



# LIBYA

## Gender Justice & The Law

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# Libya

## Gender Justice

Assessment of laws affecting gender equality and protection against gender-based violence

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# ACRONYMS

<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CEDAW Committee</b>	UN Committee on the Elimination of Discrimination against Women
<b>ESCWA</b>	Economic and Social Commission for West Asia
<b>FGM/C</b>	female genital mutilation / cutting
<b>GBV</b>	Gender-based violence
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>NGO</b>	Non-government organization
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>SDGs</b>	Sustainable Development Goals
<b>UNDP</b>	United Nations Development Programme
<b>UNESCWA</b>	United Nations Economic and Social Commission for West Asia
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNFPA</b>	United Nations Population Fund
<b>UNHCR</b>	United Nations High Commission for Refugees (UN Refugee Agency)
<b>UNICEF</b>	United Nations Children's Fund
<b>UN Women</b>	United Nations Entity for Gender Equality and the Empowerment of Women
<b>WHO</b>	World Health Organization
<b>Arabic terms</b>	
<b>fatwa</b>	Ruling or pronouncement on a point of Islamic law
<b>'idda</b>	The period a woman must observe after the death of her spouse or after a divorce during which she may not remarry
<b>khalwa</b>	Social mingling of men and women who are unrelated
<b>khul'a</b>	Divorce process initiated by the wife requiring return of her mahr
<b>mahr</b>	Mandatory payment by the groom or his father to the bride which then becomes her property
<b>talaq</b>	Repudiation; divorce process whereby the husband repudiates his wife
<b>'urf</b>	Custom
<b>wali</b>	Guardian
<b>wilaya</b>	Guardianship
<b>zina</b>	Unlawful sex, including adultery and sex between two persons neither of whom are married

# INTRODUCTION

## Scope

UNDP, in partnership with UN Women, UNFPA, and ESCWA, has conducted a study on Gender Justice and the Law to provide a comprehensive assessment of laws and policies affecting gender equality and protection against gender-based violence in the Arab states region.

The study is composed of an introductory piece that describes the background, rationale, analytical framework and methodology, and a total of 18 country profiles. Each country profile maps the country's key legislative and policy developments regarding gender justice.

This country profile presents the findings of the study relating to Libya. It provides an analysis of whether the country's laws and policies promote or impede equality between women and men before the law, and whether they provide protection against gender-based violence.

This country profile includes analysis of the following areas of the law:

- Constitutional guarantees of gender equality and constitutional protections against gender-based violence
- Status of penal codes and whether the country has domestic violence laws that address gender-based violence
- Status of personal status codes and how they impact gender equality
- Status of nationality laws and whether they ensure that women and men enjoy equal rights in relation to citizenship
- Status of labour laws and whether they provide protection from discrimination and gender-based violence in the workplace

## Methodology and acknowledgements

The study was conducted in two phases:

1. A literature review was conducted between January 2016 and June 2017 of the various laws, regulations, policies, and law enforcement practices related to gender justice in each of the 18 countries, which then formed the basis of draft country profiles.
2. Realizing the limitations of desk-based literature reviews, country validation processes for each of the draft country profiles were led by UN Country Teams and national consultants. Country validation processes took place between September 2017 and August 2018 to ensure the accuracy of each country profile. These sought the views of government partners and other key national stakeholders.

Thanks are due to all those who reviewed this country profile, including Ms. Azza Maghur, Lawyers for Justice in Libya, and members of UNSMIL and the Ministry of Institutional Reform. The Libya country profile has not been officially endorsed by the Government of Libya.

The literature reviews that formed the basis of the country assessment were authored by consultants John Godwin and Nadya Khalife. They also edited the final drafts for publication after feedback from national counterparts. Their insights and hard work are recognized with gratitude. Nadya Khalife and Amr Khairy translated the outputs of the study into Arabic and English. Gratitude is also extended to John Tessitore for assistance with copyediting in English.

# LIBYA



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## Gender Justice & The Law

DOES THE LAW ENSURE GENDER EQUALITY AND PROTECTION FROM VIOLENCE?

The colour-coded representation below provides a comparison of the laws identified in the country profile with international human rights standards, the recommendations of the UN Committee on the Elimination of Violence against Women and country recommendations under the country's respective Universal Periodic Reviews.

### YES

The law provides for gender equality and/or protection from gender-based violence and is substantially compliant with international standards. A green category does not indicate that the law is perfect or that gender justice in the relevant topic area has been fully achieved.

### NO

The law does not provide for gender equality and/or there is no or minimal protection from gender-based violence.

### Partly

Some gender justice aspects of the law have been addressed, but important gender inequalities remain.

No available data or inadequate information.

## Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Libya acceded to CEDAW in 1989 and maintains reservations to Article 2 and Article 16(c) and (d) as well as a general reservation that accession cannot conflict with personal status laws derived from Sharia. Libya is party to the CEDAW optional protocol allowing for individual complaints.

## Constitution

Article 6 of the Interim Libyan Constitution states that Libyans shall be equal before the law, enjoy equal civil and political rights, have the same opportunities in all areas, and be subject to the same public duties and obligations without distinction, including on the grounds of gender.

## NATIONALITY LAW

### NATIONALITY

Libyan women do not have the same rights as men to pass their nationality to a child or a foreign spouse.

## CRIMINAL LAWS

### Domestic violence

Libya does not have domestic violence legislation.

### Abortion for rape survivors

Abortion is prohibited by Articles 390–395 of the Penal Code, including for women who have been raped. The penalty is reduced if the abortion is performed to save the honour of the person performing it or the honour of a relative.

### Adultery

Law No. 70 of 1973 criminalizes adultery and zina, which is defined as sexual intercourse between a man and a woman who are not bound to each other by marriage. The penalty for zina is flogging with 100 lashes.

### Marital rape

Marital rape is not criminalized.

### Sexual harassment

Article 12 of the Labour Relations Law prohibits employees from performing or inciting acts of sexual harassment. Articles 368–398 of the Penal Code criminalize physical and sexual assaults in public.

### Female Genital Mutilation / Cutting (FGM/c)

There is no legal prohibition. There are no documented cases.

### Sexual orientation

Law No. 70 of 1973 criminalizes all forms of consensual sex and indecent acts outside of marriage. Articles 407 and 408 of the Penal Code were amended in 1973 to criminalize consensual sex and indecent acts.

### Rape (other than of a spouse)

Article 407 of the Penal Code criminalizes rape as an offence against honour and morals. The penalty for having carnal connection by force or threats is imprisonment for a period not exceeding ten years.

### Honour crimes: Mitigation of penalty

Article 375 of the Penal Code allows for reduced punishment of eight years' imprisonment for a man who kills his wife, daughter, or sister if the crime is perpetrated immediately upon finding the woman engaged in adultery.

### Human trafficking

Libya does not have comprehensive anti-trafficking legislation. The Penal Code punishes international trafficking of women for sexual exploitation in some circumstances.

### Exoneration by marriage

Article 424 of the Penal Code exonerates a rapist if he marries his victim and does not divorce her for a period of three years.

### Protective detention

The government operates Social Rehabilitation Centres for the mandatory detention of women and girls who have been raped or abandoned by their families. This form of protection is not supportive of gender justice because it restricts the liberty of women and girls.

### Sex work and anti-prostitution laws

Prostitution is prohibited by the Penal Code, and the Law against adultery and zina, Law No. 70 of 1973.

## PERSONAL STATUS LAWS

### Minimum age of marriage

Article 6 of the Family Law stipulates that the minimum age for marriage for women and men is 20. The court may allow persons under 20 to marry if there is a specific reason, benefit, or necessity for the marriage.

### Guardianship of children

The legal position is unclear. Both mothers and fathers have guardianship of their children according to Law No. 17 of 1992. The position after divorce is unclear. Principles of Islamic law apply to resolve issues relating to guardianship.

### Male guardianship over women

A woman requires consent of her male guardian to enter marriage. However, a guardian cannot force a woman to marry against her will or prevent her from marrying the husband of her choice. The guardian's consent is needed if the woman wants to travel.

### Custody of children

The mother has custody of her sons until they reach puberty and her daughters until they marry. However, a divorced woman who remarries risks losing custody of her daughter.

### Marriage and divorce

A wife has domestic responsibilities and must ensure the comfort of her husband. In return, she is entitled to maintenance from her husband and to be free from violence. Only judicial divorces are recognized. A woman can divorce on specified grounds, or through a khul'a divorce if she forgoes her financial rights.

### Inheritance

Sharia rules of inheritance apply. Women have a right to inheritance, but in many cases receive less than men. Daughters receive half the share that sons receive.

### Polygamy

The Family Law permits polygamy. As a result of a Supreme Court judgment, polygamy is allowed without conditions.

## LABOUR LAWS

### Right to equal pay for the same work as men

Article 21 of the Labour Relations Law No. 12 of 2010 states that there should be no discrimination in wages based on sex.

### Domestic workers

Domestic workers are included within labour legislation. Chapter 3 of the Labour Relations Law addresses domestic work. Employers must ensure equality of domestic workers with other workers in areas such as leave entitlements and social protection rights.

### Dismissal for pregnancy

Article 25 of the Labour Relations Law prohibits employers from dismissing women because of pregnancy.

### Paid maternity leave

Article 25 of the Labour Relations Law provides that women are entitled to 14 weeks of maternity leave, which the government is required to pay. This conforms to ILO recommendations.

### Legal restrictions on women's work

Women are restricted from being employed in some occupations. Article 24 of the Labour Relations Law states that women shall not be employed in types of work that are unfamiliar to their nature as women.

# OVERVIEW

## Legal framework

### International law

Libya acceded to the Convention on the Prevention of All Forms of Discrimination against Women (CEDAW) in 1989. Upon accession, the government entered the following reservations to CEDAW:

1. Article 2 shall be implemented with due regard for the peremptory norms of Islamic Sharia relating to determination of the inheritance portions of the estate of a deceased person, whether female or male.
2. The implementation of paragraph 16(c) and (d) of the Convention shall be without prejudice to any of the rights guaranteed to women by the Islamic Sharia.

In 1995, Libya modified its reservations to a general reservation, thus replacing the points covered above. The general reservation notes “[Accession] is subject to the general reservation that such accession cannot conflict with the laws on personal status derived from the Islamic Sharia.”

Libya acceded to the CEDAW Optional Protocol in 2004, which allows people to submit complaints on violation of rights guaranteed by the Convention to international protection mechanisms when domestic remedies are limited or unavailable.

Libya ratified the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol) in 2004, subject to a reservation about “judicial separation, divorce and annulment of marriage”. In 2009, a special edition of the Libyan Official Gazette confirmed that the international human rights agreements ratified by Libya included CEDAW and the African Charter on Human and People’s Rights.

### Domestic law

Domestic laws relevant to gender justice include:

- ☒ Penal Code of 1954
- ☒ Law on the Establishment of the Hadd penalty for *Zina* and modifying some provisions of the Penal Law, Law No. 70 of 1973
- ☒ Ministerial Decree 119 on the Protection of Survivors of Rape and Violence.
- ☒ Family Law of 1984
- ☒ Labour Relations Law of 2010
- ☒ Libyan Constitutional Declaration (Interim Constitution) of 2011

The country’s legal system is influenced by French, Italian, and Egyptian legal sources, and its highest legislation is the Libyan Constitutional Declaration, which was promulgated during the Libyan Revolution in 2011. This Constitutional Declaration is temporary, pending a permanent Libyan Constitution.

Libya gained its independence and adopted a constitution in 1951. The Libyan Constitution of 1951 did not include a provision on Sharia, and only states in Article 5 that “Islam is the religion of the state.” The Libyan Civil Code recognizes Sharia as a secondary source of law, with legislation the primary source of law. After the 1969 military coup, no new constitution was promulgated. From 1969 to 2011, Islamic Sharia was mentioned in some documents that were considered to be of a constitutional nature; but prior to 2011, Islamic Sharia was not formally embedded in Libya’s Constitution.

### Towards a permanent Libyan Constitution

The Libyan Constitutional Declaration (Interim Libyan Constitution) was issued in 2011 by the National Transitional Council and is still in force.

Article 1 declares Islamic Sharia as the principal source of legislation. Based on this clause, several cases have been brought before the Libyan Supreme Court for the purpose of abrogating laws supportive of women’s rights that were promulgated during the previous regime. For example, Supreme Court judgment No. 30/59 of 2013 repealed a clause in the Libyan Family Code,<sup>1</sup> thereby allowing polygamy without conditions, based on Islamic Sharia as the principal source of legislation.

<sup>1</sup> Human Rights Watch, “A revolution for all: Women’s rights in the new Libya” (2013).

The following Articles of the Libyan Constitutional Declaration are particularly relevant to gender justice:

- The family is the basis of society and shall be entitled to protection by the State. The State shall also protect and encourage marriage. The State shall guarantee the protection of motherhood, childhood, and the elderly. The State shall take care of children, youth, and the handicapped (Article 5).
- Libyans shall be equal before the law, enjoy equal civil and political rights, have the same opportunities in all areas, and be subject to the same public duties and obligations, without distinction on the grounds of religion, belief, language, wealth, sex, kinship, political opinions, social status, or tribal, regional, or familial adherence (Article 6).
- Human rights and basic freedoms shall be respected by the State. The State shall commit itself to join the international and regional declarations and charters that protect such rights and freedoms. The State shall endeavour to promulgate new charters that shall honour the human being as being God's successor on earth (Article 7).

## Women's status in the Libyan Political Agreement (LPA)

The LPA was signed in 2015 by various factions, including the Libyan House of Representatives and the previous Libyan Parliament (General National Congress), and it is widely accepted and recognized internationally and by the parties within Libya.

The LPA does not include a specific section on women. It's Governing Principles include the principle of "equality between all Libyans in civic and political rights and equal opportunity, and rejection of any form of discrimination for any reason whatsoever" (Principle 8). However, gender discrimination is not specifically mentioned.

Principle 5 states that "Islamic Sharia is the source of all legislation, and all that contradicts it shall be deemed null and void." This principle is wider in interpretation than the text of the Libyan Constitutional Declaration, which does not make Sharia the only source of law and does not go as far as nullifying all that is in contradiction with it, including legislation. The principle related to Islamic Sharia in the LPA could be used to restrict women's rights, including those previously acquired by legislation, especially since there is no specific section in the LPA related to women's rights to counterbalance or limit the consequences of this provision.

Article 2 of the LPA states that the Government of National Accord will take into consideration a fair representation of women. However, it does not specify quotas for women.

In the sections of the LPA related to peace and security (including confidence building measures and security arrangements), women and girls are not mentioned, despite the fact that women and girls are the most vulnerable and require protection in situations of civil war, crisis, and insecurity. The LPA also does not specifically refer to the importance of protecting women and girls who are displaced or refugees.

Article 11 of the LPA states that the Government of National Accord shall commit itself to the formation of a Women Support and Empowerment Unit under the Presidency of the Council of Ministers. The LPA thereby gives some weight to women's rights related to empowerment within the government and limited political rights, but does not address the status of women or their rights to protection in the context of conflict and the consequences of war, including war crimes.

## The Libyan Draft Constitution

In accordance to the Libyan Constitutional Declaration and Election Law, Law No. 17 of 2013, a Constitution Drafting Assembly was elected in 2014 to draft a permanent constitution. In 2017, the Assembly submitted its final draft of the new constitution to the House of Representatives. In accordance with the Libyan Constitutional Declaration, the draft constitution is to be referred to the Libyan people for referendum, which has yet to take place.

The Draft Constitution is divided into 11 chapters. Articles related to women are spread throughout the draft. Chapter two (on rights and freedoms) includes Article 7, which specifically addresses women's rights and guarantees the rights to equality and non-discrimination as follows:

Male and female citizens shall be equal in and before the law. There shall be no discrimination between them and all forms of discrimination for any reason such as ethnicity, colour, language, sex, birth, political opinion, disability, origin, or geographical affiliation shall be prohibited in accordance with the provisions of this constitution.

The Draft Constitution includes three other positive Articles related to women: Equal Opportunity (Article 16),<sup>2</sup> Supporting Rights of Women (Article 49),<sup>3</sup> and Special Provision for Women (Article 185).<sup>4</sup> Article 39 on elections contains a general equality clause related to the rights to vote and run as a candidate.<sup>5</sup> Article 9 provides for equality for women and men in terms of defending the country.<sup>6</sup>

<sup>2</sup> "Equal opportunity shall be guaranteed for male and female citizens. The State shall work towards taking the necessary measures to achieve this."

<sup>3</sup> "The State shall be committed to supporting and caring for women, enacting laws that ensure their protection, promoting their status in society, eliminating the negative culture and social customs that detract from their dignity, as well as prohibiting discrimination against them, and ensuring their right in public elections and enabling them to have access to opportunities in all areas; it shall also take the necessary measures to safeguard and not to prejudice their acquired rights."

<sup>4</sup> "Any electoral system shall guarantee the representation of women by twenty-five per cent of the total seats of the House of Representatives and Local Councils for two election sessions, taking into account the right to run for general elections."

<sup>5</sup> "Every citizen shall have the right to give their opinion in referenda as well as to vote or run as a candidate in free, fair, transparent, and equitable elections in which all citizens are equal in accordance with the law. It shall be prohibited to deprive eligible citizen from them except based on a judicial ruling."

<sup>6</sup> "Defending the State as well as its unity and independence shall be the duty of each male and female citizen."

Article 6 of the Draft Constitution states: “Islam shall be the religion of the State, and Islamic Sharia shall be the source of legislation.” This wording is more rigid than the provision in the Constitutional Declaration (Article 1), which refers to Islamic Sharia as the “principal” source of legislation.<sup>7</sup> Article 6 allows for different interpretations of Islamic Sharia, which may provide opportunities for addressing gender inequalities. Interpretations may include support to participation of women in decision-making, as the Quran does not indicate an absence of women in the judiciary or in leadership positions.

Article 10 of the Draft Constitution on nationality states: “The law that regulates granting and withdrawing nationality shall take into account the public interest, national security, maintaining of demographic composition, and the ease of integration in Libyan society.” This article does not address the discrimination against women that exists in the current nationality law. Article 10 defers Libyan nationality regulations to legislation.

## Policy framework

Efforts to address gender justice are situated within the framework of broader policies and programmes on transitional justice and rule of law. There are pending issues on transitional justice that will have significant implications for gender equality, protection from violence, and women’s access to justice. The breakdown of rule of law has led to impunity for armed groups who perpetrate sexual and gender-based violence (GBV) on all sides of the conflict.

The UN Development Programme is working to strengthen the role of Libyan women in the political transition by providing support to key women’s organizations to enable them to participate in the transitional process and to provide an effective lobby for women’s rights. A priority is ensuring that the Women’s Empowerment and Support Unit with the Presidency Council can play an active role in ensuring that women’s rights are integrated in transitional policies and legislation.

Populations that face distinct and additional risks of GBV in Libya include internally displaced persons, refugees and asylum seekers (including people transiting through Libya seeking to enter Europe), prisoners and other people in detention, people with disability, and LGBT people. Libyans from certain tribes and communities have faced discrimination and violence since 2011. Migrant workers from sub-Saharan Africa have also been subject to discrimination and abuse by state and non-state actors. Sexual violence used against men in situations of detention is a distinct form of GBV. Improved management of detention centres is a key policy and programme challenge.

## Legal and support services

The government lacks policy structures, institutional capacity, and resources for the provision of legal and support services for survivors of GBV. Some general social services may be able to provide such care and support, but there is a lack of specialized government services due to the ongoing conflict.

The UN Secretary-General’s 2015 report to the UN Security Council on conflict-related sexual violence made the following observation:

The majority of the international community withdrew temporarily from the country [in the last six months of 2014], which limited the provision of essential services to survivors of sexual violence as well as access to verified information. Women have been particularly affected, with a number of female activists targeted for assassination. The deteriorating security situation has increased fears of sexual violence, which has been reported to be a driver of displacement to neighbouring countries. Growing numbers of asylum seekers, refugees, and migrants attempted to reach Europe from Libya by sea, with sexual violence against women and girls reported to have taken place in this context. Extremist activity in Libya is a source of serious concern given regional trends regarding sexual violence committed by armed groups.

Attacks on courthouses and members of the judiciary have halted the work of the justice system in Benghazi, Derna, Sirte and Tripoli. The United Nations Support Mission in Libya (UNSMIL) is intensifying efforts to facilitate a political dialogue among key stakeholders, which provides an opportunity to address sexual violence.<sup>8</sup>

While the government operates Social Rehabilitation Centres for women and girls, these have been criticized for violating the human rights of women and girls, many of whom who are effectively detained against their will with no mechanism to challenge their detention.<sup>9</sup> The mandate of these centres is to provide housing for “women who are vulnerable to engaging in moral misconduct,” including “raped adolescent girls; misled adolescent girls whose decency was assaulted; women accused of prostitution about whom the court did not make a decision; women abandoned by their families because of illegal pregnancy; homeless women; and divorced women abandoned by their families.”<sup>10</sup>

7 “Islam is the Religion of the State and the principal source of legislation is Islamic Jurisprudence (Shari’a).”

8 UN Secretary-General, Conflict-related sexual violence: Report of the Secretary-General (23 March 2015), S/2015/203, p.11.

9 Stakeholder Submission to the United Nations Universal Periodic Review 22nd Session of the Working Group on the UPR Human Rights Council April–May 2015 Submitted September 2014 by The Advocates for Human Rights and Mobilising for Rights Associates, [http://www.theadvocatesforhumanrights.org/uploads/libya\\_hrc\\_women\\_s\\_rights\\_2014.pdf](http://www.theadvocatesforhumanrights.org/uploads/libya_hrc_women_s_rights_2014.pdf).

10 Human Rights Watch, Libya: A Threat to Society? Arbitrary Detention of Women and Girls for ‘Social Rehabilitation’ (2006).

# PROTECTION FROM DOMESTIC VIOLENCE AND SEXUAL VIOLENCE

There are general provisions in the Penal Code that could in theory be applied to prosecute men who commit domestic violence against women and girls. However, none of the resources reviewed indicated that domestic violence cases are addressed by applying these provisions as a matter of practice. There is no special law designed to address domestic violence, and marital rape is not specifically criminalized.

The Penal Code includes provisions on battery and assault, which are covered in Title I, Chapter I of Book III under the title “Crimes against the Individual’s Life and Safety.”<sup>11</sup>

The Penal Code criminalizes rape as an “offence against freedom, honour and morals,” rather than as a crime against the individual. Marital rape is not covered by the Penal Code rape offence. The penalty for having carnal connection by force or threat is imprisonment for a period not exceeding ten years.<sup>12</sup> The penalty for indecent assault by force or threat is imprisonment for a period not exceeding 5 years.<sup>13</sup>

In practice, only the most violent rape cases (mostly involving older men attacking minors) are prosecuted, while other sexual assault offences committed by family members are remedied through family arrangements to avoid public scandal.<sup>14</sup>

The Penal Code exonerates a rapist if he marries his victim and does not divorce her for a period of three years. Article 424 provides:

If the offender marries the woman against whom the offence is committed, the offence and penalty shall be extinguished, and the penal effects thereof shall cease. This shall apply both to the offender and to his accomplices, provided that the personal status law applicable to the offender does not authorize divorce or judicial divorce. But if the personal status law applicable to the offender authorizes divorce or judicial divorce, then the marriage of the offender shall only stay criminal proceedings or execution of the penalty for a period of three years. The stay shall cease before the passage of three years from the date of the offence if the woman against whom the offence was committed is judicially divorced for no reasonable reason or if a ruling of divorce is issued on her behalf.

The term “sexual harassment” does not exist in the Penal Code. Anyone who subjects a woman to words, acts, or gestures that violate her decency in a public street or accessible location, and anyone who incites passers-by to indecency by gestures, words, or acts shall be punished by detention for a period of no less than one month and not exceeding six months.<sup>15</sup> Some other forms of physical harassment such as physical and sexual assaults are criminalized by the Penal Code.<sup>16</sup> The Penal Code provides specific punishments for assaults on pregnant women.<sup>17</sup>

The Penal Code provides that it is an offence to injure someone in such a way as to lead to an ailment. However, should the ailment not exceed ten days, the perpetrator is not punishable unless the survivor files a complaint.<sup>18</sup> This provision may deter police from acting on domestic violence incidents or cause them to delay any action until the enduring nature of the victim’s injuries is confirmed.

Domestic violence is addressed under the Family Law, which states that husbands should not cause physical or mental harm to their wives, and wives should not cause physical or mental harm to their husbands.<sup>19</sup> However, there is no specific penalty for acts of domestic violence and there is no clearly defined process by which women can obtain protection orders to prevent acts of domestic violence from occurring.

Law No. 38 of 2012 on certain procedures related to the transitional period<sup>20</sup> was enacted by the interim National Transitional Council. It grants immunity from prosecution for serious crimes that were “necessary” for the success of the revolution. This provision has been criticized for encouraging a culture of impunity.<sup>21</sup> Advocates have called for the law to be amended so that there is no amnesty for those responsible for serious international crimes such as murder, torture, sexual violence, enforced disappearance, and forced displacement.

Law No. 29 of 2013 on transitional justice does not explicitly include crimes committed during the Libyan uprising of 2011 and onwards.<sup>22</sup>

11 Penal Code, Arts. 368–398.

12 *Ibid.*, Art. 407.

13 *Ibid.*, Art. 408.

14 United Nations Economic Commission for Africa, *Violence against Women in Africa, A Situational Analysis* (2010).

15 *Ibid.*, Art. 420 (bis).

16 Penal Code, Arts. 368–381, 408, 409, 501.

17 *Ibid.*, Arts. 380, 381, 393.

18 *Ibid.*, Art. 379.

19 Law No. 10 of 1984, Arts. 17–18.

20 Special Procedures Law No. 38 of 2012.

21 Human Rights Watch, *Priorities for Legislative Reform: A Human Rights Roadmap for a New Libya* (2014).

22 Law No. 29 of 2013, Transitional Justice Law, Arts. 1 and 5/1.

In early 2013 the Ministry of Justice submitted a draft Law on the Protection of Survivors of Rape and Violence to the Libyan General Conference (GNC). However, the GNC did not issue the law. The Council of Ministers reacted to the GNC's refusal to issue the law by issuing Ministerial Decree 119 on the Protection of Survivors of Rape and Violence. The Decree includes a flawed implementation approach, potentially creating a system of secondary victimization. A ministerial decree is lower than a law in the legislative hierarchy. Therefore, it is important that in future a law is promulgated to more effectively address protection of survivors of rape and violence as part of the Libyan national reconciliation process.

Ministerial Decree 119 recognizes victims of sexual violence during the Libya uprising as victims of war;<sup>23</sup> and provides survivors of rape during the 2011 uprising with the right to receive compensation, health care, training, education and employment opportunities, and access to housing. It also provides that the state will establish shelters for those rejected by families and legal support in bringing perpetrators to justice. Benefits are required to be provided for families of survivors and children born following rape. These measures have not yet been implemented mainly due to lack of funding, institutional and governmental division, and the halt to the national reconciliation process.<sup>24</sup>

In 2014, the Ministry of Justice adopted Resolution 904, which established a reparations fund for survivors of sexual violence perpetrated during the uprising.<sup>25</sup>

## HONOUR CRIMES

The Penal Code allows for reduced punishment of eight years imprisonment for a person who kills his wife, daughter, or sister if the crime is perpetrated immediately upon finding the woman engaging in extra-marital sex.<sup>26</sup> The punishment for the same crime where honour is not the motivating factor is life imprisonment.<sup>27</sup> If honour is the motivating factor, the penalty is reduced by a third for an act of violence that results in injuries to a female relative, and an assault causing gross or serious harm is reduced to two years.<sup>28</sup> The Penal Code also provides that a man who "merely" assaults his wife, daughter, or sister without causing bodily harm shall not be punished if the assault occurs in these circumstances.<sup>29</sup>

## ADULTERY AND SEX OUTSIDE OF MARRIAGE

Law No. 70 of 1973<sup>30</sup> criminalizes adultery and *zina*, which is defined as sexual intercourse between a man and a woman who are not bound to each other by marriage. The law provides that the penalty for *zina* is flogging with 100 lashes.<sup>31</sup> Under Law No. 70 of 1973, the confession of the accused, testimony of four eyewitnesses, or scientific proof is required to prove *zina*.<sup>32</sup> The testimony of a woman cannot be used to establish the crime of *zina*.<sup>33</sup>

Women may be reluctant to lodge complaints of rape for fear that they may be prosecuted for *zina* or adultery if they are unable to prove the rape offence.

<sup>23</sup> International Federation for Human Rights, "Libya adopts an unprecedented decree protecting victims of sexual violence" (19 February 2014).

<sup>24</sup> Stakeholder Report to the United Nations Human Rights Council Universal Periodic Review - Libya The Prohibition of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment in Libya

Submitted by Lawyers for Justice in Libya, the Redress Trust, and DIGNITY Danish Institute Against Torture October 2014, p.8. Available from [http://www.redress.org/downloads/publications/2015torture-in-libya--lfjl-redress-and-dignity-\(7\).pdf](http://www.redress.org/downloads/publications/2015torture-in-libya--lfjl-redress-and-dignity-(7).pdf)

<sup>25</sup> UN Secretary-General, *Conflict-related sexual violence*.

<sup>26</sup> Penal Code, Art. 375.

<sup>27</sup> Ibid., Art. 372.

<sup>28</sup> Ibid., Art. 375.

<sup>29</sup> Ibid.

<sup>30</sup> Law Regarding the Establishment of the Hadd Penalty for Zina and Modifying Some of the Provisions of the Penal Law, Law No. 70 of 1973.

<sup>31</sup> Ibid., Art. 6 bis.

<sup>32</sup> Ibid.

<sup>33</sup> Alison Pargeter, *Women's Rights in the Middle East and North Africa*, Libya (Freedom House, 2010), p. 6.

## ABORTION FOR RAPE SURVIVORS

Abortion is generally illegal under the Penal Code, even in cases of rape.<sup>34</sup> Abortions may only be performed to save the life of a woman.<sup>35</sup> A person who performs an abortion without the pregnant woman's consent is subject to imprisonment for up to six years; with the pregnant woman's consent, the penalty is imprisonment for at least six months. A woman who performs her own abortion or consents to its performance is also liable to at least six months' imprisonment. Increased penalties apply if the abortion is performed by a health worker.

The penalty is reduced if the abortion is performed to save the honour of the person performing it or the honour of a relative.<sup>36</sup>

## FEMALE GENITAL MUTILATION/CUTTING (FGM/C)

FGM/C is not known to be practiced in Libya. However, FGM/C may be practiced among nomadic tribes in rural areas or migrant groups from sub-Saharan Africa. Libya does not have any legislation specifically criminalizing or prohibiting FGM/C.<sup>37</sup>

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34 Penal Code, Arts. 390–395.

35 Health Law, Law No. 106 of 1973 and Law No. 17 of 1986.

36 Penal Code, Art. 394.

37 Organisation for Economic Co-operation and Development, Social Institutions Gender Index, Libya (2014), <http://genderindex.org/country/libya>.

# FAMILY MATTERS

## Marriage

Law No. 10 of 1984 (the Family Law)<sup>38</sup> improved legal protections for women in marriage while maintaining some traditional roles that advantage men.

The Family Law stipulates that the minimum age for marriage for women and men is 20. The court may allow persons under 20 to marry if there is a specific reason, benefit, or necessity for the marriage.<sup>39</sup>

Intending spouses require the consent of their male guardians. However, a guardian cannot force a man or woman to marry against his or her will or prevent a woman from marrying the husband of her choice.<sup>40</sup> If a guardian refuses to grant permission for marriage without an acceptable legal reason, the matter can be taken to court.

The law previously imposed restrictions on polygamy.<sup>41</sup> However, Libya's Supreme Court lifted the restrictions in 2013, allowing a husband to take a second wife without consent of the first wife.<sup>42</sup>

Wives are under a legal obligation to ensure the comfort of their husbands and to assume all domestic responsibilities. In return, she is entitled to maintenance from her husband, control over her own income and assets, and the right to be free from mental or physical violence.<sup>43</sup>

## Divorce

Only judicial divorces are recognized.<sup>44</sup> Both men and women may petition for divorce.

A wife's application for divorce may be made based on the following grounds: husband's failure to maintain the wife without cause; husband's inability to maintain the wife; husband's absence without justification; husband's defect preventing fulfillment of the aims of marriage or other grave defect; and the husband's sexual abstinence for four months or more without justification.

A woman can also divorce through *khul'a*, in which divorce is granted to the wife in exchange for loss of financial rights (dowry).<sup>45</sup>

A wife and husband can also agree to divorce by mutual consent.

According to Human Rights Watch, after divorce men typically keep the family home and other property while divorced women are expected to return and live with their families. Women may only be granted housing as part of a settlement after a divorce if they have custody of their children.<sup>46</sup>

Both mothers and fathers have legal guardianship of their minor children.<sup>47</sup> The mother has custody of her sons until they reach puberty and her daughters until they marry. If the wife leaves the marital home and the husband is found at fault, she retains custody of her children. However, a divorced woman who remarries risks losing custody of her daughter. A divorced woman remains in the home as long she has custody of her children.<sup>48</sup>

38 Law No.10 of 1984 Concerning the Specific Provisions on Marriage and Divorce and their Consequences (Family Law).

39 Family Law, Art. 6.

40 Ibid., Art. 8.

41 Law No. 22 of 1991 and Law No. 9 of 1994.

42 Human Rights Watch, *A Revolution for All*.

43 Family Law, Arts. 17–18.

44 Ibid., Art. 28.

45 Ibid., Art. 48.

46 *Human Rights Watch, A Revolution for All*.

47 United Nations Children's Fund, Libya, MENA Gender Equality Profile (2011), <http://www.unicef.org/gender/files/Libya-Gender-Equality-Profile-2011.pdf>.

48 Family Law, Arts. 62, 63, 65, 70.



# INHERITANCE

Inheritance is determined by Sharia principles, under which women have the right to inherit, but will generally inherit a smaller share than men. A daughter has the right to a share of the inheritance that is half that of her brother. The Law on Women's Right to Inheritance of 1959 provides a penalty of imprisonment for anyone withholding a lawful share of inheritance from a woman.<sup>49</sup>

# NATIONALITY

Children whose father is Libyan acquire Libyan nationality automatically when they are born. The law is unclear as to whether children whose mother is Libyan acquire Libyan nationality automatically when they are born. Children who are unable to acquire or prove Libyan nationality may be denied basic health and education services.

According to Article 3 of Law No. 24 of 2010 on Nationality, women may pass their nationality to their children if the father's nationality is unknown or if the father is stateless. Article 11 states that children of Libyan mothers who are married to non-Libyans can obtain Libyan nationality. However, implementing regulations are required to explain the procedure for passing nationality to a child. Until implementing regulations are made, the position is unclear.

Libyan women also do not have the same rights as Libyan men to pass on their nationality to a non-Libyan spouse.

# LABOUR LAWS

## Entering employment

Women are restricted from employment in some occupations. The Labour Relations Law of 2010 states that women shall not be employed in types of work that are "unfamiliar to their nature" as women, which are to be defined in executive rules.<sup>50</sup> No rules made under this provision were identified.

Law No. 8 of 1989 entitles women to apply for positions on the same conditions as men in the judiciary, and in particular the positions of the general prosecutor's office and in the judicial administration bureau. No other provision was found prohibiting discrimination based on gender in recruitment and hiring.

## Remaining in employment

The Labour Relations Law of 2010 states that there should be no discrimination in wages based on sex and "men should not be distinguished from women in employment and wages of equal value."<sup>51</sup> It is unclear whether this right to equal pay applies only to women and men employed in the same roles, or extends to include equal wages for work of equal value where it is a different type of work.

49 Law on Women's Right to Inheritance of 1959, Art.5.

50 Labour Relations Law No.12 of 2010, Art 24.

51 Ibid., Arts. 21, 24.

Women are entitled to 14 weeks of maternity leave, which the government is required to pay.<sup>52</sup> If the woman gives birth to more than one child (twins, triplets, etc.), the maternity leave entitlement increases to 16 weeks.<sup>53</sup> Employers are prohibited from terminating a woman due to pregnancy or absence due to maternity leave.<sup>54</sup> Employers that employ women with children are required to provide childcare facilities.<sup>55</sup>

## Workplace sexual harassment

The Labour Relations Law prohibits employees or labourers from performing or inciting acts of sexual harassment.<sup>56</sup> However, the penalty for sexual harassment is unclear, and the prohibition applies to employees but not employers.

## Domestic workers

Chapter III of the Labour Relations Law addresses domestic work. Employers must ensure equality of domestic workers with other workers in areas such as leave entitlements and social protection rights. The Labour Relations Law provides general protections to domestic workers, including to be treated well and not to be insulted by the employer.<sup>57</sup>

# SEX WORK AND ANTI-PROSTITUTION LAWS

Persons who engage in sex work may be prosecuted for sex outside of marriage. *Zina* is an offence punishable by 100 lashes.<sup>58</sup> A person who has intercourse with a person with consent may be punished by imprisonment of not more than five years.<sup>59</sup>

There are also specific Penal Code offences that apply to prostitution. Any woman who makes prostitution her means of livelihood and gain shall be punished by detention for a period of no less than one year. Anyone who opens or manages a house of indecency or house of prostitution or assists in any manner in the management thereof shall be punished for a period of no less than one year and a fine or no less than LYD 100 and not exceeding LYD 300.<sup>60</sup>

# HUMAN TRAFFICKING

Breakdown of rule of law and lack of government oversight has allowed human trafficking operations to expand in recent years. There is no comprehensive anti-trafficking legislation, although the Penal Code punishes trafficking in women in certain circumstances. Trafficking of men and boys is not addressed by the Penal Code.

Under the Penal Code, it is an offence to force a woman to be a prostitute or to compel a woman to emigrate with the knowledge that she will be exploited into prostitution.<sup>61</sup> Penalties for international sex trafficking include imprisonment for up to ten years and a fine.<sup>62</sup> It is also an offence to facilitate the trafficking of women internationally into prostitution, penalties for which are a prison sentence between one and five years and a fine.<sup>63</sup> The Penal Code addresses international sex trafficking involving coercion of women by threats or force but does not address other types of trafficking involving fraud, deception, or abuse of power. Other types of servitude, slavery, and forced labour are also not addressed.

A draft Law on Trafficking in Persons is available from the Ministry of Justice website. The draft Law consists of thirty articles, including penalties and fines for perpetrators of trafficking as well as protection mechanisms and monetary aid to survivors of trafficking.<sup>64</sup>

52 Labour Relations Law No.12 of 2010, Art 25; Libya, Law on Social Security No. 13 of 1980, Arts. 11, 25.

53 Labour Relations Law No.12 of 2010, Art 25.

54 Ibid.

55 Ibid., Art. 26; Child Protection Act No. 5 of 1997, Art. 11.

56 Labour Relations Law No.12 of 2010, Art.12(10).

57 Ibid., Art. 93.

58 Law No. 70 of 1973.

59 Penal Code, Art. 407(4).

60 Ibid., Art. 417 bis (a).

61 Ibid., Arts. 416, 418.

62 Ibid., Art. 418.

63 Ibid., Art. 419.

64 Draft Law on Trafficking in Persons 2013, [http://www.aladel.gov.ly/home/uploads/sections/412\\_1111.pdf](http://www.aladel.gov.ly/home/uploads/sections/412_1111.pdf).

# SEXUAL ORIENTATION, GENDER IDENTITY, AND RELATED ISSUES

Law No. 70 of 1973 criminalizes all forms of consensual sex and indecent acts outside of marriage. Articles 407 and 408 of the Penal Code were amended in 1973 to criminalize consensual sex and indecent acts regardless of the gender of the persons involved. A person who has intercourse with a person with consent may be punished by imprisonment of not more than five years.<sup>65</sup>

There are no specific laws protecting people from hate crimes, GBV, or discrimination based on their sexual orientation. There are no legal protections for, or recognition of, transgender people.

Gay people are reported to be targeted for violence by Islamist militias.<sup>66</sup> There are reports of violence directed at gay men by the Nawasi Brigade.<sup>67</sup>

## LIBYA: KEY RESOURCES

### Legislation and Decrees

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<sup>65</sup> Penal Code, Art. 407(4).

<sup>66</sup> Asylum Research Consultancy, *Libya Country Report* (5 July 2013), <http://www.refworld.org/docid/51de77c24.html>.

<sup>67</sup> Ibid. The Nawasi Brigade is a militia group based in Tripoli.

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