LIBYA

Equality between women and men is granted in the 1977 Declaration of the Authority of the People and the 1988 Great Green Charter of Human Rights in the Age of the Masses. The 1997 Charter on the Rights and Duties of Women in Jamahiriya Society includes provisions to guarantee the equal rights of men and women in areas such as national security duties, marriage, divorce, child custody, and the right to work, social security, and financial independence. However, these guarantees of equality are undermined by family law, which retains many discriminatory clauses.

The country ratified the Convention on the Elimination of All forms of Discrimination Against women in 1989, and the Optional Protocol to the Convention in 2004. Reservations to CEDAW were listed at Article 2 and Article 16, in relation to rights and responsibilities in marriage, divorce, and parenthood, on the grounds that these articles should be applied without prejudice to Sharia law. Libya ratified the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa in 2004.

1. Discriminatory family code

Libya currently has no unified family code. Different laws relating to personal status are partly based on the Maliki school of Sunni Islam, and contain provisions that discriminate against women. Civil courts typically make decisions relating to personal status, as civil and Sharia courts have been merged since 1969.

The legal age of marriage is 20 years for both men and women in Libya, but judges can grant permission for marriage at an earlier age. Early marriages are relatively rare in Libya. According to the United Nations, in 2006 2.4% of women between 15 and 19 years of age in Libya were married, divorced or widowed (compared to 39.6% in 1973). Article 21 of the Great Green Charter forbids forced marriage and requires full consent of both parties.

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2 Idem, p.284
3 Idem, p.286
4 United Nations Treaty Collection (2014)
5 Pargeter (2010) p.289
6 African Union (2010)
7 Pargeter (2010) p.292
8 Idem
9 Idem, p.287; Kte’pi (2013) p.709
11 Kte’pi (2013) p.709
parties; under Law No.10 of 1984, a male guardian cannot refuse permission for a woman to marry.\textsuperscript{13} Arranged marriages, while once the norm, are now relatively rare, occurring mostly in rural areas.\textsuperscript{14} While a non-Libyan man must convert to Islam in order to marry a Libyan woman, a non-Libyan woman is not required to convert if she wishes to marry a Libyan man.\textsuperscript{15} Sexual relations outside of marriage are a criminal offence.\textsuperscript{16} Recent data on the adolescent fertility is not available, although the United Nations reports a rate of 3.8 per 1,000 women age 15-19.\textsuperscript{17}

Under Law No.10 of 1984 (Art.17) men and women have different responsibility during marriage and if dissolution. Wives are placed under legal obligation to ensure the comfort, physical and psychological well-being of their husbands, and to assume all domestic and childcare responsibilities; in return, she is entitled to financial support from her husband, control over her own income and assets, and the right to be free from psychological or physical violence.\textsuperscript{18} In terms of parental authority, under Islamic law, the father is considered the natural guardian of his children, the mother the physical custodian.\textsuperscript{19} 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.\textsuperscript{20} Judges may, however use their discretion, and in cases where the mother is not Libyan will often grant custody to the father.\textsuperscript{21}

Sharia law provides for detailed and complex calculations of inheritance shares.\textsuperscript{22} Woman may inherit from their father, mother, husband or children and, under certain conditions, from other family members. However, their share is generally smaller than that to which men are entitled. Daughters, for example, inherit only half as much as sons.\textsuperscript{23} In some cases, women cede their inheritance rights to their brothers, partly to ensure that they will then receive financial support if they do not marry, or become divorced or widowed.\textsuperscript{24} It is not clear how common this practice is.

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Polygamy, though legal in Libya, is relatively uncommon.\textsuperscript{25} In addition, existing wife/wives must grant their permission before the court before the marriage can take place and the husband must provide proof that he is financially capable of expanding his family.\textsuperscript{26} A recent survey conducted by the International Foundation for Electoral Systems (IFES) reports that while a large majority of men (70\%) agree that it is acceptable for a man to

\begin{itemize}
\item \textsuperscript{13} Pargeter (2010) p.292; CEDAW (2009) p.22
\item \textsuperscript{14} Kte’pi (2013) p.709
\item \textsuperscript{15} Pargeter (2010) p.292
\item \textsuperscript{16} Amnesty International (2010) p.211
\item \textsuperscript{17} United Nations Population Division (2013b); data from 2002
\item \textsuperscript{18} Pargeter (2010) p.292; CEDAW (2009) p.22
\item \textsuperscript{19} Kte’pi (2013) p.710
\item \textsuperscript{20} Idem
\item \textsuperscript{21} Pargeter (2010) p.294
\item \textsuperscript{22} Kte’pi (2013) p.710
\item \textsuperscript{23} Idem
\item \textsuperscript{24} Pargeter (2010) p.297
\item \textsuperscript{25} Pargeter (2010) p.292; Kte’pi (2013) p.710
\end{itemize}
have more than one wife, only a third of women agree with this statement. Women are also twice as likely to believe polygamy weakens family unity (63% versus 32% of men).\textsuperscript{27}

Men have the right to repudiate (divorce unilaterally) their wives, but such divorces must be registered with the court to be valid.\textsuperscript{28} Women do not have the same right, and can only obtain a divorce under a limited number of conditions (e.g. desertion or lack of financial support), or request a \textit{khula} divorce and forfeit their dowry.\textsuperscript{29} In the case of the latter she may also need to give up custody of her children in exchange for divorce.\textsuperscript{30} Divorced women may face social stigma and financial difficulties, particularly if they do not have support from their natal family.\textsuperscript{31}

Survey data from IFES provides some information with regard to decision-making, showing that fewer women (71%) than men (89%) consider themselves completely free in deciding how their earnings are spent.\textsuperscript{32} The same survey shows a general tendency to share decision-making jointly between husbands and wives, although in the area of financial or economic decision-making, men tend to be dominant, either as contributing to the decision or as sole decision-makers.\textsuperscript{33} When it comes to household purchases for daily needs, 26% of men primarily make such decisions, while 43% of couples decide jointly and 16% of women primarily decide. Decisions regarding large household purchases show a similar pattern: 25% primarily the husband, 46% the couple jointly decide, 10% primarily the wife.\textsuperscript{34}

2. Restricted physical integrity

Article 17 of Law No. 10 of 1984 states that husbands should not cause physical or psychological harm to their wives, but beyond this, there is no legislation in place to protect women from \textbf{domestic violence}, or to penalise perpetrators.\textsuperscript{35} There are no accurate figures available as to the prevalence of domestic violence, but it is thought to be fairly common.\textsuperscript{36} The intervention of family members or neighbours in incidents of domestic violence tends to limit reporting, as does social stigma and the fear of being rejected by the husband and extended family.\textsuperscript{37} The few cases that are filed are usually subsequently withdrawn.\textsuperscript{38} 28% of women think it is somehow justifiable for a man to beat his wife.\textsuperscript{39} When given specific scenarios, the share of both men and women who believe domestic violence is always or sometimes justified increases. For example, 52% of men and 41% of women would justify a husband beating his wife if she went out without telling him, while only 24% of

\begin{footnotesize}
\begin{enumerate}
\item 27 IFES (2013) pp.6, 35
\item 29 Idem; Idem
\item 30 Kte’pi (2013) p.710
\item 31 Pargeter (2010) p.294
\item 32 IFES (2013) pp.7, 48
\item 33 Idem
\item 34 Idem
\item 36 US Department of State (2012)
\item 37 Pargeter (2010) p.295
\item 38 OECD (2014), Gender, Institutions and Development Database, http://stats.oecd.org
\item 39 IFES (2013) pp.8, 59
\end{enumerate}
\end{footnotesize}
women and 30% of men would reject domestic violence in any of the listed scenarios (e.g. neglecting household responsibilities, being disobedient to the husband, neglecting children, etc.)

Rape is a criminal offence, but the law does not recognise spousal rape. Rape victims seldom report what has happened to them, for fear of being blamed themselves, or of being prosecuted for engaging in extramarital sex. A convicted rapist may either marry the victim with her agreement, or serve a prison sentence of up to 25 years. There is no reliable information as to how often this occurs, although some NGOs report that the forced marriage of rape victims has reportedly stopped. There have, however, been widespread reports of rape being used as a tactic during the recent war, with the International Criminal Court adding charges of rape against Gaddafi.

There is no law against sexual harassment. It is, however, reportedly widespread, including intimidation of women by militias and extremists, especially were the woman is accused of acting “un-Islamic”. In 2009, adult residents of a care home for women and girls orphaned as children made complaints about on-going sexual harassment at the centre. Officials initially pressured the women to retract their claims, although the Prosecutor’s Office then went on to open an investigation, resulting in the director of the residence being charged. Recent survey data from IFES reports that 3% of women declare experiencing unwanted/sexually suggestive noises, comments, or gestures towards them every or most times they are in public spaces, suggesting that this phenomenon is relatively limited in public, although this same percentage rises to 11% among women 18-24.

There is no evidence to suggest that female genital mutilation (FGM) is a general practice, although there are reports that FGM may be practised among some nomadic tribes in remote rural areas, and among migrant groups from Sub-Saharan Africa. There is no available data on the percentage of women who have undergone FGM.

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So-called ‘honour’ killings are not reportedly common in Libya, although the Penal Code contains provisions for more lenient sentences for men who kill or harm a female relative on discovering that she has engaged in extramarital sex.

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40 Idem, p.60
42 Idem; Idem
43 US Department of State (2012)
44 Kossov, Igor (2011);
46 US Department of State (2012)
47 Human Rights Watch (2010)
48 Idem
49 IFES (2013) p.59
50 US Department of State (2012)
51 UNICEF (n.d.)
Abortion is only legal in cases where the pregnant woman’s life is in danger.\textsuperscript{53}

Women have the right to use contraception, but it is relatively difficult to access information on reproductive health and contraception due to social taboos around discussion of sexuality.\textsuperscript{54} Women also need to have their husband’s consent to obtain contraceptive services\textsuperscript{55} and 44% of women report that they are required to be accompanied by someone when visiting a doctor.\textsuperscript{56} Generally, medical services are either not easily available or completely lacking in some areas\textsuperscript{57}. Recent data on contraceptive use is not available, but as of the most recent report, 25.7% of women were using a modern form of contraception\textsuperscript{58} while 12% of married women aged 15-49 had an unmet need for family planning.\textsuperscript{59}

3. Son bias

The male/female sex ratio for the working age population (15-64) in 2013 is 1.06 while the sex ratio at birth is 1.05.\textsuperscript{60}

There is evidence to suggest the Libya is a country of low concern in relation to missing women but the situation is improving.

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According to UNICEF, the under-five mortality rate is slightly higher for boys compared to girls.\textsuperscript{61} Gender-disaggregated data for nutrition and immunisation rates is not available, but overall, rates for the latter are very high (98-99%, depending on the vaccine).\textsuperscript{62}

Results from the 2013 IFES survey report that while there are significantly more women than men (14% as opposed to 3%) who have no formal education or did not complete their primary education, the majority of both men and women have at least a secondary education or higher (53% and 52% respectively), and there are almost as many women as men who hold a university degree or higher (32% and 33% respectively).\textsuperscript{63} In addition, data from the same survey indicates that low educational attainment pertains almost entirely to older generations of women.\textsuperscript{64}

\textsuperscript{53} UNDP (2010)
\textsuperscript{54} Pargeter (2010) p.304
\textsuperscript{55} Idem
\textsuperscript{56} IFES (2013) p.55
\textsuperscript{57} IFES (2013) p.56; Pargeter (2010) p.304
\textsuperscript{58} United Nations Population Division (2012); data from 1995
\textsuperscript{59} OECD (2014), Gender, Institutions and Development Database, http://stats.oecd.org
\textsuperscript{60} Central Intelligence Agency (2013a)
\textsuperscript{61} UNICEF (2014) p.31
\textsuperscript{62} Idem, p.43
\textsuperscript{63} IFES (2013) pp.6, 38
\textsuperscript{64} IFES (2013) p.6
4. Restricted resources and assets

Women have the legal right to own, manage and administer land and non-land assets.\textsuperscript{65} In practice, however, social convention dictates that men retain control and ownership of land.\textsuperscript{66} This is despite the fact that according to a FAO report, extensive out-migration of men from rural areas in Libya has resulted in the effective ‘feminisation’ of agriculture, with women assuming more and more responsibility for agricultural production.\textsuperscript{67} However, relatively few women actually own land (12%), and access to economic resources and assets continues to be a challenge for women in Libya.\textsuperscript{68}

More broadly, there is little current information on property rights in contemporary Libya. The latter were highly inconsistent under the Qadhafi regime, and the government regularly confiscated private land, some of which was redistributed to the landless or political favourites. Private property ownership was abolished in 1986, leaving Libyans with transferable use-rights only to land and inheritance rules are largely unfavourable towards women (see Family Code section above). Social tensions over property legislation remain high during the current transitional government and the drafting of Libya’s new constitution.\textsuperscript{69}

Women also have the legal right to access financial services, including bank loans (without their husbands’ consent). They also have the right to enter into various forms of financial contracts.\textsuperscript{70} In most cases, however, husbands or fathers take responsibility for any financial undertakings and commitments, and may also expect women to hand over their income.\textsuperscript{71} The 2013 IFES survey indicates that 59% of women do not personally have financial savings (versus 34% who do),\textsuperscript{72} although women who work have proportionally more access to or own financial savings than those who do not (46% versus 24% respectively). Employment also increases women’s perceived ability to obtain bank loans and credit. While only 25% of women who do not work for pay said they would be comfortable obtaining a bank loan or credit, 45% of women who work for pay said the same.\textsuperscript{73} In 2007, the Rural Bank granted 19,558 loans, of which 4,502 went to women.\textsuperscript{74}

5. Restricted civil liberties

There are no legal restrictions on women’s access to public space and freedom of movement, but societal norms can limit their right to move freely, especially in the evenings or in rural areas.\textsuperscript{75} It is also socially unacceptable for an unmarried or divorced woman to live on her own.\textsuperscript{76} There are similarly no legal requirements for women to obtain their husband’s or male guardian’s permission to secure a passport or travel independently, but social

\textsuperscript{65} Pargeter (2010) p.297; CEDAW (2009) p.3
\textsuperscript{66} Idem, p.295;
\textsuperscript{67} Cotula (2002[2007]) p.133
\textsuperscript{68} IFES (2013) p.51
\textsuperscript{69} USAID (2013)
\textsuperscript{72} IFES (2013) p.51
\textsuperscript{73} IFES (2013) p.7
\textsuperscript{74} Pargeter (2010) p.15
\textsuperscript{75} Pargeter (2010) p.291
\textsuperscript{76} Idem, p.306
conventions mean that many women do not travel alone or without the permission of their husbands or families. In addition, it is difficult for women to travel on their own within Libya, as most hotels will not accept unaccompanied women. The 2013 IFES survey reports that 57% of women say they feel completely (37%) or somewhat (20%) restricted in leaving their houses without permission and both men (96%) and women (82%) agree “a good wife should obey her husband even if she disagrees.” Following the revolution, many families have imposed restrictions on women’s movements, due to security concerns, the circulation of stories of violence against women, and the uncertainty of a centralized authority for the military and police. According to the IFES survey, at least one in five women felt somewhat or completely restricted in associating with persons of her own choosing (24%), moving about in public areas without fear or pressure (29%), and expressing her views on critical issues to family, neighbours or friends (34%). However, an attempt to introduce legal restrictions on the freedom of movement of women outside the country in 2007 caused outcry, and was quickly overturned.

Although women turned out in relatively high numbers to vote in the 2012 elections (66%, compared to 88% of men), their levels of participation in civic activities, where they might express their views on social and political issues is relatively low: according to the 2013 IFES survey, 20% of women reported taking part in such activities within the past 12 months. Only 10% reported taking part in a protest, march or demonstrate in the past 12 months, and 8% have done so over a year ago.

As Libya transitions out of the 42-year of autocratic rule under the Qadhafi regime, women have actively sought participation in the drafting process of the new constitution and in the formation of government policies, including the recent 2012 electoral law. There are quotas at both national and sub-national levels. According to the electoral law, the General National Congress consists of 200 members, 120 of whom are elected by majority or a single non-transferable vote system (depending on whether the district is single-member or multi-member). The remaining 80 members are to be elected by proportional representation from closed electoral lists which must, according to Article 15 of the 2012 law, ‘be arranged on the basis of alternation among male and female candidates, vertically and horizontally. Lists that do not respect such principle shall not be accepted’. As of the 2012 elections, there were 33 women in the 200 member General National Congress (or 16.5% of the total) and women held two seats in the transitional cabinet. While the majority of men and

77 Idem; Kte’pi (2013) p.710
79 IFES (2013) p.58
80 Idem, p.35
81 IFES (2013) p.2
82 Pargeter (2010) p.292
83 IFES (2013) p.4
84 Idem, p.18
85 IFES (2013) p.2
86 QuotaProject (2014)
88 Freedom House (2013)
women in Libya express support for women in different political roles, most men and women also believe that men make better political leaders and better business executives than women.\textsuperscript{89}

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Pregnant women are entitled to 50 days paid \textit{maternity leave} in Libya, and discrimination based on gender in employment and pay is banned under the Labour Law (1970),\textsuperscript{90} although survey data indicates a significant disparity in earned incomes between the sexes, even when controlling for educational attainment.\textsuperscript{91} Under the Labour Law, women are prohibited from working in ‘strenuous or hazardous’ jobs, from working at night, or from working more than 48 hours a week, including overtime.\textsuperscript{92} Women also face pressure from husbands and family members not to enter professions where they will be mixing with men, and to work close to home; inevitably, these stipulations limit women’s \textit{employment} options.\textsuperscript{93} Women’s labour force participation is significantly lower than men’s, with 43\% of women reporting work for pay in the last week compared to 66\% of men.\textsuperscript{94} In addition, many women leaders have expressed frustration with male colleagues who refuse to acknowledge them in supervisory roles.\textsuperscript{95, 96}

Since the adoption of the 2010 Provisions of Libyan Nationality (Art. 11), Libyan women who marry foreign men may pass on their \textit{citizenship} to their children.\textsuperscript{97}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{89} IFES (2013) pp.5, 32
\item \textsuperscript{90} ILO (2010); CEDAW (2009) pp.18, 28
\item \textsuperscript{91} IFES (2013) p.7
\item \textsuperscript{92} Pargeter (2010) p.299; CEDAW (2009) p.18
\item \textsuperscript{93} Pargeter (2010) p.299
\item \textsuperscript{94} IFES (2013) p.6
\item \textsuperscript{95} IFES (2013) p.2
\item \textsuperscript{97} Human Rights Watch (2010)
\end{itemize}
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