jurisprudence, depends on the nature or essence of the legal rule without examining its form, source, or place of existence. Hence, the jurisprudence of this criterion defines the constitution as "the rules governing subjects that are constitutional in nature or substance, either if these rules were mentioned in the document named as Constitution, approved by a constitutional convention, mentioned in ordinary legislation, or not" (3).

The constitutional subjects according to the jurists of constitutional law in terms of substance and nature are the subjects related to the form of government and public authorities (legislative, executive and judicial) and their respective jurisdictions and public rights and freedoms. And among their subjects are the general policies of the state, the economic, political and social ones. The jurist (Perlo) defined the subjects that are constitutional in essence and in substance as those relating to the "political power" (4).

A large part of the Arab jurisprudence went the same way, including Dr. Abdel Hamid Metwally, who believes that the constitutional issues in essence or nature are those "issues related to the system of government in the state". Dr. Metwally also considered the rights and freedoms as constitutional subjects, saying that the rights of individuals are- in our opinion - constitutional issues in terms of substance or subject matter (5).

(3) Dr. Sheha, Ibrahim Abdel Aziz, Political Systems and Constitutional Law, Alexandria, Manshaat Al-Ma'arif, No Publication Year, p.13.

(4) Referred to at D. Metwalli, Abdel Hamid, Details in Constitutional Law, Alexandria, Dar Nashr Al-thaqafa, Part I, 1952 p.33.

(5) Dr. Mitouli, Abdel Hamid, Political Systems and General Constitutional Principles, Alexandria, Dar Al Ma'arif, I 1057, p.7.

Dr. Mohsen Khalil defines the constitutional rules objectively as "a set of legal rules relating to the regime of the State" or "the basic legal rules that determine the political system of the state".

In addition, many Libyan constitutional jurisprudence has adopted this standard to provide the constitutional nature of the documents issued in Libya during the period from 1977 to 2011, namely The Declaration on the Establishment of the Authority of the People which has been issued on 2 March 1977 and the Green document of Human Rights issued on 8 June 1988.

From these definitions, we can state that the constitution, according to the objective criteria will be represented in the special legal rules relating to the political system of the state, its general authorities (legislative, executive and judicial), its terms of reference and the relating them to rights and freedoms of individuals. It clarifies the general policies of the state and its economic, social and political orientations.

Therefore, we put a specific question on these topics and their availability in the Libyan constitutional declaration 2011, in order to determine the extent to which the definition of the constitution in accordance with the objective standard.

The first issue of the constitution, which is the political power in the country, we find that the declaration

was allocated to the third section and below under the title of the transitional government and the political authorities of the state during that period, namely the Interim National Transitional Council, and defined its specifications, powers and duration of work, it also declared article 30 of the competent body of legislation after the completion of the country's liberation and election, which is General National Congress. The executive authority has also been organized along with its terms of reference and its relationship with the legislative and judicial authorities and it was also specified in two time periods before the completion of the liberation in article 24 and after the declaration of liberation in paragraphs 3-5 of article 30. Article 32 of the declaration provides for the independence of the judiciary and the prohibition of the establishment of exceptional courts. The existence of these issues relating to the public authority in the State and its terms of reference and the relationship with them confirms the constitutional nature of this declaration. The constitutional declaration identified the rights and public freedoms for the individuals, which is included in the second section entitled public rights and freedoms (objects from 7 to 16) which has involved a multi rights from the first and the second generation, it will be discussed in another section in this research.

The topic of the rights and freedoms is a constitutional topic, and therefore, it confirms the constitutional nature of the constitutional declaration. The constitutional declaration contains the general directions for the economic, social and political state (the constituents of the state). Its considered as a document with a constitutional nature since it also contains the general policy of the state, which guides authorities.

To sum up, the objective standard in defining constitutions is available in the constitutional declaration and we can name it a constitution even if it was momentary.

6.1.1.2 The Constitutional Declaration and the Formal Standard

This standard defines the constitution as the essential document that sets out the system of government in the state and regulates its public authorities (legislative, executive, and judicial). This document is characterized by its constituent authority. These rules can be amended only by adopting more stringent and complex procedures in the amendment of ordinary laws.

The basis for determining this formality is the source of the legal rules or the form of their issuance and the procedures followed in their elaboration and modification. Such rules must be made by a body called the constituent authority, which is different in its composition and procedures previous to it in the authority that regulates the ordinary laws.

The constitutional authority is the constituent authority and differs from the legislative authority concerned with the establishment of ordinary laws, which distinguishes constitutional rules from other legal rules.

In terms of amendment, the constitution is undergoing more severe and complex procedures than the procedures pursued in the amendment of ordinary laws, where the amendment is required by the constituent authority that is empowered to amend. Most constitutions stipulate that the amendment of the constitution requires the need for a special or prescribed majority to approve the amendment procedure, as if it provides for the need for approval of the members of the parliament, for example or three quarters. Such procedures or forms perform two functions: the first is the constitution's rigidity and the second is his Highness and his superiority over ordinary laws. In analyzing the texts of the constitutional declaration, we can say that it has the elements of the formal criterion in terms of its original constitutive authority, which is the authority that intervenes to establish the constitution at a time when there is no constitution in the country.

After the fall of the state and losing the control of the former regime on many cities, it was necessary to have an authority to run the country, which is known as the original constituent authority. It establishes a constitution of the state without being based on a constitutional text that gives it this authority and so called the original.

The Interim National Transitional Council has this original constituent authority, and under this authority the constitutional declaration is established. This declaration is undoubtedly a constitutive act. This constituent work can only be issued by the constituent authority, though temporarily.

Article 17 of the constitutional declaration states that the Transitional National Assembly is the highest authority and carries out acts of supreme sovereignty and legislation. The acts of supreme sovereignty here are the constituent authority that leads to the development and amendment of constitutional declarations. It is not intended for the acts of government known in the jurisprudence of public law, and immunity from appeal before the courts. The text of the article 36 of the constitutional declaration also demonstrates the constituent authority of the NTC, which asserts that "No provision may be repealed or amended in this document except by another decree issued by the Transitional National Transitional Council and by a two-thirds majority of the members of the council" Its version also has the power of cancellation and modification.

In terms of the conditions of the amendment, the texts that were developed and stipulated certain procedures for the amendment of the constitution stipulated in article (36) that "It is not permissible to cancel or amend any provision contained in this document except by another ruling issued by the Transitional National Transitional Council by a two-thirds majority of the members of the Council". In analyzing this text, we note its requirement to follow special procedures for amendment in the constitutional declaration. In other words, this text sets out

two conditions required by the amendment, which is evidence of the stalemate in the first constitutional declaration concerning the need for another constitutional provision for the amendment in application of a rule parallel to legal forms.

The constitutional text is not amended or repealed except by another constitutional provision which has the same legal force. This requires the possession of the constituent authority for the party that modifies or repeals. And applying the text of the article (17) and Article (36) of the Constitutional Declaration, the NTC is a constituent authority when issuing constitutional declarations and when amended. However, in the case of amendment or revocation, the constituent authority shall be exercised on the basis of a constitutional provision conferred by this jurisdiction, which is the text of Article 36, and here it becomes a constituent authority established and not original.

The second condition that gives the constitutional declaration the sort of solidity is the requirement of a special majority to approve the amendment, a two-thirds majority of the members of the Council to amend or cancel the constitutional declaration and the requirement. Furthermore, it is noted that two thirds of the members of the Council and not the attendees while voting for the Constitution.

These requirements lead to the stability of the constitutional rules. Thus, the constitutional declaration by requiring extraordinary procedures to modify or abolish it has the formal meaning or the formal criterion.

Finally, the constitutional declaration contains the objective and formal criterion in the definition of the constitution. Here we conclude that it is a constitution whether we adopt the formal criterion or the objective criterion in its definition. And thus, both definitions are applicable.

6.1.2 The second objective: The nature of the Libyan Constitutional Declaration 2011

The study of the subject of legal adaptation to the nature of the Libyan Constitutional Declaration 2011 is a study that did not have a lot of research for two reasons. The first is related to the acceleration of events and their continuation and due to the endless transitional period until to this moment. The other reason is that it is a new subject for the constitutional writers, especially in Libya, where the philosophy of the former regime perceived constitution as a divergent concept from what is common. The issue of constitutional declarations and their nature in general has been a controversy with regard to its legal nature in relation to the constitutional jurisprudence in Egypt, especially with regard to the constitutional declaration of 10 February 1953 in Egypt.

In this section, we will try to explore the views of Egyptian constitutional jurisprudence that enable us to reach the nature of the Libyan Constitutional Declaration 2011. Considering the nature of constitutional declarations, Egyptian jurisprudence has been divided into two parts:

The first: - Considers that the interim constitutional declarations do not prove to be applied in the constitution.

One of the proponents of this trend is Dr. Abdel Fattah Sayer Dyer, who believes that the constitutional declaration of 15 February 1953 is not a constitution, because one of the conditions of the constitution is to be issued by those who have sovereignty and according to what is prevalent, the sovereign of Egyptian society is the people according to the principle of the sovereignty of the nation on which the modern state is based. One of the consequences of this principle is that it is only the nation that has the right to establish the constitution, and that it is legally recognized that the revolution does not allow the leaders of the revolution to own sovereignty, but rather to direct certain aspects of public authority. It thus assigns it as a political commitment from the leaders of the revolution to establish a set of rules binding them during the transitional period until the permanent constitution is formed by those who have a legal authority to establish it, which is the nation. This is as well supported by Dr. Mohsen Khalil and confirms his view that the different methods of the formation of constitutions do not mean temporary constitutions, which are characterized as temporary entry into force. In the sense that the temporary constitutions that are characterized by the form of a meeting arise in its origin from the previous methods, and have their own character. In other words, the trend that denies the constitutional character of the constitutional declaration is based on the view that the Transitional Authority or the Government of the Revolution does not have the power to establish the constitution. Principally, this is considered as a political commitment applied during the transition period until the issuance of the permanent constitution.

Second: The constitutional declarations have a constitutional nature and this trend, although it was agreed to provide the constitutional character to the constitutional declarations, it differed on the basis on which the constitutional declarations acquire this characteristic. Some of this jurisprudence believes that the constitutional declarations are constitutions issued by a grant, which is one of the non-democratic methods in the formation of constitutions as already said. The real government (the government of the revolution) puts it under the authority of the nation and is the basis of the idea of the method of grant in the formation of constitutions.

One of the most prominent proponents of this view is Dr. Majid Ragheb Al-Hilu, who gave the title of the constitution to the Egyptian Constitutional Declaration of February 10, 1953. He stated that "The constitutional declaration or the interim constitution of 1953 is a grant from the real power holder, the Revolution Command Council, which replaced the head of state in that". There is no doubt that this declaration was not the result of a referendum or constituent assembly, nor it is a contract between the nation and the ruler, but rather a

commitment by the authority holder to respect certain provisions of the declaration. It's obvious that the pledge waiver of some power and freedom of choice and waiver is the essence of the idea of grant. Another group criticized this basis as a constitutional declaration, although they agreed to be a constitution. Dr. Mustafa Abu Zeid Fahmy believes that this declaration is not a declaration of a grant issued by the leader of the revolution and the text in the introduction that on behalf of the people. He did not say that it was a grant from him, and that the leader of the revolution was not the sovereign of the nation. Accordingly, it can be said that he has given up part of it by issuing this constitution and can never be said to be a contract or a work of a constituent assembly, a referendum, or an international treaty. The foundation created by Dr. Mustafa Abu Zeid Fahmy concerning the adaptation to the nature of the constitutional declaration is expressed as another work where the revolution perceives the importance of being taken due to its interests and the requirements of success.

Therefore, the constitutional nature of the constitutional declaration is given to some non-Egyptian constitutional jurisprudence. Dr. Hakki Isma'il Barbouti confirmed the nature of this characteristic. He declared that "we can only consider the Constitutional Declaration as a constitution, because it regulates subjects of a constitutional nature and provides the necessary safeguards for the protection of rights and freedoms".

Finally, we agree with the second view, particularly that in section I, we have noted and concluded that the definition of the constitution can apply to constitutional declarations either by applying the formal criterion or the objective criterion. It is thus possible to say that the constitutional declarations, including the Libyan constitutional declaration of 2011, are constitutional in nature, although they have a constitution of a special nature because of their temporary characteristics and a transitional period. Moreover, it is because it was not created by the ways in which the constitutions are formed and the people/nation did not consult or issue an elected constituent authority. These are the democratic methods of establishing constitutions. All these characteristics which distinguish it from permanent constitutions do not prevent it from being a constitution.

6.2 The second approach: The Impact of Transformation in the Political and Constitutional System on the Texts of Rights and Public Freedoms in the Libyan Constitutional Declaration 2011:

By the end of the first decade of the twenty-first century, a number of Arab countries have swept through popular revolutions, as stated above, and have been required to change political systems and to change from the totalitarian regimes that prevailed to democratic political systems.

The shift in regimes and the fall of the old regimes followed a major shift at various levels. One of the most important transformations in Libya is the transformation from a totalitarian regime that has long advocated democracy to another political system that has begun to take root, and to shyly embrace the values of democracy and popular participation in the regime.

6.2.1 The First objective: The Constitutional Declaration and the Identity of the New State:

With the fall of the former regime in the eastern region and the areas that lately came out of control of the regime, the constitutional declaration was issued, which regulates the transitional period until the issuance of the permanent constitution.

The Interim National Transitional Council did not wait for the completion of the editing which took place on 23/10/2011, and the constitutional declaration was issued on 3/8/2011. The constitutional declaration expressed a complete separation between the former regime and the new regime.

It included materials reflecting the difference between the former regime and what the popular revolution came with.

The constitutional declaration has therefore laid the foundations for a new state and a new political order, although the constitutional declaration did not specifically define the system of government, but it was declared an independent democratic state and the people were the source of authority.

This trend has emerged to establish a new political, social and economic system for the state throughout the preamble to the Constitutional Declaration. The preamble of the 2011 constitutional declaration contains the basic principles, goals and objectives that society seeks to achieve. Usually, the preamble in constitutions outlines the main lines of the constitution as a method of state policy and administration, which may include a statement of public freedoms and citizens' political, economic and social rights.

It should be pointed out that there are multiple trends on the preamble contained in constitutions and their legal value, which we can also place on constitutional declarations.

The third approach puts the preamble in a higher place than the Constitution itself. Thus, this approach requires the constitutional legislator, rather than the ordinary, to follow the goals and objectives set forth in the preamble when establishing legal provisions.

The fourth approach is a compromise between previous approaches. As the relevant provisions according to this approach, which are in the form of specific subject and drafting articles, are texts of equal legal value with those of the rest of the Constitution. The provisions, which include approaches and set doctrinal and philosophical tendencies, are literary texts that are binding on legislators and should be considered when making legislation and provisions.

While Dr. Ibrahim Abu Khuzam and Dr. Miloud al-Mehdabi both consider the preamble as the constitution and as a part of the legal system of the state, as long as it confiscated the authority of a legitimate jurisdiction, and thus must have a legal effect. The basis they depend on for giving the preamble the order of constitutional provisions is that there is nothing higher than the Constitution in the legislative hierarchy of the State. Also, the rules in the preamble cannot be changed and amended, and this distinguishes it from other legal provisions of the Constitution. It is a part of the constitutional system as long as this regime continues to exist with it.

Thus, the preamble of the Constitutional Declaration is an expression of the identity, philosophy and provisions of the State. These are provisions that reflect a system that eliminates former regime. These provisions in the preamble are provisions that have a constitutional value superior to all legislation in the legislative pyramid in the state. In reviewing the preamble to the Constitutional Declaration, we find that it contains principles that reflect the objectives of the revolution and the need for democratic political change in the State. The texts of the Declaration then confirmed the new identity of the State through the designation of a new State emblem and a national anthem, and the flag of the State was changed and spelled out and elaborated in the Constitutional Declaration.

Article (4) provides for the establishment of a democratic political system based on political and partisan pluralism. Thus, the democratic peaceful rotation of power aims at confirming the fall of the political system of power. In addition to article (34) which confirmed the fall of all the constitutional documents and confirms that the new state has a new identity. The first article of the Constitutional Declaration adopted Arabic as an official language while guaranteeing the linguistic and cultural rights of the Amazigh, Tabu and Tuareg, the components of Libyan society, which were referred to and recognized for the first time in the constitutions of Libya, whether issued before the independence of the Libyan state or after its independence. At the social level, the Declaration contains some texts that reflect the objectives of the revolution concerning social justice that were lost during the previous political era. This is confirmed by article (5) of the Constitutional Declaration, which we will attempt to analyse in section II of this requirement.

At the economic level, the preamble included some texts relating to the economic aspect, which are of great relevance to the texts on the social aspect, because the realization of social justice is largely linked to the achievement of economic reforms. Article (34) of the Constitutional Declaration 2011, which is a complete separation between the former regime and the new regime, to drop the existing constitutional documents during the period of the former regime and declares the building of a new state with a new political, social and economic system. It has declared the abolition of all documents of a constitutional nature. Article (35) declares the continuation of the work in a way that does not contradict with the provisions of the constitutional declaration. Thus, this article dropped everything that inconsistent with the preamble of the constitutional declaration from a political, economic and social system that contradicts the general direction of the new state.

6.2.2 The second objective: The texts of rights and freedoms in the Libyan Constitutional declaration in 2011
The constitutional declaration of 2011 sets forth its second chapter on public rights and freedoms, including articles 7 to 16, as well as the preamble which contained constitutional principles and charters, which, as we stated in section 1, are of supreme value to the rest of the State's legislation. The quote came in response to the people's demand expressed in his demonstrations.

Returning to the texts of rights and freedoms, they are considered as one of the most important topics covered by the constitutions, as we passed through this study. Therefore, the authors of the Declaration gave it a fair number of articles of the Declaration, which were characterized by reduction and shortening, as we have seen, like the constitutional declarations in other Arab countries.

The constitutional declaration began with the second chapter confirming the State's protection of public rights and liberties and specifying ways other than the provision and judicial protection. It declared and announced that it is seeking to join the international and regional conventions that protect and adhere to these rights and freedoms. This is a very advanced text for a constitution that is described as a time-frame, in which it undertakes to accede to these declarations during the transitional period.

In addition, Article 7, the first articles of the chapter on rights and freedoms, included another pledge to issue charters and legislations that recognized mankind as God's successor in the land¹. The articles then continued to provide for public rights and freedoms. On the level of personal rights and freedoms such as copyrights, freedom of opinion and expression, freedom of scientific research, freedom of movement, freedom of assembly and others, many articles in the constitutional declaration 2011 has been allocated to them.

On the level of social rights such as the right to education, health care and social security, and the freedom to form trade unions, associations and others, it was stipulated in the constitutional declaration¹.

On the level of economic rights, such as the right to work and the right to an adequate standard of living and the equitable distribution of national wealth, which is one of the most important goals that called for and for which the Revolution of February 17, 2011, Therefore, the constitutional declaration stipulated it in response to the demands of the people masses that made the revolution.

On the level of political rights, the declaration is part of the freedom to form political parties and civil

society organizations. The declaration states that the State guarantees the protection of political asylum and the non-extradition of refugees.

These following texts had been noted that:

1- Political, civil, social and economic rights overlap. We find that Article 8 provides for equal opportunities and the right to work with social rights such as the right to education and social security, Article (8) also includes the right of individual and private property with its commitment to health care for every citizen. While Article (11) establishes inviolability of private housing and property, they may not be searched or entered except as permitted by law, they have ended up protecting the inviolability of private and public funds in the same article.

2- Although Article (8) states that the State guarantees the right of private property, article (16) reaffirms private ownership and defending it and that the owner is not prevented from disposing of his property except within the limits of the law. In our point of view, this text is the result of the great violations witnessed by this right during the period of the former regime. Article (16) reworded it in a text for its importance to the Libyans.

3- The texts of rights and freedoms contained many articles that had a special nature related to the circumstances experienced by the country, which confirms what we mentioned earlier in this study that the Constitution must reflect the conscience of society and express the reality and circumstances, the Constitution cannot be a manifestation of the conscience of society except in the case of its origin. The importation of constitutional experimentation takes place between the texts and the people.

From the analysis of Article (9), it stipulates the duty of every citizen to defend their homeland. A constitutional text found in most constitutions of the world, as for the preservation of national unity and the inviolability of the civil democratic constitutional system, adherence to civil values and the fight against regional, tribal, neural and tribal prejudices are among the duties that have been linked to the country's past and the threat of the unification of the Libyan lands and the democratic constitutional civil order.

Moreover, what emerged from the regional and tribal subjugations in Libya, the former regime contributed to their emergence, and increased after the revolution of the seventeenth of February, which called the drafters of the constitutional declaration to adopt such a text.

Article (10) also contains a specific text, which is asylum and the non-extradition of refugees right protection due to the violations committed by the former regime.

4- Article 4 provides for the establishment of a pluralistic political system which is one of the objectives of the revolution. The text was written to reassure the people of achieving one of the most important goals of its revolution in renouncing the dictatorship of the individual.

5- Important texts in the field of public rights and freedoms came out of the chapter of rights and freedoms with chapter one which, in our point of view, it emphasizes the importance of these articles and therefore has been established with general provisions. Article 6 provides for equality, in which it refers to religion, doctrine, language, wealth, gender, political views, and tribal and regional affiliation.

And so, the purpose of defining it this way in the constitutional text is to emphasize each part mentioned in itself.

It is known that the Libyan people are a Muslim people and no other religions in Libya other than Islam, unless the purpose of mentioning the religion by the drafters of the constitutional declaration is to recognize the Libyan Jews and allow their return to Libya after they left since the establishment of what was known as a state of Israel in 1948 and taking out the remaining ones by the former regime. As for the doctrine, the Ibadi doctrine is found in the regions of the Amazigh Mount Nafusa. Mentioning it in the constitutional declaration is to recognize the Amazigh and their role and presence as an ethnic component contributed to the revolution and was one of the most important of its premises rather than recognition of a religious doctrine other than the Maliki school prevailing in the country.

The rest of the particles are, in our view, a confirmation that the constitutional declaration came in line with the conditions of Libyan society and its customs and revolution objectives and as an expression of the aspirations of the Libyan people, which drove them on the seventeenth of February, and the most important of which is freedom and access to rights that have long been violated despite their pre-constitution constitutions.

Finally, what is stated in the Constitutional Declaration is texts, although they are reductive and, in a constitution, characterized by timeliness, they are closer to comprehensiveness and perfection, and most of them aim at building a new society and identity for the new Libyan state.

7. Conclusion

The change that Libya witnessed after the previous regime and through the revolution in 2011 has greatly affected the constitution of rights and freedoms and the actual application of most of the provisions contained in the constitutional declaration issued by the real government in the country after the revolution.

It can be said that the most important reasons for the movement and the revolution against the former regime and the attempt to topple it was that the Libyan citizen suffered Wide violations of his most basic rights and freedoms.

And the promulgation of the constitutional declaration on 3/8/2011 is only a confirmation of this great shift in rights and freedoms theoretically and effectively, and many of these texts to confirm that this declaration is the culmination of the aspirations and aspirations of the Libyan people who are hungry for freedom.

The Declaration, which was drafted to regulate the transitional period, contained special provisions for the protection of human rights and freedoms, and its drafters tried to take account of abuses and violations that had occurred during the previous regime; a direct cause of the revolution and one of its most important repercussions

As for the practice, it witnessed a fluctuation between written texts and actual practices, especially that the transitional period took so long, and extended after the amendment of the constitutional declaration and the election of the House of Representatives in 2014.

During the transitional period and the military and political conflicts that Libya is witnessing, in our point of view, are among the main reasons for the emergence, expansion and practice of violations by the official organs of the state, as well as by the armed groups that have power and influence.

The transitional period, which is followed by revolutions and coups, is usually characterized by periods of instability. The absence of a constitution and referendum on it is the result of the absence of a permanent constitution that the country follows, governs the relationship between the ruler and the ruled, and where individuals guarantee and protect their rights.

Many of the Libyans today are waiting for the draft constitution to be submitted to the referendum; although the first impression of the draft approved by the constituent body for the drafting of the constitution that it does not live up to the ambitions and hopes of the Libyan people and does not meet many of his demands; but many of the Libyan people see in the permanent constitution the saviour, the terminator of the transitional period and what it witnessed of violations, conflicts and political and military strife.

Many of the Libyans see the Constitution as helping to stabilize the country and unify its various governments, each of which claims legitimacy. For many, the constitution represents the means of salvation to emerge from the crisis that threatens the state and threatens its unity and independence.

We also see that the draft, although with unacceptable and satisfactory material, the possibility of consensus between the groups of society and the members of the constituent body themselves is a possibility that we may not reach it is difficult to reach full agreement.

Finally, we hope that the House of Representatives will meet and issue a referendum law to hold a referendum on this draft. Moreover, the difficulties faced by the Constituent Assembly and the criticism and defrauding of its work may be exposed to it when the draft is not approved when it is put to the referendum, which may delay its work and thus disrupt the exit of a permanent constitution for the country.

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Summary:

Public Rights and Freedoms in Libyan Constitutional Declaration 2011

The most important objective of the revolution in Libya in February 2011, which turned into an armed clash, was to issue a constitution guarantees the rights and freedoms, which were violated during the rule of the former regime.

The Libyan Constitutional Declaration 2011 translated the ambitions and aspirations of the Libyan people, and although it was founded to organize a transition period, according to the objective criterion for the definition of constitutions, it is a constitution to contain constitutional subjects. In addition, according to the formal criterion, it is a constitution for the existence of the formal criterion elements in terms of its original constitutive authority. It is an authority that interferes with the constitution when there is no constitution in the country.

Thus, the Libyan Constitutional Declaration has a constitutional nature, which is no different from the permanent constitutions and its texts, which are superior to all legal rules. The texts of the rights and freedoms contained in the Libyan Constitutional Declaration (Part II, Articles 7-16) approved many of the provisions of Islamic law, international covenants and constitutions of countries with mature constitutional experience. Its articles, which were characterized by a short and concise manner, came to unify the many texts of an important subject in constitutions: rights and freedoms.

The circumstances that the country is undergoing are reflected in the content of some texts, which confirms that the constitutions must reflect the conscience of society and its aspirations. Despite the existence of the texts, the transitional period lasted longer than the constitutional declaration and witnessed many violations of rights and freedoms. Therefore, the issuance of the permanent constitution, which must be consensual to ensure national reconciliation and recognize transitional justice, is a popular and elitist demand.