

ARTICLE 19

# Libya: Draft Constitution

August 2017

---

Legal analysis

# Executive summary

---

ARTICLE 19 has followed the drafting of the new Constitution in Libya since 2011. The present review builds on our broader work to promote freedom of expression and freedom of information in Libya and in the Middle East and North Africa region more generally.

The purpose of this analysis is to emphasise the positive aspects of the Constitution, draw out its negative features through the prism of international human rights law standards, and present recommendations for its improvement. We do not undertake a comprehensive analysis of the Draft Constitution. In the light of our expertise, the analysis is focused on the application of international standards on freedom of expression to the chapters addressing rights and freedoms (Chapter 2) and independent constitutional authorities (Chapter 7). The omission of any provisions from this analysis does not mean that ARTICLE 19 endorses them or finds them in compliance with international law.

## Summary of recommendations

1. The Constitution should protect the right to freedom of expression in broader terms, in order to encompass the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers.
2. The Constitution should specify that freedom of expression through all media is protected, including the Internet;
3. Any restrictions on the right to freedom of expression should be in compliance with international human rights standards. Namely, the limitation clause relating to the right to freedom of expression should state that “the right to freedom of expression may only be subjected to such restrictions as are provided by law and are strictly necessary and proportionate in a democratic society for the protection of national security, public order, public health or morals, or for respect of the rights or reputations of others.” Alternatively, at a minimum, the Constitution should explicitly state that any restrictions must be fully compatible with international human rights standards;
4. The Constitution should provide guarantees to protect pluralism of media ownership and diversity of content in a clearer way. The limitation restricting media ownership to citizens should be removed;
5. The Constitution should clearly recognize the right of access to information and stipulate that the principle of maximum disclosure should be applied on information held by or on behalf of a public body, and by private persons with a public service mission;
6. The Constitution should make clear that any restrictions on the right of freedom of information must be provided for by law, justified by one of a set of enumerated, legitimate aims provided for in the International Covenant on Civil and Political Rights (ICCPR), and be necessary and proportionate. In line with the general clause on restriction of the right to freedom of expression, the Constitution should indicate that the requested information can be withheld only if the disclosure threatens to cause substantial harm to that aim; and the harm to the aim must be greater than the public interest in having access to the information;

7. Provisions on independent regulation of audiovisual media should be completely revised, in order to reflect international standards;
8. The Constitution should impose a positive obligation on the State to respect, protect and facilitate the exercise of the right to protest. Any restrictions on the right to assembly and association and on the right to protest should be drafted in compliance with international law;
9. The Constitution should not establish a State religion or privilege one religious legal system, such as Sharia, over any other. All references to any specific religious beliefs should be only symbolic.

# Table of contents

---

<b>Introduction</b> .....	5
International human rights standards.....	6
The right to freedom of expression in international human rights law .....	6
Permissible limitations on freedom of expression and freedom of information .....	7
Regional instruments .....	7
African Union.....	7
League of Arab States .....	9
Protection of other human rights .....	9
Freedom of assembly and association .....	9
Freedom of religion or belief .....	10
<b>Analysis of the draft Constitution</b> .....	11
The right to freedom of expression.....	11
Media and journalists.....	12
Access to information.....	12
Media regulation.....	13
Freedom of assembly .....	14
Other concerns.....	15
Recommendations: .....	15
<b>About ARTICLE 19</b> .....	16

# Introduction

---

ARTICLE 19 welcomes the opportunity to comment on the Draft Constitution of Libya (Draft Constitution) adopted by the Constitutional Drafting Committee on 30 July 2017.<sup>1</sup> We believe that the adoption of a new constitution that complies with international human rights standards is absolutely crucial in the democratic transition of the country and we support the drafting process. In this respect, we observe that Libya faces a number of serious challenges which are hampering progress towards the building of a democratic state where rule of law, human rights and security are guaranteed.

ARTICLE 19 has followed the drafting of the new Constitution in Libya since 2011. This analysis builds on our broader work to promote freedom of expression and freedom of information in Libya and in the Middle East and North Africa region more generally.

In the analysis, ARTICLE 19 highlights the positive aspects of the Constitution as well as the areas that need to be improved in order to meet international human rights law standards. We do not undertake a comprehensive analysis of the Draft Constitution. Given our expertise, we focus on provisions relevant to our mandate. The omission of any provisions from this analysis does not mean that ARTICLE 19 endorses them or finds them in compliance with international law.

This analysis builds on our previous contribution to the drafting process of the Constitution in Libya from July 2013 when we produced a comprehensive policy brief outlining how the new Constitution should protect the right to freedom of expression and freedom of information. We hope that both the previous brief and this analysis will be considered by the Constitution drafting committee and we stand ready to provide further support and assistance in this important process.

---

<sup>1</sup> ARTICLE 19's analysis is based on unofficial translation of the Draft Constitution into English. ARTICLE 19 does not take responsibility for the accuracy of the translation or for comments made on the basis of any inaccuracies in the translation.

# International human rights standards

---

## The right to freedom of expression in international human rights law

The right to freedom of expression and freedom of information are protected by a number of international human rights instruments that bind Libya. Article 19 of the **Universal Declaration of Human Rights** (UDHR) guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.<sup>2</sup>

The **International Covenant on Civil and Political Rights** (ICCPR) elaborates upon and gives legal force to many of the rights articulated in the UDHR.<sup>3</sup> Article 19 of the ICCPR guarantees freedom of expression and freedom of information as follows:

- 1) Everyone shall have the right to hold opinions without interference.
- 2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Libya – like the majority of states in the region – has ratified and is bound to implement into domestic law the provisions of the ICCPR.<sup>4</sup>

As expressly confirmed by the Human Rights Committee, Article 19(2) embraces a right of access to information held by public bodies.<sup>5</sup>

In addition, a number of other international human rights instruments protect freedom of expression and freedom of information.

- The **Convention on the Rights of the Child** (CRC)<sup>6</sup> protects the freedom of expression and freedom of information of children in Article 13 in similar terms to Article 19 of the ICCPR:

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers,

---

<sup>2</sup> UN General Assembly Resolution 217A(III), adopted 10 December 1948. The UDHR, as a UN General Assembly Resolution, is not directly binding on States. However, parts of it, including Article 19, are regarded as having acquired legal force as customary international law; see *v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).

<sup>3</sup> Article 2 of the ICCPR, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) à 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967)

<sup>4</sup> The status of the ICCPR ratifications is available at <http://bit.ly/2x034kD>.

<sup>5</sup> Human Rights Committee, General Comment No 34, Freedoms of Opinion and Expression (Article 19), CCPR/C/GC/34, 12 September 2011, paras 18-19.

<sup>6</sup> Adopted 20 November 1989, entry into force 2 September 1990. Libya acceded to the treaty on 15 April 1993.

either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a) For respect of the rights or reputations of others; or
  - b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

- Libya has also ratified the ***UN Convention Against Corruption*** (UNCAC) which clearly requires States to ensure that the public has effective access to information.<sup>7</sup>

## Permissible limitations on freedom of expression and freedom of information

While the right to freedom of expression and information is a fundamental human right, it is not guaranteed in absolute terms. Article 19(3) of the ICCPR permits the right to be restricted in the following terms:

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a) For respect of the rights or reputations of others;
  - b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Thus, restrictions on the right to freedom of expression and freedom of information must be strictly and narrowly tailored and may not put into jeopardy the right itself. In order to determine whether a restriction is sufficiently narrowly tailored, the criteria of Article 19(3) of the ICCPR need to be applied. Any restrictions on freedom of expression or freedom of information must:

- be provided by law;
- pursue a legitimate aim, namely respect of the rights or reputations of others, protection of national security, public order, public health or morals; and
- be necessary to secure the legitimate aim and meet the test of proportionality.

Furthermore, Article 20(2) of the ICCPR stipulates that any advocacy of national, racial and religious hatred that constitutes incitement to discrimination, hostility or violence must be prohibited.

## Regional instruments

### ***African Union***

Libya is also a member of the African Union<sup>8</sup> and signatory to the principal human rights instrument for the African continent, the ***African Charter on Human and Peoples' Rights*** (African Charter),<sup>9</sup> which guarantees the right to freedom of expression in Article 9:

---

<sup>7</sup> Article 13, UNCAC, UN GA Resolution 58/4, 31 October 2003. Libya ratified on 7 June 2005.

<sup>8</sup> The list of member states is available at <https://au.int/en/memberstates>.

<sup>9</sup> Adopted 27 June 1981, OAU Doc.CAB/LEG/67/3, entered into force 21 October 1986.

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

The ***Declaration of Principles on Freedom of Expression in Africa*** (African Declaration), adopted by the African Commission on Human and Peoples' Rights in 2002<sup>10</sup>, in Article II also affirms that:

1. No one shall be subject to arbitrary interference with his or her freedom of expression.
2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.

Article XII of the African Declaration, which deals with the protection of reputation, stipulates that:

1. States should ensure that their laws relating to defamation conform to the following standards:
  - No one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
  - Public figures shall be required to tolerate a greater degree of criticism; and
  - Sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.
2. Privacy laws shall not inhibit the dissemination of information of public interest.

Similarly, in Article XIII, on criminal measures, the African Declaration mandates States to review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society. It also further affirms that freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

The African Declaration also extensively addresses the right of access to information. In Part IV, the African Declaration mandates that public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law. The African Declaration further specifies the right to information principles in following terms:

- everyone has the right to access information held by public bodies;
- everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
- any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
- public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
- no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
- secrecy laws shall be amended as necessary to comply with freedom of information principles.

---

<sup>10</sup> Adopted at the 32nd Session of the African Commission on Human and Peoples' Rights, 17-23 October 2002.



In terms of regional standards, it is notable that the ***African Platform on Access to Information***, developed by groups across Africa including ARTICLE 19, has been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights.<sup>11</sup> These principles provide guidance to African States on the right to freedom of information, including the importance of battling corruption, protecting whistle-blowers, and promoting unhindered access to Information Communication Technologies, and access to electoral information.

### ***League of Arab States***

The Arab Charter on Human Rights (Arab Charter), which was adopted by the Council of the League of Arab States in 2004, purports to affirm the principles of the UDHR, ICCPR as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Charter and the Cairo Declaration on Human Rights in Islam.<sup>12</sup> Although the Arab Charter provides less robust protections for certain fundamental rights, Article 32 of the Revised Arab Charter protects freedom of expression. It is significant that even this controversial text protects in express terms the rights to freedom of expression and freedom of information.

## **Protection of other human rights**

### ***Freedom of assembly and association***

The rights to freedom of assembly and association are human rights recognised in the UDHR (Article 20)<sup>13</sup>, the ICCPR and numerous other international and regional human rights instruments. Article 21 of the ICCPR states:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

The right to freedom of association is enshrined in Article 22 of the ICCPR which states:

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

The rights to freedom of assembly and association may be subject to similar restrictions as the right to freedom of expression. Any interference with the right therefore has to pass the strict three-part test outlined in relation to freedom of expression earlier.

While the African Charter in Article 10 provides that every individual has the right to free association "provided that he abides by the law," the African Commission on Human Rights, established under the African Charter, issued a resolution on freedom of association in which

---

<sup>11</sup> Adopted September 2011, available at <http://bit.ly/2w60AVr>.

<sup>12</sup> League of Arab States, Arab Charter on Human Rights, 22 May, 2004. Entry into force 15 September 2008.

<sup>13</sup> Article 20 of the UDHR states: "1. Everyone has the right to freedom of peaceful assembly and association. 2. No one may be compelled to belong to an association."

it called upon governments not to “enact provisions which would limit the exercise of this Freedom” and noted that any restrictions should be consistent with States’ “obligations under the African Charter.”<sup>14</sup> Further, Article 11 of the African Charter guarantees the right to freedom of assembly as follows:

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Under international law, States have a positive obligation to respect, protect and facilitate the right to protest.<sup>15</sup>

### ***Freedom of religion or belief***

Freedom of religion is protected by international human rights law. Article 18 of the ICCPR provides as follows:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Finally, Article 8 of the African Charter provides that “free practice of religion shall be guaranteed.”

---

<sup>14</sup> Resolution on the Right to Freedom of Association, Adopted at the 11<sup>th</sup> Ordinary Session, Fifth Annual Activity Report, at 28.

<sup>15</sup> ARTICLE 19, The Right to Protest, Dec. 2016, available at <http://bit.ly/2hJFyES>.

# Analysis of the draft Constitution

---

## The right to freedom of expression

ARTICLE 19 makes the following observations on the protection of the right to freedom of expression in the draft Constitution:

- It is positive that the draft Constitution recognises the right to freedom of expression in its provisions. However, **this recognition is very limited**: Article 38 simply states that expression and publication are protected rights but fails to define the scope of the right. By contrast, international instruments clearly state that the right belongs to every person, that it includes the right to seek and impart information and ideas of any kind with no consideration of frontier, and that it can be exercised in any form and through any media;
- The **provisions on restrictions** of the right to freedom of expression fail to meet international standards. Article 38 of the draft Constitution provides for the State to take measures to protect private life and prevent incitement to hatred and discrimination. While these may be entirely valid reasons to restrict freedom of expression, there may also be other legitimate aims to do so under international law. In any case, such limitations can only be compatible with international law under the strict conditions of the three-part test described in the previous section;
- The provisions on restrictions are confusing as to the conditions under which freedom of expression might be restricted. The conditions on restrictions of the right to freedom of expression are contained in Article 38 (see above) and in Article 65 (which sets forth the ‘rules for restrictions on rights and freedoms’). We welcome the fact that Article 65 states that any restriction needs to be necessary, clear, limited and appropriate to the interest requiring protection.’ However, such language, while it includes elements of the three-part test required by international law, lacks clarity. The provision should be rewritten to clearly mention the three-part test outlined above;
- The **provisions on incitement** should closely follow the wording of Article 20(2) of the ICCPR. Article 38 needs to be rewritten to strictly prohibit “incitement to discrimination, hostility or violence.” For future reference, we refer the Libyan legislators to the UN Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and which should apply to all grounds of discrimination recognised in international law;
- The provisions in Article 38 that prohibit expiation and the forced imposition of ideology are **too vague** and overbroad. As such, they might be used to prohibit legitimate expression that would be critical of a philosophical system or religious beliefs. As mentioned above, the limitations of freedom of expression should all be measured through a three-part test required by international law.

## Recommendations

- The Constitution should protect the right to freedom of expression in broader terms, in order to encompass the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers. It should explicitly provide that freedom of expression through all media is protected, including the Internet;

- Any restrictions on the right to freedom of expression should fully comply with international law, namely, the limitation clause relating to the right to freedom of expression should state that “the right to freedom of expression may only be subjected to such restrictions as are provided by law and are strictly necessary and proportionate in a democratic society for the protection of national security, public order, public health or morals; or for respect of the rights or reputations of others.” Alternatively, Article 65 should clearly state that restrictions must follow the three-part test under international law and include an explicit statement that restrictions must be compatible with international law on human rights;
- The passage on the prohibition of incitement to discrimination, hostility, violence should be removed from Article 38, and a separate provision on the prohibition of incitement should be rewritten, following the wording of Article 20(2) of the ICCPR.
- The passage on expiation and forced imposition of ideology needs to be removed from Article 38.

## **Media and journalists**

ARTICLE 19 welcomes the proclamation that the freedom, plurality and independence of the press and media institutions will be guaranteed by the State (Article 39). However, we believe that the Constitution should clearly state that the State must guarantee pluralism of ownership and the broadest possible diversity of content and viewpoints in the media.

We also note that the limitation restricting media ownership to citizens – in Article 39 – is not compatible with international law.

ARTICLE 19 also observes that the protection against provisional detention in press trials (in Article 39) could provide a limited form of protection to journalists, but is not a sufficient protection of freedom of expression, including the protection of journalists, under international standards. Similarly, whilst the provision that press institutions can only be closed by judicial order could contribute to a certain form of protection of media freedom it falls short of the requirements of media freedom and independence under international law. Both sentences should simply be removed: any restriction to media freedom, as for any restriction to freedom of expression, should conform with the three-part test under international law.

## **Recommendations**

- The Constitution should provide guarantees to protect pluralism of media ownership and diversity of content in a clearer way;
- The limitation restricting media ownership to citizens should be removed.

## **Access to information**

Article 47 of the Draft Constitution provides for the right of access to information. We welcome that the State will have the duty to enforce necessary measures to ensure transparency and access to sources of information. However, we note that the provisions of Article 47 fail to comply with international standards.

As a matter of principle, the right to information should be premised on the principle of maximum disclosure, which means that there should be a presumption that all information held by, or on behalf of, public bodies are subject to disclosure and that this presumption may be overcome only in very limited circumstances. This is the very essence of freedom of information, and the Constitution should make it clear that access to official information is a basic right: public bodies and private persons with a public service mission have an obligation to disclose information, and the public has a corresponding right to receive information. Everyone present in the territory of the country should benefit from this right. The exercise of this right should not require individuals to demonstrate a specific interest in the information. Where a public authority seeks to deny access to information, it should bear the onus of justifying the refusal at each stage of the proceedings. In other words, the public authority must show that the information that it wishes to withhold comes within the scope of the limited regime of exceptions.

In the draft Constitution, the provisions on limitations on the right to access to information fail to include the three-part test, recognised by international law, for the assessment of the legality of exceptions on the right to freedom of information. We recall that the test demands that all exceptions to the right to freedom of information should meet the following requirements:

- The information must relate to a legitimate aim listed in the law;
- Disclosure must threaten to cause substantial harm to that aim; and
- The harm to the aim must be greater than the public interest in having access to the information.<sup>16</sup>

Overall, the list of legitimate aims which may justify withholding information is similar to the legitimate aims which justify restrictions on the right to freedom of expression.

The provisions on the right to information should be redrafted to meet the requirements of international standards.

#### **Recommendations:**

- The Constitution should clearly recognize the right of access to information and stipulate that the principle of maximum disclosure should be applied on information held by or on behalf of a public body, and by private persons with a public service mission;
- The Constitution should make clear that any restrictions on the right of freedom of information must be provided by law, justified by one of a set of enumerated, legitimate aims provided for in international law, and be necessary and proportionate. The Constitution should include a provision governing limitations on freedom of information which should meet the requirements of Article 19(3) of the ICCPR and in doing so indicate that the requested information can be withheld only if the disclosure threatens to cause substantial harm to that aim; and the harm to the aim must be greater than the public interest in having access to the information.

#### **Media regulation**

---

<sup>16</sup> See ARTICLE 19, [The Public's Right To Know: Principles on Freedom of Information Legislation](https://www.article19.org/).

The draft Constitution provides for the creation of independent regulatory authorities. However, the protection of independence provided for at Articles 155 and 156 are not sufficient to meet the requirements of international standards.

In relation to the regulation of media, the draft Constitution only mentions the existence of a high press and media council (Article 164). ARTICLE 19 observes that the existence and remit of a regulatory authority in the field of media should be recognised and described in the Constitution to a similar extent as for other regulatory authorities.

More importantly, under international law, public regulation can only be justified for broadcast media: as they rely on a naturally scarce resource – spectrum – public regulation is needed to organise an optimal allocation of available frequencies in the service of the general interest.

There is no justification for public regulation of the print media: in this sector, independent self-regulation has proved to be an efficient means of ensuring knowledge, promotion and enforcement of rules of professional ethics, without creating a disproportionate restriction on freedom of expression. While the State can, where necessary, provide a legal underpinning for the creation of self-regulatory bodies, such a mechanism should never threaten the independence of self-regulation of the print media.

#### **Recommendation**

- Provisions on independent regulation of audiovisual media should be completely revised, in order to reflect international standards.

#### **Freedom of assembly and association**

Freedom of assembly and association and freedom of expression are interdependent rights. It is for this reason that ARTICLE 19 also evaluates the scope of protection of the rights to assembly and association. Restrictions on one right may seriously affect the ability to exercise the other. Without robust guarantees of freedom of expression, collective expression is hampered, and associations will not be able to effectively voice their views and concerns. In contrast, restrictions on the right to associate may limit the capacity of individuals to express themselves.

The right to freedom of assembly and association is recognised in Articles 42 and 44. We welcome that the State guarantees the right of creating civil society organisations, but the requirement that membership should be conditioned to ‘balance between independence and transparency’ is both vague and disproportionate under international law. We also welcome the right to hold meetings and assemblies and organise demonstrations, and the fact that the State should only ‘resort to the least required violence in case of necessity’. However, the limitations of the right need to be reviewed to ensure compatibility with international law.

As noted, limitations on the right of assembly and association must be consistent with the three-part test of international law.

#### **Recommendation:**

- The Constitution should impose a positive obligation on the State to respect, protect and facilitate the exercise of the right to protest. Any restrictions on the right to assembly and association and on the right to protest should be drafted in compliance with international law.

### **Other concerns**

ARTICLE 19 is also concerned that a number of provisions in Chapter 2 and 7 that are problematic from human rights perspective. Namely:

- The draft Constitution introduces concepts that are unknown to international law and extremely vague. Particularly illustrative is the right to ‘serenity’ at Article 34. Such severe lack of precision can only lead to arbitrary interpretations that will render the protection of rights and freedom meaningless.
- We are also concerned to find references to the Sharia and Islamic values (Article 53 on the right to education, Article 160 on the national human rights council and Article 162 on the legal research council). Of particular concern is the fact that the mission of the human rights council is defined by equal reference to international law and the Sharia, which suggests that provisions regarding Sharia law might be further relied upon to prevent compliance with and ratification of international human rights norms and treaties.

ARTICLE 19 believes that any mention of the Sharia (or Islamic law) in the Libyan Constitution should be avoided. The Sharia, a set of standards and regulations belonging to a certain interpretation of Islam, is scarcely compatible, if not completely incompatible, with international law and the general demands of a democratic society. If the drafters still wish to include a reference to Islam, we refer them to the preamble of the Afghan Constitution as a possible model for the Libyan Constitution. The preamble of the Afghan Constitution proclaims both the Afghan people’s “faith in God Almighty” and “[Belief] in the Sacred religion of Islam,” as well as “Observing the United Nations Charter and respecting the Universal Declaration of Human Rights.”

ARTICLE 19 reiterates that it is of paramount importance that the new Constitution states that all international treaties ratified by Libya, as well as customary international law and general international law, have legal force in Libya, and that the core international human rights treaties which Libya has ratified are applicable and binding in domestic law.

### **Recommendations:**

- The Constitution should remove vague concepts, such as the right to serenity;
- The Constitution should refrain from establishing a State religion or privilege one religious legal system, such as Sharia, over any other. All references to any specific religious beliefs should be only symbolic.

## About ARTICLE 19

---

ARTICLE 19 advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications that outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the organisation publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at <http://www.article19.org/resources.php/legal>.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at [legal@article19.org](mailto:legal@article19.org). For more information about ARTICLE 19's work in Middle East and North Africa, please contact Saloua Ghazouani Oueslati at [saloua@article19.org](mailto:saloua@article19.org).