

## Libya

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

Marriage in Libya is governed by the rules of the Islamic Sharia. In 1969, the civil and Shari'a courts were merged and civil courts with jurisdiction over family matters were created. Personal status laws which govern legal procedures such as marriage, divorce and inheritance, are still rooted in Islamic law (MENA Gender Equality, 2011).

Islam was declared as the religion of the state and thereby the governing body in the Constitutional Proclamation in 1969. This was reinforced in 1977 by the Declaration on the Establishment of the Authority of the People which stated that "the Holy Quran is the law of the community in the Socialist People's Libyan Arab Jamahiriya" (CEDAW, 2008).

Marriage is by law an equitable association between two equal parties and no one person may marry another against that person's will (Principle 21, Great Green Charter of Human Rights). If a woman's legal guardian is refusing to consent to her proposed marriage with an acceptable, legal excuse, the woman may bring her matter before the judiciary for a ruling which would overpower that of the guardian (CEDAW, 2008). Under the same law, a wife may also demand a divorce for reasons of desertions or damage.

The equal rights by law for all men and all women in the exercise of power as well as in regard to other social rights relating to marriage, divorce, motherhood, child custody, labour and social security is upheld by the Women Rights and Obligations in the Mass Society for 1997 (Pargeter, 2005).

Every male and female citizen is entitled to form a family based on a marriage that has the consent of both parties. There are legal provisions that prohibit forced marriage which is defined as a young man or a young woman who are made to marry against his or her will (Law No. 20 of 1991 on the Consolidation of Freedom, Art 25).

Polygamy is permitted but it is not a common practice. In order to take a second wife, the husband must prove his financial and physical capacity through the judicial system. He must also present a written agreement from the first wife, although this may be overridden in certain cases (Pargeter, 2010).

There are no legal provisions which prohibit harmful practices against widows. Law no 10 for 1984 states that women with no guardian after a divorce or the death of a husband are entitled to maintenance within the matrimonial home (Pargeter, 2005). The law does not provide for official registration of marriages and partnerships including customary, religious or informal or de-facto unions. A marriage is only legal when authorized by the court (Law on protection of Women's Rights to Inheritance, 1959).

## **b) Child marriage**

The legal age of marriage for women and men is 20 years. Law No. 10 of 1984 on Marriage and Divorce Provisions and the Effects Thereof, article 8, establishes that “a guardian may not compel a young man or young woman to marry against his or her will”. This is upheld over Islamic law which allows for women to be compelled against their will into marriage. The marriage of a child has no legal legitimation and all necessary action, including legislation, should be implemented if necessary (1984 Marriage and Divorce, Law 10). All marriages must be registered in order to be legitimate. There are no public measures to generate social support for the enforcement of laws on the minimum age. There are no legal repercussions for those facilitating a marriage of a minor (Women Business and the Law, 2015).

With either the Court or the ruling of a Judge, there are exceptions to the legal age of marriage that allow women and men to marry under the legal age of 20, if it is deemed that there is a compelling interest or need. This must be done with the consent of the guardian (Law No. 10 of 1984).

Early marriage is relatively rare in Libya (Girls Not Brides, 2013).

## **c) Household responsibilities**

Under Law No. 10 of 1984, men and women have different responsibilities during marriage and divorce. The woman has the right to alimony and everything within the limits of the husband’s wealth and capability according to provisions of this law, the non-subjection of her private property, which she may do with as she pleases and without being harmed physically or psychologically by her husband (CEDAW, 2008). The husband has the right to alimony and everything pertaining thereto if the husband is destitute and the wife is wealthy. The wife’s obligation to her husband is to take care of his comfort and his psychological repose, supervision of the marital house and organization and maintenance of its affairs, raising, protection and nursing of her children from him, and her refrainment from harming him physically and psychologically (CEDAW, 2008).

The law does not provide the same opportunity for women to be recognized as the head of household as it does men (CEDAW, 2008). The law does not require a woman to obey her husband as she is seen as an equal partner under the law, however in practice men typically are in complete control of the household and its inhabitants.

In regard to parental authority, Islamic Law dictates that the father is considered the natural guardian of his children and the mother the physical custodian (CEDAW, 2008). In the event of divorce, custody is often awarded to the mother until daughters marry and until sons reach puberty and move in with their fathers (CEDAW, 2008).

Legally, women have the same rights as men in regard to guardianships, wardship, trusteeships and adoption of children, however in practice this is not the case (Women Business and the Law, 2015). Upon the immediate birth of a child, the mother’s parentage is established and is equal to that of the father, unless the father declares that the child was conceived adulterously (CEDAW, 2008).

The law provides married and unmarried men and women with the same rights to choose where to live (Women Business and the Law, 2015).

#### d) Divorce

Divorce may be granted with the consent of both the husband and the wife in the presence of their respective attorneys (Law 10, of the 1984 of the Marriage and Divorce Provisions and the Effects Thereof, Art 35). This law was instated in order to abolish any discrimination against women on marriage, divorce and the effects thereof, solidifying a woman's rights within a marital relationship. This law grants women the right to divorce their husband and is meant to prevent discrimination or estrangements following separation. The divorce must be documented before a competent court. A wife may demand a divorce as does a man for reasons of any type of desertion or damage (Law No. 10 of 1984 on Marriage and Divorce Provisions and the Effects Thereof, Art 8). If both parties do not agree to the divorce, each person is entitled to continue the request of divorce from a special court.

A woman can also initiate a divorce for other reasons, but in exchange she will lose any financial rights she would have otherwise been entitled to. According to the law, after a divorce has been finalized, it continues to be the man's responsibility to support the woman for an agreed upon amount of time. However, this is rarely enforced (Pargeter, 2005).

In many Arab countries, men are able to divorce their wife by simply declaring his intent to divorce three times before a witness. According to Libyan law, a man must also petition the court in order for the declaration to be valid. This was established in the Great Green Charter, Art 21, which demands both parties either be in agreement or if the petitioner is able to establish legitimate grounds for divorce (Pargeter, 2005).

Women and men are both given legal guardianship of their minor children. If the separation was mutually agreed upon, the mother is given custody of her daughters until they marry and of her sons until they reach puberty. The father is required to provide financial support for the children (UNICEF, 2011).

In practice, women are often disadvantaged due to cultural traditions. Often, they are obligated to consult with a male relative before taking legal action and it is still an accepted practice for a man to take action on behalf of the woman (Pargeter, 2005). Women have the right to challenge discriminatory actions by the court and claim compensation if successful, however it is hard to know whether these actions are ever followed through (Pargeter, 2005). Divorce also carries a huge stigma for women and can often, especially in rural areas, lead to the woman being ostracized from the community (World for Libya, Women's Rights in Libya, 2011).

#### e) Inheritance

The Law provides daughters with the same ownership rights as sons in regard to both land and non-land assets (Libyan Civil Law, Kambota,). Often this law is overturned by Islamic law which dictates that women inherit half of what their male counterparts are entitled to. According to the Law on Protection of Women's Rights to Inheritance, female surviving spouses are given the same rights as male surviving spouses in regard to land and non-land assets. However, Islamic tradition often takes precedence, and women struggle to collect what is legally theirs as a result of bureaucracy (UNICEF, 2011). It is also not unusual practice for a woman to hand over her share of the inheritance to her brothers in order to secure financial support should she not marry or end a marriage through divorce

or widowship (Pargeter, 2005). Widows are legally given a portion of their pensions, but it is widely reported that even the collection of the reduced amount is hard (Pargeter, 2005).

The minority Tuareg population believe that inheritance should be run through the female line (Pargeter, 2010).

## **2. Restricted Physical integrity**

### **a) Violence against women**

Libya ratified The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) in May 2004 (ACHPR, 2017). There is no domestic law that directly addresses violence against women. The Penal Code states that anyone who kills in the name of honour will be subject to detention; beating or causing simple harm will not bring any punishment to the perpetrator. There is no national action plan or policy to address violence against women. There are no shelters available that offer protection for women who are victims of domestic violence (UNICEF, 2011). Libyan women are sometimes subjected to forced detainment in social rehabilitation camps for breaking societal and cultural norms (COI Report, 2012). These facilities have been widely criticized for human rights abuses with some of the women and girls being held for having broken moral codes, who have become pregnant outside of wedlock, or for having been raped (UNICEF, 2011).

In recent years the Libyan state has made slight progress in acknowledging the need to protect women from violence and to promote women's autonomy and independence. However, women's personal freedom and security remain limited in reality due to the traditional nature of Libyan society, which places social pressure on women to preserve their honour. Gender-based violence is seen as a disgrace and often the female victim is the one held responsible for the actions of the perpetrator (Pargeter, 2005).

### **b) Domestic violence**

Article 17 of Law No. 10 of 1984 states that husbands should not cause physical or mental harm to their wives, but there is no further legislation to protect women from such abuses or to penalize the perpetrators (UNICEF, 2011). Such abuses are seen as shameful and bring dishonour to the family, therefore they are often dealt with internally as opposed to looking for legal retribution (Pargeter, 2005). IFES reports that there are high levels of acceptance and justification for domestic violence throughout Libyan culture (IFES, Libya Status of Women Survey, 2013).

The US Department of State's Country Reports on Human Rights Practices for 2012 indicates that NGOs report the problem is "widespread," but also notes that there are no reliable statistics on the prevalence of domestic violence (Pargeter, 2010).

### **c) Rape**

The Penal Code designates rape or sexual intercourse with another by force, threat or deceit will be punished with a penalty of imprisonment not exceeding ten years (Penal Code, Article 407). A sexual offense requires proof of the attack in order for allegations to be filed (UNICEF, 2011). In practice, only the most heinous crimes are prosecuted, and rape victims themselves risk prosecution for extramarital sexual relations if they attempt to press charges (Pargeter, 2010). A rapist is expected to marry his

victim to “save her honour” as a “social remedy” (Parageter, 2010). The woman’s consent is needed for such a marriage, but given the reality of social pressures, she effectively has no option but to marry the perpetrator (UNICEF, 2011).

Spousal rape is not considered a crime, and like other forms of domestic abuse, such cases are considered private matters that carry a great deal of shame if publicly reported, therefore often these incidents remain hidden from public eye (UNICEF, 2011). A wife is able to file a complaint but it is rare such cases hold (Parageter, 2010).

#### **d) Sexual harassment**

In the Penal code, indecent assault is punishable by imprisonment not exceeding five years. If the victim is under the age of fourteen the penalty is imprisonment for a period no less than a year. If anyone commits an indecent assault on a person with that person’s consent, both he and his partner will be punished by detention (Penal Code, article 408). The definition of sexual harassment does not cover educational establishments, sporting establishments, public places, cyber harassment or cyber stalking.

Despite this legislation, reports of sexual harassment are widespread and are said to go largely unpunished (Parageter, 2010).

#### **e) Female genital mutilation**

According to the Inter-Parliamentary Union (IPU), female genital mutilation (FGM) is reportedly not practiced in the Libya. There is no specific legislation addressing FGM.

#### **f) Abortion**

Abortion is illegal unless the mother’s life is at immediate risk (Law No. 17 of 3 November 1986). Anyone who does the procedure on a woman without her consent will be punished by imprisonment for a period not exceeding 6 years (Penal Code, 1954). Anyone who causes an abortion with the woman’s consent will be punished by detention for a period of no less than six months. The same penalty will be given to the woman. A pregnant woman who induces her own abortion will be punished with detention of a period of up to six months (Penal Code, 1954).

### **a) Restricted Access to productive and financial resources**

#### **a) Secure access to land and assets**

According to the Civil Law, men and women have equal rights to own property, regardless of their marital status (Women Business and the Law, 2015). There is no legal discrimination, obstacles, or restrictions regarding women’s access to agricultural loans, acquisition of agricultural land, and disposal of agricultural land in all legal ways, e.g., sale, purchase, inheritance, gift, allocation by the state, compensation, membership in agricultural cooperative associations, and so on (CEDAW, 2008).

Women have the legal right to own, manage and administer land and non-land assets. However, in practice, social code dictates that men retain control and ownership of land (Parageter, 2010). According to a FAO report, due to extensive outward migration of men from rural areas, agriculture

has undergone a 'feminisation' in rural areas, with more women assuming a large portion of the agricultural production (Abdelali-Martini 2011). Despite this transition, very few women actually own their land and access to economic resources, assets, and credit for their work continues to be a challenge for women.

Libya has a limited private housing market due to the peculiarities of a political system that discourages private sector activity. Women have the right to own and use housing, but the tradition dictates that a woman's home is generally in the husband's name if she is married. Single women are expected to live with their parents or relatives, as it is deemed shameful by society for a young woman to live alone (Parageter, 2010).

### **b) Secure access to formal financial resources**

Women have the right to access financial services and do not need authorisation from their husband or legal guardian (Abdelali-Martini, 2011). They have the right to access bank loans, mortgages and other forms of financial credit (CEDAW, 2008). Under Libyan legislation, women have full and independent use of their income and assets; they are free to use banks and their services without the consent of a male figure (Parageter, 2010).

There are no public measures put in place to promote or ensure the equal treatment of women in regard to financial stability and access. Finances are seen to be a private matter and are dealt with internally within the family unit. The International Foundation for Electoral Systems (IFES) reports that most economic decisions are left to the men, with the women contributing to the decision but rarely making it themselves (IFES, Libya Status of Women Survey, 2013).

### **c) Workplace rights**

Libya has ratified ILO Conventions C100- Equal Remuneration Convention 1951 as well as C111- Discrimination (Employment and Occupation) Convention, 1958. It has not ratified C156- Workers with Family Responsibilities Convention, 1981, C-183 Convention concerning the Revision of the Maternity Protection Convention, 1952, or C-189- Domestic Workers Convention.

The law mandates non-discrimination on the basis of sex in employment in regard to selection criteria, recruitment, hiring, terms and conditions, promotions, training, assignments and termination. The law also requires equal remuneration for work of equal value. However, there are certain jobs that are deemed unfit for women to work within (Labour Relations Act, Act No.12 of 1378).

According to the Great Green Charter of Human Rights of the Jamahiriyan Era, it is the right of every man and woman to work (Jamahiriyan, 1988, Art 11). Act No. 12 of 1378 of the Labour Relations Act demands equal remuneration for work of equal value regardless of gender (Women Business and the Law, 2015).

A female employee is entitled to 98 days of paid maternity leave with a mandatory postnatal period of 6 weeks or more. If more than one child is born, the leave is extended to 112 days. A woman is entitled to a position within the same company upon return; however it is not guaranteed that the position will be of equal standing. For 18 months following her pregnancy, the woman is entitled to one or more nursing breaks of at least one hour in total, which are considered paid hours of work



(Women Business and the Law, 2015). The Government is responsible for paying 100% of the maternity leave.

However, the discriminatory practices of family life are often extended to the workplace and women face challenges such as pervasive sexual harassment or lack of acknowledgment (IFES, Libya Status of Women Survey, 2013). Women remain largely underrepresented in the workforce as it is generally considered that a woman's place is within the home (Parageter, 2010).

#### **4. Restricted Civil liberties**

By law, there are no restrictions on women's access to public space or freedom of movement, but societal and cultural norms have placed significant restrictions upon them (Parageter, 2010). There are no legal restrictions for women to travel independently locally or internationally, or to obtain a passport, yet culturally it is not seen as acceptable for a woman to be moving on her own (Parageter, 2010). Logistically it becomes more complicated as women are often refused service if they attempt to stay in a hotel alone without a male companion (Parageter, 2010).

##### **a) Citizenship rights**

Men and women share the same rights to acquire nationality regardless of whether they are married or unmarried (Libya Law 18, 1980). They are also allowed to change their nationalities. Women are allowed to retain their nationality if they choose to marry a person of non-Libyan descent, however if they choose to adopt the citizenship of their husband's country, they will no longer be able to maintain their Libyan nationality (Libya Law 18, 1980).

Unlike men, women do not have the right to transfer their nationality to their foreign-born spouses or the children of such unions (Law Number (24) for 2010/1378). While the children of a Libyan father and foreign mother are granted Libyan nationality, children of a Libyan mother and foreign father are not and require visas to enter the country if they reside abroad (Parageter, 2010).

There are no restrictions on a woman registering the birth of her child.

Families headed by Libyan mothers and foreign fathers are also discriminated against in that they are deprived of a family book (official documentation that permits access to certain state benefits such as subsidized food) and are not permitted to obtain loans. They are similarly excluded from state payments to families following the birth of a child (Parageter, 2010).

##### **b) Voting**

Women and men have the same voting rights. Women are encouraged to attend and participate in the Basic People's Congresses. There are no formal restrictions preventing them from serving in leadership positions. However, women struggle to make significant advances in what remains to be a male dominated political system (Gender Concerns International, The Situation of Women in Libya, 2017).

### **c) Political voice**

The General National Congress exists of 200 members, 120 of whom are elected by majority or non-transferrable voting system. The remaining 80 members are elected by proportional representation from closed electoral lists which must, according to Article 15 of the 2012 Law for the Election of the General National Congress, must “be arranged on the basis of alternation among male and female candidates. Lists that do not respect such principle shall not be accepted”. Article 17 of the 2012 Law states that the Commission may choose to replace a candidate who is deemed ineligible, but the replacement must be of the same gender (Law Number 4 for the year 2012 For Election of the General National Congress).

Social norms encourage women to remain out of the public eye, and far fewer women than men participate in practice (Parageter, 2010).

### **d) Access to justice**

Women continue to be disadvantaged in court due to discriminatory customary practices. A woman’s testimony is worth only half of a man’s, according to Islamic practice (UNICEF, 2011). They typically consult with a male relative before taking legal action, and it is still accepted practice for a man to take legal action on a woman’s behalf (Parageter, 2010). A woman has the right to challenge discriminatory actions by the state and claim compensation should the courts rule in her favour. However, it is difficult to determine whether women actually file such claims, as court records are not easily accessible by the public (Parageter, 2010).



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